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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2074/93
T.A. No.

199

DATE OF DECISION 23.8.96

Dr. Sita Ram Sharma

Petitioner

Shri S.K. Bisaria

Advocate for the Petitioner(s)

Versus

Lt. Governor, Delhi & Anr.

Respondent

Shri Vijay Pandit

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.s Lakshmi Swaminathan, Member(J).

The Hon'ble Mr.

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2074/93

New Delhi on this 23rd day of August, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Dr. Sita Ram Sharma,
R/o B-7, Delhi Administration Flats,
Model Town,
Delhi-110009. ..Petitioner.

By Advocate Shri S.K. Bisaria.

Versus

1. Lt. Governor, Delhi through its
Chief Secretary,
Delhi Administration,
Delhi. ..Respondents.
2. Director of Education,
Delhi Administration, Delhi,
Old Secretariat,
Delhi. ..Respondents.

By Advocate Shri Vijay Pandit.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant retired from service as Deputy Director of Education, according to the respondents, w.e.f. 16.8.1991 although the applicant himself states the date of his retirement as 23.8.1991. His grievance is that the respondents have not settled all his even retirement benefits nor paid part of it/upto April/May, 1994 i.e. $2\frac{1}{2}$ years after his retirement. This O.A. has been filed on 29.9.1993 and amended on 1.9.1994. The applicant has sought appropriate directions to order the respondents to decide his pension case immediately without any delay and to pay interest on the amount of arrears of pension, GPF and cost of the application.

V.S.

2. Shri S.K. Bisaria, learned counsel for the applicant, has submitted that the respondents deducted Rs.60,000/- from the gratuity payable to the applicant illegally. Out of it, the respondents issued a release order of Rs.25,000/- on 5.7.1994 which has still not been paid and no account has been given to the applicant towards the deduction of Rs.35,000/- for interest on the house building advance. He has also submitted that on retirement, it was obligatory on the part of the respondents to make all payments of retirement/ immediately. He has denied that the applicant has not completed the necessary papers to receive the retirement benefits, as alleged and submitted that instead of making the retirement benefit payments in accordance with the rules, the respondents are trying to shift their obligations on the applicant. He has also submitted that the applicant having rendered more than 33 years of service, he could avail of the full benefits of 240 days which was due to him whereas leave encashment for 118 days has been paid so far and an amount of Rs.30,000/- is outstanding. The learned counsel has also submitted that regarding the payment of Provident Fund, Gratuity, Leave Encashment benefit and Group Insurance, since the applicant had no role to play and the records were already available with the respondents, there was no reason at all for delay in the payments of more than three years. In the circumstances, the applicant has prayed that the respondents should be directed to pay all the retirement benefits with 18% interest on the delayed payment.

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3. The respondents have filed reply to the amended O.A. in which they have submitted that pension and full amount of DCRG as admissible under the rules, were sanctioned by order dated 10.10.1994, Provident Fund was paid on 20.5.1994 and sanction for leave encashment for 118 days was issued by order dated 1.3.1994. Regarding commutation of pension, they state that the medical examination report of the applicant has still not been received and hence the delay. According to them, the case of the applicant for pension, gratuity and final withdrawal of GPF could not be finalised in time because the applicant pension did not submit the/papers and other documents despite several reminders to him, the details of which are given in the additional reply, for which they allege that he alone is responsible. They have submitted that no interest is payable on the pensionary benefits as the delay in finalisation of the payment was on account of the applicant. They have stated that since he had retained the Govt. accommodation for four years after his retirement, the amount of Rs.25,000/- was withheld from his gratuity for want of 'no demand certificate'. Although by the respondents' Annexure R-12 letter dated 5.7.1994, addressed to the Pay and Accounts Officer, there is a request to release the amount of Rs.25,000/- withheld earlier out of the DCRG xxxx, the learned counsel for the applicant states, /has still not been refunded.

4. From the above discussion, it is seen that though the applicant has retired from service on 16.8.1991, the respondents have paid only part of the DCRG, CGEIS, leave encashment and GPF and that too only onwards from 21.3.1994 /as per their letter dated 23.6.1995, i.e. after a period of about $2\frac{1}{2}$ years from the date of retirement. According to the respondents, they have sent several letters and reminders to the applicant from 13.1.1992 to complete the necessary formalities. However, the respondents have failed to submit any material or details of any action they might have taken to finalise the retirement benefits of the applicant prior to his date of retirement or to explain the delay satisfactorily in making the payment of GPF, leave encashment, etc. which they have done in 1994. Further, from perusal of the records, one cannot hold concluding that the respondents have taken an unduly long time to finalise the pension case of the applicant for which they ought to take necessary action to fix responsibility/ but they cannot totally pass the blame to the applicant that he has not cooperated in completing and submitting the necessary forms. The applicant has also submitted that even according to the respondents own letter dated 5.7.1994, Rs.25,000/- deducted from his gratuity has still not been refunded which was earlier withheld for want of the 'No Demand Certificate' from the Land and Building Department. In this connection, the applicant has also relied on the

department's letter dated 25.2.1993 in which it has been stated that nothing is outstanding against the applicant but in spite of that the amount has not been refunded, and there is no satisfactory explanation from the respondents for their delay.

5. In a similar case State of Kerala Vs. M. Padmanabhan Nair, 1985(1)SCC 429, the respondent

retired from service on 19.5.1973 and his pension and gratuity were ultimately paid to him on 14.8.1975. In this case, the appellants had put the blame on the respondent for delayed payment, on the ground that he had not produced the requisite Last Pay Certificate from the Treasury Office under the relevant rules. The Hon'ble Supreme Court held that a duty was cast on the Treasury Officer to grant to every retiring Government servant the Last Pay Certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest by the High Court was allowed/ which was also upheld by the Supreme Court. The Supreme Court held as follows:

"2. Usually the delay occurs by reason of non-production of the LPC (last pay certificate) and the NLC (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires

or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement". (Emphasis added)

6. In the present case, the respondents have failed to show what action they took to obtain the necessary information from the other department, namely, the Land and Building Department in time so that the withheld amount of DCRG could be released. The respondents have also / to comply with the requirements of law in settling the dues of the petitioner on his retirement in time. In the facts and circumstances of the case and having regard to the decision of the Supreme Court in Padmanabhan Nair's case, this O.A. is allowed with the following directions:

(1) The respondents shall pay interest @ 12% p.a till the date of actual payment on,

(a) the delayed amounts of DCRG, CGEIS, GPF and leave encashment paid to the applicant in 1994 w.e.f. two months from the date of his retirement, i.e. 16.8.1991.

(b) the amount of Rs.25,000/- withheld month

from the gratuity, w.e.f. one / from 5.7.1994.

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(2) (a) The respondents shall furnish the details of amount of all retirement benefits made and still due, including commutation of pension to the applicant within one month from the date of receipt of a copy of this order.

(b) The respondents shall take immediate steps, and in any case within a period of three months from the date of receipt of a copy of this order, to release the balance amount of the retirement benefits with interest @ 12% p.a., w.e.f. two months from the date of retirement till the date of payment.

(3) In case the amounts mentioned in Paragraphs 1 and 2 above along with interest are not paid within the period of three months, the applicant would be entitled to interest thereafter @ 18% p.a. till the date of actual payment.

No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

23/8/96.

'SRD'