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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 210/92

DATE OF DECISION : 25.09.1992

Shri Krishan Bal

...Applicant

vs.

Union of India

...Respondent

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri D.C. Vohra, Counsel

For the Respondent

...Shri J.C. Madan, Proxy
Counsel for Sh.P.P. Khurana
Counsel

1. Whether Reporters of local papers may be allowed to see the judgement? *Y*
2. To be referred to the Reporter or not? *Y*

JUDGEMENT

The applicant belongs to the Indian foreign service, Group 'B' and was posted at Washington D.C. between 1976-81. He was working as Attache in the Indian Embassy at Washington D.C. w.e.f. 21.5.1980. On 27.10.1980, the applicant was transferred to the Ministry of External Affairs, New Delhi and the applicant relinquished the post of Attache in the Embassy on the forenoon of 27.10.1980. The applicant, however, served a notice for voluntary retirement on 17.3.1981 on the First Secretary (Admn) of the Embassy. The

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applicant was informed by the Indian Embassy on 14.4.1981 to proceed to India and to report for duty in the Ministry of External Affairs immediately failing which disciplinary action will be taken against him. His application for voluntary retirement can only be considered on his return to headquarters. The applicant received that notice on 1.7.1981. He did not participate in the enquiry (which was, therefore, held ex parte) and on the basis of which he stood voluntarily retired under FR 56(k) on the expiry of notice of period of three months. On 18.1.1983, the respondents passed an order whereby the applicant was purported to ^{have been} dismissed from Government service w.e.f. 31.12.1982. The applicant approached the respondent for release of final payment of the GPF account on 8.9.1988 and the final balance together with interest till July, 1983 (based on his dismissal from 31.12.1982) amounting to Rs.20,896 was paid to him on 26.9.1988. After the receipt of this amount, the applicant filed OA 1510/89 in August, 1989 which was decided on 7.6.1991. The Tribunal ordered allowing that application that the

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applicant should be treated as having retired voluntarily w.e.f. 17.6.1981 when three months' notice under FR 56(k) expires. Further direction was issued by the Tribunal to release to the applicant a proportionate pension, gratuity and other retirement benefits together with simple interest @ 10% p.a. within a period of three months from the date of receipt of this order.

2. After the judgement in OA 1510/89, the applicant has filed this Original Application on 23.1.1992. In this OA, it is stated that the applicant is entitled to of GPF etc. the balance amount/along with the compound rate of interest at 12% p.a.. The grievance of the applicant is that the respondents are not adding any interest to the payment being made by them. The applicant in the application also referred to the letters issued by the Ministry of External Affairs on 1.10.1991 and 4.10.1991 enclosing cheques for Rs.7,529 of the leave salary for the period from 27.10.1980 to 16.6.1981 and Rs.205 for refund of contribution under CGEGIS respectively. The applicant has also correlated these letters with the

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letter dt. 19.9.1988 regarding the payment of GPF amount to the applicant amounting to Rs.20896, on the basis of his dismissal from 31.12.1982.

3. In this application, the applicant has claimed for the following reliefs :-

- (1) A direction to the respondent Union of India to allow to the applicant a rate of interest of 12% per annum, at compound rate, on the balance in his GPF A/c at the time of retirement and provide him with a detailed statement how it has calculated the amounts due and paid to the applicant;
- (2) A direction to the Respondent Union of India to pay to the applicant the entire amount of balance in GPF A/c with interest @12% p.a., deducting what has already been paid, till the actual date of payment of such balance with interest, as due;
- (3) A direction to Respondent Union of India under Section 27 of the Administrative Tribunal Act, 1985 to treat the directions of the Lordships in their judgement dt.7.6.1981 in OA 1510/89 and pay 10% interest p.a. on not only pension and gratuity but also on other retirement benefits such as leave encashment;
- (4) The cost of these proceedings be awarded in favour of the applicant and against the Respondent; and
- (5) Any other or further order that this Tribunal may deem fit and proper.

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4. The learned counsel for the applicant did not press relief Nos. 1 and 3 and only confined his arguments to relief No. 2.

5. The respondents contested the application and stated that the GPF amount becomes payable when an officer quits service and submits his application for final payment of GPF. The applicant himself approached the respondents for release of final payment of his GPF amount on 8.9.1988. So the final balance together with the interest thereon till July, 1983 was paid to him on 26.9.1988. This amount has been paid to him much before the applicant filed OA 1510/89, in August, 1989. As the final payment of GPF balance was paid to the applicant immediately on receipt of the application, he cannot claim interest on account of the late submission of his application for final payment of GPF. The claim of the applicant is also barred by time. Certain other averments have been made in the counter regarding the payment of leave encashment etc., but since the relief has not been pressed

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so these are not mentioned in ^{detail} / in the judgement.

The provident fund is not a retirement benefit as it constitutes employee's own contribution for providence. Deposits etc. in the Provident Fund were governed by rules specifically meant for the purpose. The applicant has been paid GPF balance together with interest in accordance with the provisions of the Rule 11(4) of the General Provident Fund (Central Services) Rules, 1960. The final payment was made immediately on his application which has been enclosed as Annexure R1 to the counter. Interest for a maximum period of six months from the date of retirement/dismissal is payable to the applicant and that has been paid taking into account the date of his dismissal as 31.12.82. Subsequently the dismissal has been set aside by the Tribunal in the judgement dt. 7.6.1991 passed in OA 1510/89 and held that the applicant stood voluntary retired from service from June, 1981.

6. I have heard the learned counsel for both the parties at length and have gone through the record of the case. The learned counsel for the applicant has referred to Rule 82 and 83 of General Financial Rules. Rule 82

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of the GFR relates to arrear claims and Rule 83 relates to a claim of Government servant which has been allowed to remain in abeyance for a period exceeding two years and should be investigated by the Head of the department concerned. None of these rules apply to the case of the applicant. It is a fact that the claim against the Government cannot be barred. But at the same time, every case has to be seen on its own merits. The learned counsel for the applicant has argued that since the date of retirement of the applicant has been taken to be as 17.6.1981, so the respondents themselves have calculated interest on the GPF balance upto July, 1983 and in such a situation the interest should have been calculated upto the time the amount was actually paid to the applicant, on 19.9.1988. The learned counsel for the applicant has also referred to Rule 11(4) of the GPF (CS) Rules, 1960. Rule 11(4) is reproduced below :-

"In addition to any amount to be paid under Rule 31, 32 or 33, interest thereon upto the end of the month preceding that in which the payment is made or upto the end of the next six months after the month in which such amount becomes payable, whichever of the period be less, shall be payable to the person to whom amount is to be paid.

Provided that where the Accounts Officer has intimated to that person (or his agent) a date on which he is prepared to make a payment in cash or has posted a cheque in payment to that person, interest shall be payable only upto the end of the month preceding the date so intimated to him or the date of posting the cheque, as the case may be."

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The learned counsel for the applicant has also referred to the authorities of Raj Kishore Dass vs. UOI & Ors. (1988 ATC 741) and Rebati Ballav Dutta vs. Deputy Director of Accounts (Postal), Cuttak & Ors. (1990(14) ATC 435). Both these authorities relate to the Cuttack Bench of the Central Administrative Tribunal. The case of Raj Kishore Dass relates to interest for late payment and the payment was made more than one year after retirement for no fault of the subscriber, but the interest was paid for six months only. So the competent authority was directed under Rule 14 to pay interest for the rest of the period. In the other authority of Rebati Ballav Dutta, the delay in payment was occasioned without any fault of the subscriber and the interest was ordered to be paid upto the date of payment and reference has also been made to the authority of the Hon'ble Supreme Court in the case of State of Kerala vs. M. Badmanabhan Nair, 1985 (1) SCC 429. The learned counsel for the applicant has also referred to sub rule 3 clause b of Rule 34 of GPF (CS) Rules, 1960 which provide that the Head of the Office should send to every subscriber

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necessary form either one year in advance of the date on which the subscriber attains the age of superannuation or before the date of his expected retirement earlier.

7. However, in the present case as regards the administrative lapse on the part of the department, that is not the case. The applicant has himself applied for premature retirement by notice given in March, 1981. He was at that time as an Attache in the Indian Embassy in Washington D.C. The applicant has done so because of certain reasons and he was also proceeded departmentally and he was dismissed from service by the order dt. 13.1.1983. The respondents on their part have calculated interest for a period six months hence, i.e., upto July, 1983. The applicant after his dismissal did not avail of the opportunity of applying for GPF balance with the respondents. The reference to Rule 34 sub clause 3 of the GPF (CS) Rules, 1960 does not apply in the present case in as much as the applicant has not sought retirement on superannuation and no body can anticipate that the applicant would be seeking retirement w.e.f. March, 1983. In any case the applicant should have applied for the GPF balance immediately

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when he has applied for premature retirement in March, 1981. It was his own money and it does not come within the retirement benefits. It was the case of the applicant that since he has given three months' notice, the respondents had to accept his request for premature retirement under FR 56(k) which is expressly provided so. The same plea has been accepted by the Tribunal in its order dt. 7.6.1981. The applicant cannot take advantage of his own omissions.

8. It is also a fact that the applicant has filed OA 1510/89 and he has already been paid the balance of the GPF amount along with the interest calculated upto July, 1983 in September, 1988. When he has assailed earlier the grievance of non payment of certain retirement dues to him, it was open to him also to claim for this benefit if at all he was entitled to it in that OA and if he has not done so, that amounts to the waiver on his part. The applicant cannot subsequently come forward for any grievance which has been left out and is almost covered by the voluntary retirement which he has claimed by the notice of March, 81.

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9. The respondents have also taken the plea that the present application is barred by limitation. In fact the applicant has been paid the amount in September, 1988 and if he was ^{aggrieved} by non payment of any claim of interest on that amount, then he should have come within one year from that date or within one and a half years after making the representation under Section 21 of the Administrative Tribunals Act, 1985. The actual amount of GPF which he has contributed has been paid to him and the applicant only aspires for interest of certain period and that cannot be said to be a recurring cause of action to the applicant as that amounts to one time payment. Rule 83 of GFR relied on by the learned counsel for the applicant cannot be applied in such cases. The claim of interest is something else and the award of statutory interest is another thing. Under Rule 11 sub clause 4 of the GPF (CS) Rules, 1960 only ~~the~~ interest upto the period of six months can be allowed. Though there is a note under Rule 11 of the said rules which permits the award of interest on the fund balance beyond the period of six months if the same is authorised by the Head of Accounts Office upto a period of one year and by

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the immediate superior to the Head of the Accounts Office upto any period after such authority has satisfied itself that the delay in payment was occasioned by circumstances beyond the control of the subscriber or the person to whom such payment was to be made and in such cases administrative delay involved in the matter shall be fully investigated and action, if any required, taken. In the present case, there must be something to show that the delay has been occasioned by circumstances beyond the control of the subscriber, i.e., the applicant, but it is not so. The subscriber himself applied in 1988 vide Annexure R1 to the counter for the payment of the balance in GPF Account and that application is in proper form. So it cannot be said that there was any administrative lapse in not clearing the GPF balance in favour of the applicant.

10. The learned counsel for the applicant has also referred to the authorities, but none of them has any application to the facts of the present case. There the case was of retirement on superannuation and the application was made for final withdrawal of the GPF balance and was received well in time in the office of

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the respondents, but the delay was on account of the administrative lapse. It cannot be, therefore, said that the respondents are at fault in not clearing the CPF balance of the applicant within a reasonable time.

11. The learned counsel for the respondents also argued that certain notices sent to the applicant of the disciplinary proceedings at his known address in Washington D.C. were returned unserved and the applicant was not available at his address and in this connection has also shown the departmental file which was also made available for perusal to the learned counsel for the applicant. The learned counsel for the respondents, therefore, argued that the applicant cannot take the plea that the forms were not sent to him immediately. Moreover, the applicant was dismissed from service and on dismissal he was equally entitled for withdrawal of the CPF balance standing in his name. He could not wait till 1988.

12. In view of the above facts and circumstances of the case, the application is totally devoid of merit and is dismissed leaving the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA)
MEMBER (J) 25/82