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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 489
~~Tax No.~~

1986

DATE OF DECISION 21.11.86

B. B. Srivastava Petitioner

Shri G.N. Oberoi Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE G. RAMANUJAM, VICE-CHAIRMAN (JUDICIAL)

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *no*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*

S.P. Mukerji
(S. P. MUKERJI)

G. Ramanujam
(G. RAMANUJAM)

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. No. 489/86

Date of Decision : 21.11.86

B. B. Srivastava . . . Applicant -
Vs.
Union of India . . . Respondent
Shri G.N. Oberoi . . . Advocate for applicant
Shri M.L. Verma . . . Advocate for respondent

CORAM :

The Hon'ble Mr. Justice G. Ramanujam, Vice-Chairman
The Hon'ble Mr. S. P. Mukerji, Administrative Member

ORDER :

The applicant herein was working as an Audit Officer in the P & T Department and he retired on 30.11.85 from the P & T Audit Office. His Death cum Regirement Gratuity(DCRG) of Rs.44,550 was paid after deducting (1) a sum of Rs.5,921.50 towards the loan dues and (2) a sum of Rs.1,000/- for want of Last Pay Certificate (LPC). While in service he has taken a House Building Advance(HBA) from the Government and he has been making payments both towards principal and interest due on that advance. But according to him, some of the payments made by him towards the said loan have not been given credit to, as a result of which a sum Rs.5,921.50 has been withheld from and out of the amount due to him towards DCRG.

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2. In the Department in which he was working there was restructuring of the posts of U.D.C. and SdO., but the posts of Audit officer was not restructured. As a result of restructuring, certain posts of UDC and SO were upgraded, while the posts of audit officers did not come up for restructuring. However, in view of the representations made by the officers in the category of audit officers, a sum of Rs.100 was paid every month on ad-hoc basis pending the receipt of the Fourth Pay Commission's recommendations. The applicant was thus in receipt of the said ad-hoc monthly payment of Rs.100/- till he retired on 30.11.1985.

3. In these circumstances after his retirement the applicant filed this application claiming three reliefs (a) for payment of Rs.1,000/- withheld due to non receipt of LPC, with interest at the rate of 18% from 30.11.85; (b) for payment of Rs.5,921.50 withheld wrongly with interest ^{at 18%} from 30.11.85 on the ground that this amount has been wrongly withheld towards the ~~bañ~~ arrears and the Department had not credited the payments duly made by him in time and (c) for repayment of the excess amount of Rs.496.50 recovered from his salary on account of the interest on HBA ^{with interest at 18%} from 1.9.82 from the date of recovery.

4. Subsequent to the filing of this application the principal amounts of Rs.496.50, 5,921.50 and 1,000/- have been paid to him on 31.7.86, 31.7.86 and 20.9.86 respectively. Thus as on date, there is no dispute between the parties so far as the principal amounts are concerned which have since been paid. The main dispute now centres around the interest payable on the principal amounts.

5. There is another disputed item between the parties that relates to a sum of Rs.100 paid by the department on ad-hoc basis every month till Fourth Pay Commission's recommendations. According to the applicant, the said sum of Rs.100 paid every month should be treated as part of pay and should count for pension. On the other hand the learned counsel for the respondents points out that the special ad-hoc allowance of Rs.100 paid to the applicant was purely on ad-hoc basis and this cannot be counted as part of the applicant's pay. In this connection the learned counsel for respondents referred to a communication dated 14.10.86 wherein it was clarified that the special ad-hoc allowance of Rs.100 drawn by the audit officers will not count for the purpose of fixation of pay in the revised scales nor can be taken into account for purposes of calculation of pension. In this case it cannot be disputed that the special ad-hoc allowance of Rs.100 which was paid to audit officers was not in lieu of enhanced pay, nor was it paid as additional pay. It was paid on an ad-hoc basis to satisfy the claim from the audit officers that while there has been restructuring of UDCs and SOs resulting in considerable financial benefit to them, similar benefit has not been extended to them, even though they are performing more onerous duties. ^Rawaiting the recommendations of the pay Commission. ^RAs the audit officers have not been given the benefit of any restructuring or upgrading, ^Rwith a view to satisfy the audit officers, a sum of Rs.100 has been ordered to be paid till the receipt of recommendations from the Fourth Pay Commission. On the above facts we are not in a position to say that the special ad-hoc allowance was in lieu of higher pay. Only when an

allowance is paid to an official in lieu of enhanced pay that amount will be taken up for calculation of terminal benefits or pension. An allowance paid purely on ad-hoc basis till a particular event takes place cannot be treated as part of pay. In this view we are not inclined to say that the special ad-hoc allowance of Rs.100 should be treated as part of the pay and is to be taken for the purpose of calculation of pension. It is pertinent to note that the Fourth Pay Commission in its recommendation while re-fixing the pay of Audit Officers from 840-1200 to 2375-3500 specifically stated that the special ad-hoc allowance paid to the Audit Officers cannot be continued in view of the fact that the revised scales of pay takes all the matters into consideration. This revised pay scale of 2375-3500 is the same for all those in the scale of 840-1200 whether they were in receipt of special ad-hoc allowance or not. Thus it is clear that the sum of Rs.100 paid as ad-hoc allowance was not at any stage treated as the part of the pay of audit officers. Therefore we are not in a position to agree with the applicant that the sum of Rs.100 should be taken into account for fixation of pension.

6. Coming to the main question as to whether the applicant is entitled to interest at 18% on the amounts wrongly withheld by the Government, we find that the said claim is based on the fact that if the amounts had not been withheld, he could have invested the same and that would get him a minimum interest of 18%. The amounts said to be wrongly withheld consist of Rs.496.50, Rs.5,921.50 and Rs.1,000.

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7. So far as Rs.1000/-, which has been withheld from DCRG for want of LPC is concerned, the interval between the applicant's retirement on superannuation and the date of payment of withheld amount is 8 months and 20 days. Though the applicant claims interest on this Rs.1,000/- in our view the delay is not so much ~~long~~ as to call for or warrant the award of interest. We are not therefore inclined to grant interest on the said sum of Rs.1000/- However, we feel that the amount of Rs.496.50 has been paid after a considerable delay. If the amount has been paid to him without delay the applicant would have been benefited by this amount. It is not disputed that there has been an excess collection of Rs.496.50 from him. This excess collection is said to have been made on 1.9.82 and the amount was refunded to him only on 31.7.86 after a delay of 3 years and 11 months. According to the learned counsel for respondents, the applicant brought to the notice of the department the excess collection only on 16.2.85 and thereafter the said amount has been returned on 31.7.86 and there is not so much delay as to call for the award of interest. We are not in a position to accept the arguments of the learned counsel for respondents. If the amount has not been recovered from the applicant in excess, the amount would have been available for the applicant. Even assuming that the applicant brought the mistake to the notice of the Department only on 16.2.1985, once the excess collection is found to be due to a mistake on the part of the Department, the applicant is entitled

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to interest from the date of collection. Hence we feel that the applicant is entitled to interest on the said amount of Rs.496.50.

8. As regards the rate of interest, however we feel that the claim of the applicant at 18% is somewhat excessive. Learned counsel for the applicant referred to the decision of the Supreme Court in State of Kerala Vs. Padmanaba Nair (1982 2 SC 476) in support of the claim for 18% interest. In that case the Supreme Court specifically found that the pension has been unnecessarily withheld and there has been culpable negligence on the part of the respondents in withholding the pension. It was for that reason the interest at 18% was warranted^{by} ordered. But this is a case of excess recovery by oversight or by inadvertance. Therefore, we are not in a position to allow interest at 18%. We feel 12% will be the reasonable rate of interest to be allowed in this case.

9. Coming to the amount of Rs.5,921.50 which was to be paid to him on the date of his retirement but actually paid on 31.7.1986, we find that there has been delay of nearly 8 months. If the amount has not been withheld but paid to him immediately on his retirement he would have had the benefit of the said sum. We therefore inclined to grant interest on this amount at the rate of 12%.

We direct the respondents to pay interest at the rate of 12% per annum on Rs.5,921.50 from 30.11.85 to 31.9.86 and on Rs.496.50 from 1.9.82 to 31.7.86 within three months from the date of receipt of this order. The application is thus allowed in part.


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER


(G. RAMANUJAM)
VICE-CHAIRMAN (J)