

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-1235/2004

New Delhi this the 16<sup>th</sup> day of February, 2005.

Hon'ble Sh. Shanker Raju, Member(J)

H.C. Gupta,  
S/o late Sh. Devi Das,  
R/o I-7/27, Sector-16,  
Rohini, Delhi-85.

.... Applicant

(through Sh. M.K. Bhardwaj, Advocate)

Versus

Union of India & Ors. through

1. Secretary,  
Ministry of Defence,  
Central Secretariat,  
South Block,  
New Delhi.
2. Engineer-in-Chief,  
E-In-C's Branch,  
Army Hq.,  
Kashmir House,  
New Delhi-11.
3. Chief Engineer Western Command,  
Chandi Mandir - 134 107.
4. CRO (Officers),  
Delhi Zone, Delhi Cantt-10.
5. GE E/M (Plant & Machinery),  
Delhi Cantt-10.
6. The Principal,  
CDA Pension,  
Draupadi Ghat,  
Allahabad.

.... Respondents

(through Mrs. Harvinder Oberoi, Advocate)

Order (Oral)

Heard the learned counsel for the parties.

2. Applicant impugns respondents' order dated 24.3.2004 whereby his request for interest on delayed payment of gratuity has been rejected.
3. Applicant who was served with a charge sheet with a major penalty while in service has retired on superannuation on 31.3.2001.

12

4. After disagreement between the Enquiry Officer and Disciplinary Authority the applicant filed OA-3468/2001 whereby by an order passed on 18.8.2002 directed the respondents to complete the disciplinary proceedings within a period of one month wehreafter in MA-2095/2002 by an order dated 4.10.2002 time to comply with the directions was extended latest by 4.11.2002 with a stipulation that no further time would be granted.

5. As a result thereof respondents by an order dated 15.2.2003 exonerated the applicant and dropped the charged. Accordingly within three months all the retiral benefits have been paid to him. Learned counsel of the applicant states that in the light of Rule 68 of the CCS(Pension) Rules, 1972 on exoneration in the disciplinary proceedings, the gratuity would fall due immediately after 3 months from the date of retirement, as such the time taken to conclude the proceedings on fictitious charge which has been proved otherwise, the applicant is not at all attributable to the aforesaid delay. Relying upon the decision of the Apex Court in Vijay L. Mehrotra Vs. State of U.P. (AIR 2000 SC 3513) which was followed by a Co-ordinate Bench of the Tribunal in Subhash Chander Vs. U.O.I. (2000(2) ATJ 29), it is contended that such a delay entails 10% interest.

6. Learned counsel further relied upon a decision in the case of R.P. Kappor Vs. U.O.I. & Ors. (1996(2) ATJ (3) to buttress his plea.

7. Learned counsel of the respondents vehemently opposed the contention and stated that because of the challenge to the disciplinary proceedings the enquiry got delayed. Moreover, it is stated that as the applicant was exonerated on 15.02.2003 within three months all the retiral dues have been paid. It is stated that the decisions cited are not applicable as the delay in disbursing of retirement benefit is on account of pending disciplinary proceedings against the applicant and without full exoneration one is not entitled for retirement benefits or interest thereof.

8. On careful consideration of the rival contentions of the parties, it is no more res integra in the light of the decision of the Constitution Bench decision of the Apex in D.S. Nakara Vs. U.O.I. (1983 SCC (L&S) 145) that pension and retiral benefits are not

bounty but is a right of a retiree government servant. Rule 68 of the CCS(Pension) Rules, 1972 provided that interest on delayed payment of gratuity as per the guidelines on the subject issued by the Department of Personnel and Training vide O.M. dated 10.01.1983 when disciplinary proceedings are pending against a government servant, no gratuity is paid/payable until the conclusion of the proceedings but the gratuity would fall due immediately after 3 months from the date of retirement before the applicant to be exonerated from the retrospective date. The aforesaid guidelines were further reiterated in Department of Personnel and Training O.M. dated 21.12.1991. In this view of the matter having regard to the decision in R.P. Kapoor's case (supra) where relying upon the same instructions, it was held that leave encashment, DCRG commutation on delayed payment entails an interest @ 12%.

9. In Mahrotra' case the Apex Court has clearly laid down that when there is no reason or justification in not making the payments and the delay is not attributable to the concerned retiree the entire retirement benefits entail interest.

10. It is trite law that if one is proceeded against departmentally during service tenure, on retirement deemed proceedings under Rule 9(2) of the Rules ibid would be construed.

11. On the aforesaid analogy, the Government of India in 1991 has decided that gratuity and other benefits would due fall immediately after 3 months from the date of retirement even though exoneration has taken place subsequently.

12. On respectful agreement to the decision of the Co-ordinate Benches, O.A. is allowed. Impugned order is quashed. Respondents are directed to accord simple interest @ 12% on delayed payment deeming the date of payment 3 months from the date of retirement and actual payment of gratuity, leave encashment as well as commutation within two months from the date of receipt of a copy of this order. No costs.

S. Raju  
(Shanker Raju)  
Member(J)