

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1263/87
TAX NO.

198

DATE OF DECISION 06.10.1989

Manohar Lal

Applicant (s)

Shri R.K. Kamal

Advocate for the Applicant (s)

Versus
Union of India

Respondent (s)

Shri K.N.R. Pillai

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, Vice-Chairman.

The Hon'ble Ms. Usha Savara, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Kamleshwar Nath,
Vice-Chairman).

This application under Section 19 of the Administrative Tribunals Act, 1985 lays a claim for interest on the late payment of gratuity amount.

The applicant retired as Deputy Chief Operating Superintendent on 24.11.1980. He was entitled to receive gratuity of Rs.30,000/-. The payment, however, was withheld because the applicant continued to occupy the Railway Accommodation. He ultimately vacated it on 22.8.1981. In respect of the period of occupation, a sum of Rs.3454.06 was deducted from the gratuity on account of rental and electricity charges. Subsequently, the applicant was paid

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Rs.24262.30 in March 83, Rs.1907.06 in March 85 and Rs.376.56 in August 85. The applicant's case is that there was no justification whatsoever for the opposite parties to withhold the payment for such a long period and, therefore, the applicant is entitled to penal interest at market rate. Learned counsel for the applicant has referred to the case of State of Kerala Vs. M. Padmanabhan Nair, 1985(1) S.L.R. 750 (SC).

The case of the opposite party is that this application filed on 7.9.87 was barred by limitation and that there was no unreasonable delay in making the payment of the gratuity amount. It is said that the amount which was paid in March and August 85 flowed from the applicant's claim of revision of some pay and, therefore, could not have been paid bonafide till the claim was settled. Lastly, it is said that according to the administrative decisions of the Government for the purposes of Rule 68 of the Central Civil Services (Pension) Rules 1972, the liability of the department to pay interest was confined to 7% for a period of one year beyond three months from the due date and 10% for the period beyond one year and, therefore, in case the applicant is found entitled to interest, not more than 10% interest may be awarded.

We have heard learned counsel for the parties and gone through the record. On the question of limitation, learned counsel for the applicant refers to the order dated 10.4.1986 (Annexure A-I), which shows that his claim for payment of

interest was re-considered and ultimately rejected on that date. Learned counsel for the opposite party refers Annexure A-V by which the claim was initially rejected on 13.1.1986.

It appears to us that the order dated 13.1.1986 (Annexure A-V) did conclude the applicant's claim of interest, but the opposite party nevertheless reopened the question and reconsidered it in consequence of which they passed the second rejection order dated 10.4.1986 (Annexure A-I). While it is true that representations which are not contemplated by any statutory rules may not be such representations to which Section 20 of the Administrative Tribunals Act may apply (See S.S. Rathore Vs. State of Madhya Pradesh, A.T.R. 1989(2) S.C.335), nevertheless where the concerned department agrees to reconsider a case and does examine the case and takes a decision, it is the ultimate decision which could be treated as a final decision for the purposes of limitation. In this connection, this date ought to be 10.4.1986. There was a slight delay even with reference to that date; but the applicant had made application for condonation of delay and the Bench which admitted the case condoned the delay by an order dated 11.9.1987. We see no reason to depart from that view.

In respect of the delayed payments of March and August 85, the liability to pay must refer back to the due date of the payment of gratuity, because after all the claim in respect of salary is a claim during the continuance of service and the amount, whenever ultimately granted, must be said to have accrued on the appropriate due date. We are of the opinion,

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therefore, that the total amount of Rs.30,000/- was due to the applicant as gratuity at the time of his retirement.

However, the applicant continued to stay in the Railway Accommodation which he vacated on 22.8.1981 and for that reason the applicant has fairly claimed interest after that date.

The only question which remains to be considered is whether the applicant should get interest at the rate decided by the Government for the purposes of Rule 68 of the Central Civil Services (Pension) Rules 1972 or at penal rates. In the first instance, the withholding of the entire gratuity amount of Rs.30,000/- on account of the applicant continuing in the Railway Accommodation is not fair; some smaller amount which could be reasonable could have been withheld. In the second place, if the charges on account of electricity and rent had been recovered from the applicant's gratuity amount, there was no further justification to withhold the remaining amount. It appears, therefore, that it is not merely a case of delayed payment, but, what has been described as "culpable delay" in Padmanabhan Nair's case (Supra). We should think, therefore, the applicant should get penal interest.

A series of decisions including Padmanabhan Nair's case would indicate that a proper rate of interest applicable in such cases is @ 12%. The case of O.P. Gupta Vs. U.O.I. and others, (1987) 4SCC 328 and N. Mahapatra Vs. U.C.I.

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and others, A.T.R. 1988(2) C.A.T.260(Cuttack) may be referred to in this connection.

In view of what we have said above, ^{we} direct that the opposite party will pay interest at the rate of 12% on a sum of Rs.26,546/- (Rs.30,000 - Rs.3454) from 1.12.1981 (i.e. three months after the applicant vacated the house) till payment subject to a progressive adjustment of the amount already paid to the applicant in March, 1983, March, 1985 and August, 1985.

Parties shall bear their costs.

U. Savara
(Usha Savara)
Member (A)

K. Nath
6-10-89
(Kamleshwar Nath)
Vice-Chairman

"SRD"