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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2315/2004
MA 1258/2005

New Delhi, this the 31st day of August, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Miss. Christine James
D/o Shri Frank James
Retired Chief Nursing Officer,
Lady Hardinge Medical College
& Smt. S.K. Hospital, New Delhi,

Residence of :

G-4, 39 J. Block,
Dilshad Colony, New Delhi – 110 095.

...Applicant

(By Advocate Shri K.L. Bhandula)

VERSUS

1. Secretary to the Govt. of India
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi – 110 001.
2. The Director General, Health Services,
Nirman Bhavan, New Delhi – 110 001.
3. The Principal & Medical Suptd.,
Lady Hardinge Medical College &
Smt. S.K. Hospital, New Delhi – 110 001.
4. Secretary Cabinet Sectt.
(Public Grievances), Govt. of India,
2nd Floor, Sardar Patel Bhavan,
New Delhi – 110 001.
5. Secretary, Ministry of Personnel,
Public Grievances & Pension,
Department of Pension & Pensioners' Welfare, Lok Nayak Bhavan, New Delhi.

...Respondents.

(By Advocate Shri Duli Chand)

O R D E R (ORAL)

MA 1258/2005 seeking bringing document, namely, due drawn statement, on record, being not opposed is allowed.

2. The reliefs prayed for in this OA are as follows:-

8. RELIEFS SOUGHT.

In view of the averments made in para 1, facts in para 4 and legal grounds mentioned in para 5, the applicant prays that the Hon'ble Tribunal be graciously please to direct:-

- i) Payment of dues/arrears arising out of the 5th Pay Commission and other late payment of G.P.F., leave encashment etc., with interest of 18%.
- ii) to hand over cheques for Rs.15,000/- and Rs.5000/- made in the name of the applicant but not handed over after re-validation and with 18% interest.
- iii) Similarly placed persons have not been charged market rent for their over-stay after retirement in Govt. Accommodation and therefore, market rent charged from her be refunded with 18% interest.
- iv) Cost of the proceedings and any appropriate orders in the interest of justice.
- v) Appropriate disciplinary action against the staff members who took more than 6 years to clear her dues of the applicant and also caused harassment to her.
- vi) to furnish details of the payments including G.P. Fund, leave encashment in consolidated statement to enable the applicant to ensure that she got all payments."

3. Admitted facts of the case are that this is the second round of litigation.

The applicant retired on attaining the age of superannuation on 29.2.1996. She continued to occupy the nursing hostel accommodation till it was finally vacated on 26.8.1997. Since payment on account of pensionary benefits etc. to the applicant were withheld, it necessitated her to file OA No. 2718/2002, which was disposed of vide order dated 3.9.2003 with the following directions:-

"6. In the above facts and circumstances of the case, the OA is disposed of with the following directions:-

- (i) Respondent No.3 is directed to verify the records with regard to any pensionary benefits still due to the applicant as early as possible and in any case within one month from the date of receipt of a copy of this order;
- (ii) In case, any amounts are still withheld by the respondents which are due to be paid to the applicant in accordance with rules, the same shall be arranged to be paid within the aforesaid period with 8% simple interest per annum from the due date till the date of actual payment;
- (iii) Respondent No.3 shall also take such further action as permissible under law and fix responsibility for any lapses of the concerned officials with regard to the other persons who have over stayed in the hostel accommodation as per law;
- (iv) In the above circumstances, cost of Rs.3000/- (Rupees three thousand only) is imposed against the respondents and in

in favour of the applicant, which shall also be paid to the applicant within the aforesaid period." (emphasis supplied)

4. The Bench informed that the applicant overstayed in the accommodation allotted to her while she was in service and no recovery had been effected from her as also from others who also overstayed in the said accommodation. However, the Tribunal observed that; "equality cannot be claimed as a matter of right for extension of illegal action taken in respect of other persons" and, therefore, the action taken by the respondents to withhold /recover the due amounts cannot be faulted.

5. The contention raised by Shri K. L. Bhandula, learned counsel appearing on behalf of applicant is that no interest has been paid on delayed payment of Rs.1,86,271/-, on account of commutation of pension which amount, in fact had been belated paid only on 14.7.2000, though was due in the year 1996. It is further contended that a sum of Rs.14,577/-, being the difference of revised leave encashment amount, under Fifth Central Pay Commission recommendations, though was drawn in June'1998 but had been paid to her only on 20.3.2005. It is, therefore, contended that the applicant was entitled to interest on the aforesaid amounts.

6. The respondents contested the applicant's claim and stated that they have already paid all arrears, which became due on account of implementation of recommendations of Fifth Central Pay Commission and nothing is due to the applicant as on date. On the other hand, a demand notice for Rs.29,700/- was issued by the Estate Officer on 30.8.1997 on account of overstaying in the government hostel accommodation. Neither any response has been received from the applicant nor the said amount has been deposited by her till date.

7. I have heard both counsel for parties and perused the pleadings carefully.

8. A due drawn statement in respect of whatever amounts have been paid, has been furnished by the respondents too. It would be expedient to notice the same, which reads as under:-

"Due drawn statement of retirement benefits paid to Mr. James.

DUE		DRAWN		BALANCE
Sr. No.	Items	Amount	Details of payment/ mode of payment	Amount
1.	Gratuity	Rs.165,363	(i) Paid vide cheque No.599378 dt.23/3/96 (ii) Revised gratuity on account of implementation of 5 th Pay commission report vide Cheque No.770528 dt. 27/04/98	Rs.1,05,517/- Rs.59,846/-
		Rs.165,363	Total	Rs.165363 NIL
2.	Commu tation of pension	Rs.257316/-	(i) Paid vide cheque No.599377 dt. 26/3/96 (ii) Balance amount was authorized to her concerned Bank vide PAO/Treasury letter No.PAO/LHMC/ PN/PPO/97-98/2655-57 dt. 31/3/98 and PAO/LHMC/326-30 dt.14/7/2000	Rs.71045/- Rs.186,271/-
		Rs.257316/-	Total	Rs.257316/- NIL
3.	Leave Encash ment	Rs.79503/-	(i) paid vide cheque no.690478 dt.7/5/96 (ii) Difference of revised leave encashment on account of 5 th Pay Commission was drawn vide cheque No.759637 dt. 10/6/98 but the same was not collected by Ms. C. James and the cheque expired, hence redraw and paid vide cheque no.392180 dt. 30/3/05	Rs.64,926/- Rs.14,577/-
		Rs.79,503/-	Total	Rs.79,503/- NIL
4.	G.P.F. Final Payme nt	Rs.396791/-	Paid vide cheque no.691125 dt. 10/5/96	Rs.396791/- NIL
5.	C.G.E.I .S.	Rs.6736/-	Paid vide cheque no.690475 dt.7/5/96	Rs.6736/- NIL
6.	Arrear of pay on account of 5 th Pay Commi ssion report for the month of Jan.96 & Feb. 96	Rs.2906/-	A cheque no. 739370 dt. 10/6/98 was drawn but the same was not collected by the applicant and the cheque expired and hence redrawn and paid vide no. 392180 dt. 30/3/05	Rs.2906/- NIL
7.	Withhel d amount	Rs.5000/- Cost 3000/-	Paid vide cheque no. 379061 dt. 16.4.2004	Rs.11167/- NIL

	of gratuity to meet out liabilitie s of applica nt if any plus cost of Rs.300 0/- awarde d by CAT in Q.A. No.271 8/2002 with interest @ 8% for 7 years and 11 months	Int. 3187/- ----- Rs.11167/-			
8.	-----	Nil	Excess payment on a/c of withheld amount of gratuity + int. @8% for 7 yrs 11 mths. In actual Rs.5000/- was withheld from gratuity which has been refunded to Ms. James as at Sr. No.7 above but with interest this amount has been paid to her twice inadvertently with interest which may kindly be allowed in favour of respondent. Ch. No.379079 dt. 13.1.04	Rs.5000/- +Int. 3186/- ----- 8166/-	(-) 8166
9.	-----	NIL	Amount to be recovered on account of over-stay in Hostel after retirement	-----	(-) 29700

9. In my considered view a perusal of the directions issued on an earlier occasion i.e. OA 2718/2002 particularly in para 6.2, clearly shows that 8% simple interest per annum was to be paid on the "amounts still withheld by the respondents". The amount of Rs.1,86,271/- being the difference on account of pension had already been paid on the date when the aforesaid judgement was pronounced and hence in my opinion, applicant's claim of interest on the said amount is not sustainable and deserves to be rejected. The amount paid to applicant after the pronouncement of order dated 3.9.2003 was Rs.14,577/- for Leave Encashment, Rs.2906/-, on account of arrears of pay of Jan.-Feb.'96, Rs.5000/- withheld from applicant's gratuity and Rs.3000/- on account of costs

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imposed by the applicant. A perusal of Item No.7 would show that the applicant was paid a sum of Rs.3167/- as interest.

10. As far as the license fee and damage charges on account of overstayal in the hostel accommodation is concerned, it was not directed by this Tribunal in the aforesaid OA that amount cannot be recovered, particularly when demand notice for Rs.29,700/- remains pending with the Estate Officer. A perusal of the due drawn statement clearly shows that the said amount is to be recovered on account of overstayal in the hostel accommodation particularly when the applicant was not entitled to retain the said accommodation after retirement. As far as the recovery of the said amount is concerned, it is yet to be decided whether the applicant was liable to pay or not. Since the applicant had already been paid a sum of Rs.3167/- as interest @ 8% for 7 years and 11 months, which is clear form the perusal of para 7 of the statement, I find that no other sum is due on account of interest. The only amount, which had been paid belatedly to the applicant was Rs.14,577/- and Rs.2,906/- and Rs.5000/- in terms of para 3, 5 and 7 of the aforesaid due drawn statement.

Therefore, I do not find any infirmity, illegality and arbitrariness in the respondents action as contended by learned counsel for applicant particularly when as noticed above, a sum of Rs.11,167/-, which included interest besides an amount of Rs.3000/- as costs had already been paid to the applicant vide cheque no.379061. Accordingly, I do not find any merit in the present OA and the same is dismissed. No costs.


(Mukesh Kumar Gupta)

Member (J)

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