

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

REGN. NO. OA 930/86

Dated: 13.6.1988 .

Shri Makhan Singh Applicant

Vs.

Union of India & others Respondents

Coram: Hon'ble Mr. Justice J.D. Jain, ViceChairman

Hon'ble Mr. Kaushal Kumar, Member

For the Applicant Shri Pradeep Kumar, Counsel.

For the Respondents Mrs. Raj Kumari Chopra, Counsel

(Judgement of the Bench delivered by Hon'ble
Mr. Justice J.D.Jain, Vice Chairman)

The applicant was employed as SPM(HSG-I) in the Department of Posts and Telegraphs. at the relevant time. He was allowed to voluntarily retire from the said post with effect from 11.8.85 under the provisions of Rule 48 of the Central Civil Services(Pension)Rules, 1972. However, his Death Cum Retirement Gratuity (for short DCRG) was withheld by the Respondents in view of the fact that disciplinary proceedings under Rule 16 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965 were pending against him for imposition of a minor penalty. The applicant accordingly represented and thereafter filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction ~~to~~ to the Respondents to pay the entire amount of gratuity. The filing of this OA on 28.10.86 itself had the desired effect to a great extent inasmuch as an amount of Rs.31069/- was paid to the applicant balance towards DCRG on 6.12.1986. However, the amount of Rs.5,000/- was withheld as estimated loss suffered by the Respondent

department on account of the violation of the departmental instructions by the applicant. The charge against the applicant was that there was a deficiency of Rs.23,750/-60 in respect of certain parcels which were detected under-paid. The sender on being approached agreed to pay the amount of deficiency in the instalments of Rs.2500/- each. The department issued instructions that the payment of instalments should be received only in cash and not by means of a cheque. However, the applicant who was then working as Sub Postmaster Incharge of N.S.Mandi Post Office received the said payment from the defaulter by means of two cheques of Rs.2500/- each. The said cheques when presented were dishonoured. Thus according to the department they have suffered a loss of Rs.5000/- on that account.

2. The Respondents have however, paid the balance amount of Rs.5000/-also during the pendency of this application. So the only question that survives is regarding the rate of interest to which the applicant may be entitled on account of gross delay, on the part of the Respondents for not paying the amount of DCRG. to the applicant.

3. Learned counsel for the applicant has placed reliance on the decision of the Supreme Court in The State of Kerala and others Vs. M.Padmanabhan Nair(1985(1) All India Services Law Journal 106). It was observed by the Supreme Court in the said judgement that:-

" the necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable

to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

In that case the delayed payment was made on account of non-issue of the Last Pay Certificate by the concerned authority.

4. The only defence put forth by the learned counsel for the Respondents is that it was because of the pendency of the disciplinary proceedings that the DCRG was withheld. However, we notice that under Rule 68 of the Central Civil Service Pension Rules Gratuity cannot be withheld because of departmental proceedings ^{having been} instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for imposing any of the penalties specified in clauses (i), (ii) and (iv) of Rule 11 of the said Rules.

5. In the instant case it was admitted that the disciplinary proceedings were initiated under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules. Eventually, however, the said proceedings were dropped.

6. From the foregoing it clearly emerges that the withholding of the gratuity of the applicant was not at all justified. The ^{defence} taken by the Respondents is contrary to the provisions of Rule 69 of the Central Civil Services Pension Rules which is specific in terms. In the circumstances, the Respondents cannot escape

the liability for payment of interest on the amount of gratuity paid to the applicant after gross delay without any justification.

7. Rule 68 of the Central Civil Services Pension Rules provides as under:-

" 68. Interest on delayed payment of gratuity.

(i) If the payment of gratuity has been authorised after three months from the date when its payment became due, and it is clearly established that the delay in payment was attributable to administrative lapse, interest at such rate as may be prescribed by the Government from time to time in this behalf on the amount of gratuity in respect of the period beyond three months shall be paid:

Provided that the delay in the payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down in this Chapter."

8. Pursuant to the aforesaid provision, Government of India, Department of Personnel & Administrative Reforms issued Office Memorandum No. 7/3/84-Pension Unit, dated the 28th July, 1984 prescribing the payment of interest where the payment of D.C.R.G. has been delayed at the following rates:-

(i) beyond 3 months and up to one year.... 7% per annum

(ii) beyond one year 10% per annum

Obviously, the claim of the applicant for payment of interest at the market rate does not seem to be justified inasmuch as the gratuity had been withheld under the bonafide impression that the same could not be paid during the pendency of disciplinary proceedings. Of course as already stated there was no justification to withhold the gratuity of the applicant. So we are/^{not} inclined

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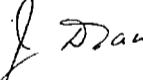
to direct the Respondents to pay penal interest on these dues at the current market rate. At the same time, we make it clear that there is no justification to split the rate of interest into two parts i.e. 7% per annum for the first nine months and 10% per annum for the remaining period because the gratuity was in fact paid after the expiry of one year. So we feel just and proper that the rate of interest should be applied uniformly for the whole period of delay.

9. To sum up, therefore, we direct the Respondents to pay interest at the rate of 10% per annum beyond 3 months of the retirement of the applicant both on the amount of Rs.31069 as also the balance amount of Rs.5000/- till the dates of the respective payments.

10. This application stands disposed of in the above terms.

11. The payment shall be made to the applicant within three months of the receipt of this order by the Respondents failing which the Respondents shall pay up to date interest at the same rate.


(KAUSHAL KUMAR)
MEMBER


(J.D. JAIN)
VICE CHAIRMAN

13.6.88