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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1474/93

New Delhi this the 20th Day of December, 1993.

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman

Sh.D.K. Tetri,
Son of Late Sh. Jaimal Dass,
Resident of 226, Asian Games Village
Complex, Malwa Singh Block,
New Delhi.

...Applicant

(In person)

Versus

Union of India through the
Dy. Director General
(Postal Accounts and Finance)
Deptt. of Posts, Dak Bhavan,
New Delhi.

...Respondent

(By Advocate Ms. Pratima Mittal, proxy counsel for
Mr. K.C. Mittal, Counsel)

O R D E R

(Hon'ble Mr. N.V. Krishnan)

The applicant was an Accounts Officer in the office of the Deputy Director General (Postal Accounts and Finance) - the respondent. He went on deputation to the Indira Gandhi National Open University (IGNOU for short) on 11.11.1985. While so, after proper sanction of the Government, the applicant was absorbed in the IGNOU w.e.f 1.7.90 about which there is no dispute. Annexure-2 letter of the Department dated 13.12.90 makes it clear that his permanent absorption would take effect from 1.7.90. In terms of paragraph-3 of that circular the applicant is entitled to pension and gratuity and in terms of para-6 of that circular the applicant is entitled to encashment of earned leave subject to a maximum of 240 days. The applicant has grievance on both these counts.

2. In so far as the encashment of earned leave is

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concerned, his contention is that as he has retired from 1.7.90, the leave salary for the purpose of reckoning leave encashment should be determined on the basis of the leave salary that he would have drawn, had he proceeded on leave from IGNOU. He submits that had he proceeded on leave from IGNOU from 1.7.90 his leave salary would have been computed on the basis of the actual salary drawn by him in IGNOU in June, 1990. On the contrary, while the respondent has no doubt paid encashment for 240 days, the payment has been made at the rate of pay which the applicant would have drawn in June, 1990 had he been continuing with the Government and not been absorbed in the IGNOU.

3. In so far as gratuity is concerned, the applicant states that he had done all that could be expected of by sending the letter dated 27.3.91 (Annexure-9) to the respondent's office at Lucknow. In particular, he states that he had given an option for drawal of lump sum payment in lieu of pension in terms of para 3 of the Department's Annexure-2 letter dated 13.12.90. As this was received in respondent's office on 8.4.91 the respondent was bound to make payment within three months, i.e. on or before 8.7.91, as provided in Rule 68 of the CCS (Pension) Rules reproduced as Annexure-7. On the contrary the payment was made only by the letter dated 11.11.91 (Annexure-9). He, therefore, claims interest on the delayed payment.

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4. The respondents have filed a reply denying both these claims. It is stated that he is entitled to leave encashment only on the basis of the salary drawn by him prior to the absorption.

5. In so far as the gratuity is concerned, it is stated that subsequent to the Annexure-9 letter dated 27.3.91, the applicant gave the Annexure R-1 letter dated 9.7.91 which indicated that he had still not taken a decision as to whether he would join the pension scheme of the IGNOU or the CPF scheme, though he gave his consent that his case could be finalised by presuming that he would opt for CPF scheme.

6. I have heard the parties. The applicant ably argued his case. He relies on the Rule-39 of the CCS (Leave) Rules, reproduced as Annexure-3 as also the Annexure-RJ-11 filed with the rejoinder reproducing rule 39 of the same Rules.

7. The applicant submits that normally, leave salary would have been paid to him on the basis of the salary drawn by him in the IGNOU, Therefore, the respondent was bound to compute encashment on that basis. He further relies on the order issued by the Govt. of India under FR 114 (reproduced as Appendix-I in Swami's Compilation), which states that the Government is bound to pay the leave salary but, for that purpose, the foreign employer is required to make a contribution equal to the leave salary. In respect of compensatory allowance during leave it is the liability of borrowing agency. He, therefore contends that leave salary should

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be computed on the basis of the salary drawn by him in IGNOU in June 1990. He also draws my attention to the decision taken by the Comptroller and Auditor General of India in respect of another official under him vide Annexure 5 letter dated 25.6.90. That relates to the cash equivalent of leave salary payable to one Sh. S.N. Sharma, IAS who was on deputation. A direction was issued to the Principal Director of Audit, Central Revenues that Sh. Sharma was entitled to leave salary including deputation duty allowance, except HRA CCA for the period of encashment.

8. I have carefully considered this submission. While on foreign service, leave salary is paid on the basis of the pay in the foreign service, which invariably would be higher than what the employee would have drawn had he not gone on deputation. The principal reason for this concession is that the entire contribution for such leave salary is received from the foreign employer. This should not be the basis for claiming that for encashment of leave, on retirement after absorption by the foreign employer the leave salary should be calculated similarly. This is due to the fact that no contribution is received from the foreign employer. It, therefore, stands to reason that for encashment purpose the salary obtained under the foreign employer would be irrelevant. The encashment can be based only on what the employee would have got immediately before absorption under the foreign employer, i.e., what he would have got had he continued in Government.

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9. In such a case pension/gratuity is also given only on the presumptive pay and allowances in Government immediately prior to retirement caused by absorption. The salary under the foreign employer is not taken into account. That rule should hold good for encashment also.

10. Reliance on Annexure-5 also does not advance the case of the applicant. That case is distinguishable in the sense that Sh. S.N. Sharma was still on deputation. That was not a case of absorption in foreign employment. In the present case the retirement is effectuated by absorption under foreign employer. Therefore, the case of Sh. S.N. Sharma is of no help to the applicant.

11. In the circumstances, I find no merit in the applicant's claim in regard to the leave encashment.

12. In regard to the interest of gratuity it may be seen from para 3 of the Annexure-2 memorandum dated 13.12.90 that a person who is absorbed is required to only exercise an option as indicated thereunder. The applicant has, in unambiguous terms, opted for getting lump sum retirement benefits by his letter dated 21.3.91 filed with his rejoinder as Annexure RJ-7. He has exercised this option specifically referring to para 3 (2) and 3(a)(2). As a matter of fact this option is with reference to para 3 (a)(ii) and (3) (iii) (a) (ii). He has reiterated this in his Annexure-9 letter dated 27.3.91 wherein also, in item-5, he refers to the option

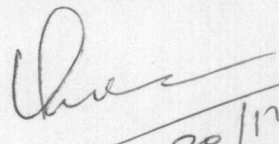
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for lump sum amount in lieu of pension. Therefore, he is entitled to get the lump sum gratuity within three months as provided in Rule-68 of the CCS (Pension) Rules.

13. I do not find any merit in the stand of the respondent that payment was delayed because of the Annexure R-1 letter of the applicant. Whether the applicant opts for the pension scheme of the IGNOU or for the CPF scheme is immaterial in so far as making the payment of gratuity is concerned. I, therefore, find that there was no valid reason for holding back the payment beyond through. Therefore, the applicant is entitled to receive interest on the delayed payment. As mentioned above, the applicant was entitled to full payment on or before 8.7.91. As payment has been made only on 11.11.91 there is delay of slightly over four months. Accordingly, the applicant is entitled to interest from 9.7.91 to 11.11.91 at 7% on the amount of gratuity which is the rate prescribed by the decision under Rule 68 of the C.C.S. (Pension) Rules, 1972.

14. In the circumstances, this OA is partly allowed with a direction to the respondent to pay interest at the rate of 7% on the amount of gratuity paid to the applicant for the period from 9.7.91 to 11.11.91 within a period of two months from the date of receipt of this order.

15. The O.A. is disposed of, as above. No costs.


20/11/92
(N.V. Krishnan)
Vice-Chairman

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