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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No.2151/92

New Delhi, this the 18th day of January, 1994.

SHRI J.P.SHARMA, MEMBER (J).

Shri M.R.Rao,
son of Shri M.S. Rao,
R/O: 55 B, Ashok Vihar III,
Delhi-110052.
(Last worked as Senior Programmer
Planning Commission, Yojana Bhawan,
New Delhi-110001.)

...Applicant

(By advocates: S/Shri R.Doraiswamy and
Sant Singh)

VERSUS

Union of India, through
Secretary to the Govt. of India,
Planning Commission,
Yojana Bhawan,
New Delhi-110001.

...Respondent

(By advocate: Shri N.S.Mehta)

O R D E R (ORAL)

The applicant held the post of Senior Programmer in the 'Computer Services Division' of the Planning Commission, Govt. of India, New Delhi. He went on deputation to the Council for Advancement of People's Action and Rural Technology (CAPART) as Senior Systems Manager since December, 1984. On a willingness of the applicant, an order was issued on 14-12-1988 permanently absorbing the applicant from 1-11-88 in the Council as Senior Systems Manager in the pay scale of Rs.3700-5000. The formal order was issued on 13-7-89 by Planning Commission by which the absorption of the applicant was in accordance with the O.M. of Ministry of Finance, Department of Expenditure dated 8-4-76. The applicant of his own on 8-11-89 informed the Director, Planning Commission, New Delhi

that in fact his permanent absorption in the Council had to be in accordance with the O.M. of Department of Personnel & Training dated 31-1-86 and 31-3-87. He, therefore, requested for issuing fresh letters. The Planning Commission, thereafter, by the order dated 31-8-90 issued the terms and conditions of permanent absorption of the applicant in the Council which also provided the payment of retirement benefits immediately after the date of permanent absorption. Thereafter, the applicant has been paid GPF which is not in dispute, gratuity of Rs.39,561, the contrinution to CGEIS Rs.7,800 on 25th and 30th July, 1991, respectively. He has been paid 100 per cent commutation of pension amounting to Rs.2,63,802 on 25-10-91 and leave encashment Rs.32,448 on 12-2-92. The grievance of the applicant is that since there is a delay in payment which accrued to the applicant on 1-11-88, a direction be issued to respondents to pay interest on the delayed amount as indicated in his representation dated 20-2-92 (Annexure A-5). He has also prayed for a direction to pay additional interest at commercial rates on the unjustly withheld interest amount.

2. A notice was issued to the respondents who contested the application by filing the reply on 21-1-93. However, after the filing of the reply, the applicant has been paid interest on GPF amount as per his demand and he has no grievance in that respect. On the outstanding amount of gratuity, the applicant has been paid a interest of Rs.7,176 and 1,396, i.e., Rs.8,572 for the period from 1-5-89 to 30-6-91. According to the applicant, he should have been paid interest for the period from 1-11-88 to 25-7-91. On

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100% commutation of pension, the applicant has been paid a sum of Rs.68,865 towards the monthly pension @ Rs.1925 per month for the period from 1-11-88 till 24-10-91, i.e., for 35 months and 24 days. This also partly satisfies the applicant but still his grievance survives as the interest @ 14% would have come to Rs.22,822.59p which could have been interest that monthly pension has not been paid when it fell due on 1-11-88. Thus, he claims now on this account Rs.22,822.59. He has ^{not} now been paid interest on the refund of CGEIS contribution and leave salary encashment. 6

3. I have heard the learned counsel for the parties at length and gone through the records of the case. The respondents have taken the date 1-5-89 as the cut-off date for calculation of interest because the applicant himself had made a representation for issuing a fresh order of his permanent absorption in Council w.e.f.1-11-88. The contention of the respondents is that the application of O.M. of 1976 or O.M. of DP&T of 1986 and 1987 would not have given any difference in the calculation of the pro-rata retirement benefits. Again the respondents have pointed out ^{/that} on 13-9-89, the applicant has exercised option for pro-rata monthly pension but under the revised option on 5-9-90 for 100% commutation in lieu of pro-rata pension. 100% commutation of pension could be granted only after the medical board satisfies and on the basis of that certificate, the calculations are made.

4. Considering the whole matter in the right
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perspective, the present application appears to be only as a test case. For example, he has been paid monthly pension @ Rs.1,925 till the date of his medical examination. Now, he claims interest on this delayed amount also. This does not appear to be at all reasonable and any prayer in that regard is only crying for the moon. Similarly, the interest has already been allowed on DCRG and the applicant wants an enhanced rate and immediately from the date when his absorption was effective though the orders have been issued prospectively in 1989. This is not acceptable perception according to law. The applicant had a right to deny the date of absorption from the date of order which was passed subsequently, but he cannot claim for doing a thing which could not have been done from a prospective date. It is a fiction that the applicant was permanently absorbed from 1-11-88 but it is a fact that orders were issued in 1989. The claim, therefore, is wholly unjust and the respondents have already compensated the applicant on this account.

5. Regarding delay in payment of leave salary encashment and the contribution of CGEIS, the applicant had a record tenure of service and this takes certain time for calculation from the old record of the leave account to the credit of the applicant. It is a ^{nominal} ~~normal~~ amount and in fact it has been paid to him in July, 1991 and February, 1992. There is no provision or rule for payment of interest on this account.

6. However, the interest is liable to be paid on

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the theory of unnecessary enrichment of a party. That is not the case here. The applicant himself changed his option in May, 1990. He was medically examined in October, 1991. So, taking all these facts into account, there is no administrative lapse whereby the interest can be awarded to the applicant.

7. The application, therefore, is totally devoid of merits and is dismissed. This is such a case where the costs could have been awarded to the respondents but in the fitness of things, it is not taxed on the applicant.

J. P. Sharma

(J.P.SHARMA)

MEMBER(J)

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