

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1789/1987
~~XXXX~~ No.

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DATE OF DECISION 7.10.1991

<u>B.L. Sharma</u>	Petitioner
<u>Mr. K.N.R Pillai</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi.</u>	Respondent
<u>Shri P.H. Ramchandani, Sr. Counsel</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

J U D G M E N T

In this application dated 8.12.1987 the applicant who retired voluntarily from the Railways on 21.3.83 has prayed that the respondents be directed to pay interest at 15% on the following delayed payments:-

- a) Provisional pension instalments amounting to Rs. 8655.60 for the period from 1.4.83 to date of actual payment on 5.12.1983.
- b) DCRG of Rs. 26,420/- from 21.3.83 to 20.10.1983.
- c) Leave encashment of Rs. 11,123/- from 21.3.83 to 14.11.1983.
- d) Commuted pension of Rs. 29,805/- from 21.3.83 to 2.2.1987.

The brief facts of the case are as follows.

2. Having entered service of the Railway Board in July 1943, the applicant was to superannuate in the normal course on 30.6.83. However, because of his ill-health he sought voluntary retirement which was allowed to him and he finally retired on 21.3.1983. It appears that at that time some vigilance investigations were going on against the then

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(the applicant)

Chairman of the Railway Service Commission where he was working earlier in Bombay and the applicant's conduct was also under investigation. Since there was delay in the grant of his pension, he represented on 5.8.83 (Annexure AI) for settlement of his retirement dues, but getting NO response, he followed it up with a Lawyer's notice dated 31.8.83 under Section 80 of the Code of Civil Procedure. On this he was sanctioned a provisional pension on 1.9.83 at Annexure-AIII but payment could materialise only on 5.12.83 after another Lawyer's notice was issued on 10.11.83. The Death-cum-Retirement Gratuity was sanctioned on 10.10.83 on which actual payment materialised on 20.10.83. His dues on encashment of leave were also sanctioned on 21.10.83, the payment of which materialised on 14.11.83. On 22.3.84 (Annexure-AVII) he claimed that interest at the rate of 15% on these delayed payments be granted. On 2.8.85 he served another Lawyer's notice for sanctioning commuted value of his pension from March 1983 and finally on 1.9.86 orders were issued at Annexure A-X converting his provisional pension into final pension on the decision to drop any action against him. He was also granted commutation of 1/3rd pension. The commutation of pension was sanctioned on 11.9.86 with prospective effect, but actual payment materialised only on 2.2.87 as in the meantime the sanction order was lost by the respondents. He again represented on 23.3.87 for claiming interest on the delayed pension, DCRG, leave encashment and commuted value of pension, but having received no response, he moved the Tribunal with this application. The applicant has argued that in accordance with the orders of the Railway Board action for sanction of pension was to be initiated two years before the date of his retirement. He has mentioned a number of cases by name in which final pension was sanctioned a day earlier than the date of retirement. But in his case the same was sanctioned months and years after his

voluntary retirement. He has challenged the action of the respondents in withholding pension merely because some investigation was going on. According to him, neither the pension nor the gratuity could be withheld as he had not been served with any chargesheet.

3. The respondents have indicated that the applicant's conduct was under investigation by the Directorate of Vigilance and later by the Central Bureau of Investigation on some serious irregularities. He was allowed to retire on 21.3.83 after three months notice. But since it takes six months for the issue of a 'No Demand Certificate', his provisional pension could be sanctioned on 1.9.83 after completing all formalities. Similarly the DCRG and leave encashment dues were sanctioned shortly thereafter. Commutation of his pension could not be allowed as he was granted pension on a provisional basis. He was granted regular pension as soon as the investigation was concluded on 1.9.86 and commutation was also allowed on that date.

4. In the rejoinder the applicant has stated that he was to normally superannuate 30.6.83 and simply because he had retired voluntarily ^{only} three months in advance, there is no reason why his pension should have been sanctioned with a delay of four years.

5. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. In accordance with Rule 9 of the Central Civil Services Pension Rules, pension can be withheld or withdrawn if in the departmental proceedings initiated before retirement, the Government servant is found guilty for grave negligence. The Supreme Court in one of its latest judgments, in Union of India and others vs. K.B. Janakiraman and others, JT 1991(3) SC 527, upheld the finding of the Full Bench of the Tribunal that

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it is only when a chargememo in a disciplinary proceedings or chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. Since in the present case, no chargesheet had been served on the applicant while he was in service and the investigation itself was dropped subsequently, the question of withholding pension or DCRG in case of the applicant does not arise. In accordance with Rule 2308-A of the Railway Establishment Code, Volume II and Railway Board's Circular No.9455 dated 8.7.1978, pension and gratuity cannot be withheld if no disciplinary proceedings are pending(A.T.R 1987(2) C.A.T 229). In R.C Bondhatey vs. Union of India and others, SLJ, 1988(3) C.A.T 189, the New Bombay Bench of this Tribunal allowed interest on gratuity when a criminal case was withdrawn for lack of evidence in 1984, five years after the applicant therein had retired in 1979. Since in the present case, the investigation was dropped, there is no reason why interest should be denied to the applicant on the delayed payment of DCRG.

6. In Smt. Savitri Devi vs. Union of India & Ors, A.T.R 1987(2) C.A.T 200, the Principal Bench of the Tribunal allowed interest on pension and gratuity which was sanctioned with a delay of two and a half years ^{after} of the applicant's voluntary retirement. The Tribunal in that case directed as follows:-

" However, for the first three months from the date on which she became entitled to pension i.e. three months after 1.8.1983 no interest will be payable. For the next 9 months she will be entitled to payment of interest at the rate of 7% per annum and for the subsequent period until the pension is released at

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the rate of 10% per annum on all amounts due to her towards pension.

5. Though order dated 11/16.10.85 to pay gratuity was issued, it is her grievance that the entire amount due to her has not been paid. Therefore, interest shall be paid on the entire amount of gratuity from 1.11.1983 at the rates mentioned above and on the balance of the amount of gratuity at 10% per annum till it is wholly paid."

In the instant case before us since the applicant was to even normally superannuate on 30.6.63 I see no reason why the retiral benefits should have been delayed beyond three months from that date, i.e., beyond 30.9.63. The fact that he had sought voluntary retirement which materialised on 21.3.63 cannot be a reason to expedite the sanction of pension even earlier than 30.9.83, but in no case can any delay beyond 30.9.63 be tolerated. The applicant was granted provisional pension on 1.9.63 only after the Lawyer's notice was issued on 31.8.63. The actual payment of provisional pension sanctioned on 1.9.63 materialised on 5.12.63, also after another Lawyer's notice had been issued on 10.11.63. Following the ruling of the Principal Bench of the Tribunal in Smt. Savitri Devi's case, ^(supra) therefore, the applicant will be entitled to interest at 7% per annum for the delayed payment of provisional pension for the period between 1.9.1963 and 5.12.63. Since the provisional pension was equal to the final pension granted to him on 1.9.66, he will not be entitled to any further interest beyond 5.12.63 so far as his pension is concerned. Similarly, the applicant will be entitled to interest at 7% per annum on the delayed payment of DCRG for the period between 1.10.83 and 20.10.83 when the actual payment was made. As regards interest on encashment of leave I feel that the applicant will be

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entitled to interest at 7% from the date of his retirement on 21.3.83 to the date of actual payment on 14.11.83 as the leave account is supposed to be maintained concurrently and the question of any administrative delay in the sanction of leave encashment does not arise. So far as the delayed commutation of pension is concerned, since the applicant has already drawn the full amount of pension from the date of his retirement to the sanction of commutation on 15.12.86 and he has been allowed interest on his delayed pension, he is not entitled to any interest on commuted pension, which was allowed with prospective effect from 15.12.86 upto which date he was drawing full pension.

7. In the facts and circumstances I allow the application in part only to the extent of granting of interest at the rates and periods indicated in the preceding paragraph. There will be no order as to costs.



(S.P. MUKERJI)
VICE CHAIRMAN

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