

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2808/2004

New Delhi, this the 14th day of February, 2005

Hon'ble Mr. M.K.Misra, Member (A)

G.C.Srivastava, IAS,
(Retired on superannuation
as Secretary, Twelfth Finance Commission
under the Ministry of Finance)
presently Member Secretary,
Twelfth Finance Commission
S/o Late Sh. Ishwar Saran
R/o C-I/55, Bapa Nagar
New Delhi - 110 003.

...Respondents

(By Advocate Sh. R.N.Singh)

V E R S U S

1. Union of India through
Secretary, Ministry of Personnel
Public Grievances & Pensions
Govt. of India, North Block
New Delhi - 110 001.
2. Department of Expenditure
Ministry of Finance
Govt. of India, North Block
New Delhi - 110 001
(through its Secretary).
3. Pay & Accounts Officer,
Department of Economic Affairs
Ministry of Finance
Govt. of India, North Block
New Delhi - 110 001.
4. Deputy Controller of Accounts
Office of the Chief Controller of Accounts
Ministry of Finance, Room No.265-A
North Block, New Delhi - 110 001.

...Respondents

(By Advocate Sh. Madhav Panikar)

ORDER

Applicant Dr. G.C.Srivastava belongs to All India Service and has filed this OA seeking following reliefs: -

i) The Hon'ble Tribunal may kindly call for the relevant records wherein Ministry of Law is understood to have given its opinion with regard to the claim of the applicant, as that would clarify the rule-position correctly;

ii) The bill return memo dated 23rd September 2004 may be quashed and set aside;

(iii) The respondents be directed to pay leave encashment for 300 days amounting to Rs.4,03,000/- (Rupees Four Lakhs Three Thousand only) to the applicant forthwith along with interest @ 18 % on the amount of leave encashment due with effect from 1st July 2003 till the date of actual payment.

(iv) The respondents be directed to pay exemplary costs to the applicant.

(v) The Hon'ble Tribunal may pass any further order (s) as be deemed just and proper to secure the ends of justice.

2. The applicant superannuated on 30-6-2003. He got the retiral benefits as per rules except the leave encashment which could not be given to him on account of the fact that the maximum period for encashment of leave is limited to 300 days and the applicant had already been paid 60 days leave encashment by the Govt. of Goa while he was serving under State Government of Goa. The respondents, therefore, was of the view that the applicant was entitled for leave encashment only for 240 days and not for 300 days. The matter was referred to different departments such as DoPT, Department of Expenditure and also opinion of Law Ministry was taken in this respect. It was pointed out by the learned counsel for the applicant that the competent authority under 12th Finance Commission had already recommended and accorded the sanction for payment of Rs.4,03,000/- (Rs. Four lakhs three thousand) on account of encashment of 300 days unutilized E.L. to the applicant vide letter dated 1.7.2003 (Annexure A-15). Despite the sanction, the applicant was not given this benefit and after making so many representations before the competent authorities at different stages, the applicant could not get any relief from them, therefore, he made a journey to the Tribunal through this OA.

3. During the course of hearing of the case, learned counsel for the applicant submitted that necessary orders has been passed vide letter dated 7.1.2005 and the competent authority in DoPT passed the order in favour of the applicant making him entitled for encashment of 300 days of leave. Thus, the relief claimed in para 8 (iii) has already been provided by the respondents.

4. Now the only dispute is regarding the payment of interest @ 18 % w.e.f. 1-7-2003 till the date of actual payment and imposition of exemplary cost on the respondents for failure to make the payment immediately after the retirement.

5. Ld. counsel for the respondents contended that since the consent of the Department of Expenditure and the advice of the

Ministry of Law was required to be taken in this respect, therefore, the payment of leave encashment of 300 days could not be made to the applicant. Therefore, there is no lapse on the part of the respondents for delayed payment to the applicant. 9

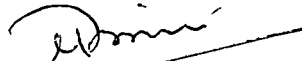
6. I have considered the submissions and the averments made by both the parties and also perused the material available on record. I observed that the applicant has retired on 30-6-2003, therefore, he was entitled for all the retiral benefits immediately after his retirement. It is also observed that the rule 20 (a), 20 (b) and 20 (c) of All India Service (Leave) Rules, 1955 clearly provides the method of calculation of encashment of leave of 300 days and there appears to be no ambiguity or doubt which could invite the advice of other departments of Govt. of India. In any case, the applicant cannot be made responsible to suffer the agony of making representations before various authorities when the provision of Rule 20 (a), 20 (b) and 20 (c) are clear and a decision can be taken on that basis. I am, therefore, of the confirmed view that the applicant is entitled to interest from the date it became due to him till the date of actual payment on the admitted amount which was due to the applicant. The Apex Court in the case of **Dr. Uma Aggarwal v. State of U.P. & Anr.** (AIR 1999 Supreme Court 1212) held as under: -

6. The case before us is a clear example of department delay which is not excusable. The petitioner retired on 30.04.1993 and it was only after 12.2.1996 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger to various places where the petitioner had worked. Such an exercise should have started atleast in 1991, two years before retirement. The amounts due to the petitioner were computed and the payments were made only during 1997-98. The petitioner was a cancer patient and was indeed put to great hardship. Even assuming that some letters were sent to the petitioner after her retirement on 30.3.1993 seeking information from her, an allegation which is denied by the petitioner, that cannot be an excuse for the lethargy of the department inasmuch as the rules and instructions require these actions to be taken long before retirement. The exercise which was to be completed long before retirement was in fact started long after the petitioner's retirement.

7. Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of the computation of interest, the matter should go back. Instead, on the facts of this case, we quantify the interest payable at Rs.1 lakh and direct that the same shall be paid to the petitioner within two months from today.

7. In view of the above discussions, the applicant is entitled to the interest @ 9 % per annum being the prevalent rate of interest at

that time under the prescribed rules. This exercise should be completed within two months from the date of receipt of a copy of this order. No order as to costs.


(M.K. Misra)
Member (A)

/vikas/

10