

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

11

O.A. No.311 OF 2004

New Delhi, this the 17th day of November, 2004

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Dr.K.S. Nishal
Ex.Sr. Marketing Officer,
Ministry of Agriculture,
R/o A-71, Prasant Vihar,
Delhi.

.....Applicant.

(By Advocate : Shri B.S. Mainee)

Versus

Union of India : Through

1. The Secretary,
Ministry of Agriculture,
Krishi Bhawan,
New Delhi.
2. The Agricultural Marketing Adviser
Government of India,
Ministry of Agriculture,
Directorate of Marketing and Inspection,
Nirman Bhawan,
New Delhi.
3. The Principal Accounts Officer
Ministry of Agriculture,
Department of Agriculture Co-operation,
16-A, Akbar Road, Hutment Annexe,
New Delhi.
4. The Pay and Accounts Officer
Directorate of Marketing and Inspection,
Second Floor,
New Secretariat Building,
Nagpur.

.....Respondents

(By Advocate : Shri Rajeev Bansal)

ORDER

Applicant, who has retired from Govt. service, seeks following reliefs:-

"8.1 That this honourable Tribunal may be pleased to allow this Application and direct the respondents to :-

- (i) pay pension to the applicant from the date of retirement till the date of payment with interest.
- (ii) pay gratuity to the applicant with interest from the date of actual payment.

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- (iii) Pay leave encashment with interest for the period when the amount was payable immediately after retirement till the date of actual payment.
- (iv) Insurance money with interest from the date of retirement till the date of actual payment.
- (v) Pay interest on the amount of P.F. from the date of retirement till the date when the amount has actually been paid in the month of September 2002.
- (vi) Pay interest on the amount of Rs.34,837/- which has been paid in March 1999 for the period from July 1994 to December 1994.

8.2 That this Hon'ble Tribunal may be pleased to direct the respondents to pay interest at the rate of 12% per annum for all the aforesaid amount as mentioned above.

8.3 That any other or further relief which this honourable Tribunal may be deem fit and proper under the circumstance of the case may also be granted in favour of the applicant.

8.4 That the cost of the proceedings may also be granted in favour of the applicant."

2. Applicant, who was transferred to Patna from Delhi on 24.6.1994 and relieved on 1.7.1994, did not join the transferred post. He challenged the said transfer order by filing OA 1617/1994, which was dismissed on 15.12.1994. Applicant had not joined and remained un-authorizedly absent. However, at certain point of time, applicant represented for voluntarily retirement and accordingly, he was relieved from his duties w.e.f. 1.11.1996. The aforesaid retirement was assailed by him in OANo.468/1999 before the Patna Bench of this Tribunal but the claim was dismissed on 5.3.2001. CWJC NO.6238/2002, filed before the Hon'ble Patna High Court against the aforesaid order of the Tribunal, was dismissed on 24.5.1996 and also the SLP filed by the applicant was dismissed in January, 2003.

3. On account of lack of supervision, contemplated proceedings were withdrawn on 20.8.1999 and vide letter dated 19.4.2004, applicant was requested to apply for grant of leave for 198 days to process the retiral dues.

4. In pursuance of directions of the respondents to treat the period during which the transfer order was stayed, an amount of Rs. 34,837/- was paid in the

month of March, 1999 towards salary for the period from July, 1994 to December, 1994.

5. Applicant being aggrieved for non-payment of interest on delayed payment of P.F., CGEIS, Leave Encashment, Gratuity and Pension has preferred the present application.

6. Learned counsel of the applicant Shri B.S. Mainee contended that the applicant's case could have been processed for final settlement on 1.11.1996 and at least he should have been paid the provisional pension. Non-payment of GPF in time in 1996 entails interest. Learned counsel stated that salary of the applicant was paid after five years and the same also entails interest. Learned counsel further stated that applicant had filled up the necessary Forms as well as P.F. documents in time but the respondents have deliberately delayed the payment of his retiral dues.

7. Shri Mainee, learned counsel stated that applicant had performed duties through out the period during which he has been shown absent. As such there is no question for applying the leave and he is entitled to the salary for the period.

8. Shri Mainee, contended that in 1999, the applicant had been asked to submit the papers but the aforesaid order was illegally cancelled in Jan, 2000.

9. Shri Mainee, relied upon the decision of the Apex Court in the case of *Vijay L. Mehrotra Vs. State of U.P.*, ATJ 2001 (1) SC 215, to contend that delay which attributable to the respondents in releasing retiral dues of the retired employee, the department is liable to pay interest on delayed payment of retiral dues.

10. Shri Mainee contended that pension is not a bounty but the right of the retired employee. Learned counsel stressed that on contemplated proceedings retiral benefits cannot be withheld.

11. On the other hand, Shri Rajeev Bansal, learned counsel for the respondents contended that the applicant is not cooperative and the delay in payment of retiral benefits is on account of non-submission of pension papers by the applicant as well as the filled form of GPF and pre-receipt bills. Receipt of applicant's application dated 26.11.1996, as alleged to be submitted along with

GPF application, is denied by the respondents. Learned counsel stated that reduction in GPF was on account of wrong payment made for the year 1997 to 1999 whereas the applicant had retired on 1.11.1996 as such the correct payment was prepared. Shri Bansal stated that after finality arrived at in the case of voluntary retirement of the applicant, applicant instead of submitting papers represented against it. As such delay is justifiable and attributable to the applicant and no interest is leviable.

12. Shri Bansal stated that the applicant joined at Patna on 26.12.1994 but remained absent unauthorisedly and unless 198 days of absence is not covered by submissions of leave application by the applicant, to which the applicant is not cooperating, pension cannot be prepared.

13. In the rejoinder, pleas taken in the OA are reiterated.

14. After careful consideration of the rival contentions of the parties and on perusal of the material on record, it is trite law that the pension is not a bounty but it is a right of the retired Govt. servant, which is an accumulated wealth to be redeemed to him. It is also trite law that in case there is an inordinate unexplained delay not justified by any reasonable explanation by the Govt. in payment of retiral dues, one is entitled to interest on the same.

15. In the aforesaid conspectus, applicant stood retired on his voluntary retirement w.e.f. 1.11.1996. Proceedings by which the voluntary retirement was challenged have nothing to do with release of retiral dues. As there was no stay in favour of the applicant. The respondents should have released the retiral dues of the applicant immediately after his retirement. In case any disciplinary proceeding was to be taken up and the period of absence was not decided, it should have been immediately conveyed in the year 1996. From the pleadings, it is transpired that the respondents for the first time apprised the applicant regarding submission of application for 198 days of leave only in 2004. On a contemplated proceedings, retiral dues cannot be withheld as per Rule 69 of the CCS (Pension) Rules, 1972 and immediately steps should have been taken to provide provisional pension to the applicant. I also find that applicant has completed the pension papers and in response to their reply on 26.11.1996 had also sent his GPF papers but the receipt

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of aforesaid papers were denied by the respondents. The payment of GPF settled only in 2002 when Pay and Accounts Officer sent a bill of Rs.4,67,886/-, this should have been done by the respondents in 1996 itself. For payment of GPF amount, period of absence is not an impediment. In this view of the matter, the question of pre-receipt bills as a token of receipt would not be mitigating factor in their favour as having failed to take up proper action for payment of GPF in 1996 itself. The same has been inordinately delayed.

16. As regards other benefits are concerned, it is true that without treatment of absence period as leave though the applicant has in his credit leaves but application for grant of leave have not been submitted before the respondents. This has delayed the preparation of pension.

17. In the result, for the foregoing reasons, this OA is disposed of with a direction to the respondents that in the event the applicant submits application covering the entire period of unauthorized absence for grant of leave, his pension shall be prepared and released within two months from the date of receipt of such application from the applicant. As regards interest on payment of delayed payment of Rs.34,837/- is concerned, which was due in 1994, I direct interest at the rate of 9% simple interest per annum on the delayed payment of salary from 1.1.1995 till the salary was actually paid in 1999. As regards payment of GPF is concerned, at the rate of 9% simple interest per annum is payable from 1.2.1997 till the actual payment of GPF is to be made. As regards pension is concerned, the same may be released after the above direction is complied with. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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