

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 507/93

New Delhi, this the 14th day of January, 1994

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

Shri M.L. Keshav,
s/o: Ram Pati,
Retd. Head of the Mechanical Engg. Deptt.,
Pusa Polytechnic Pusa, New Delhi,
R/O: B.5/71, Paschim Vihar,
New Delhi.

...Applicant

(By advocate : Shri K.P. Dohare)

VERSUS

1. The Lieutenant Governor, through
The Chief Secretary, Delhi Admn.,
5, Alipur Road, Delhi.
2. Director, Directorate of Training &
Technical Education, Delhi Administration,
Rouse Avenue, New Delhi-1.
3. Principal,
Pusa Polytechnic, Pusa,
New Delhi-12.

...Respondents

(By advocate : None)

ORDER (ORAL)

The applicant was working in the Delhi Administration on the post of Head of Mechanical Engineering Department, Pusa Polytechnic, Pusa, New Delhi. While working as such, the applicant joined I.I.T., Delhi as Dy. Registrar as averred by him sometimes in 1986. The applicant was subsequently made substantive in his appointment in the IIT by the letter dated 6.8.90 (annexure V) wef 30.5.90(F/N). The applicant thereafter made a representation on 31.8.90 to the Director, Directorate of Technical Education, New Delhi, for transfer of pro rata retirement benefits and all assets and service book to IIT, Delhi. He also endorsed a copy to the Principal, Pusa Polytechnic. The Principal, Pusa Polytechnic by the letter dated 25.9.90 wrote to the Dy. Registrar that

le

terms and conditions of the absorption of the applicant in IIT may be sent to the office for further necessary action. By the letter dated 10.10.90, addressed to the Principal of Pusa Polytechnic, the applicant enclosed a copy of appointment letter to the post of Dy. Registrar and desired that the pro rata benefits and all assets and service book be transferred to IIT. By the letter dated 30.10.90, the Principal of the Institute again wrote to the Dy. Registrar that as per para 4 of G.I.M.F.O.M. in Appendix 7, Swamy's Compilation of F.R.s & S.R.s - Part I, Govt. servants who are absorbed in public sector undertakings/autonomous body are required to exercise option within 6 months of their absorption for either of the alternative indicated below :

(a) receiving the monthly pension and DCRG, under usual Govt. arrangements, or

(b) receiving the gratuity and a lump-sum amount in lieu of pension worked out with reference to the Commutation tables obtaining on the date from which the commuted value becomes payable.

2. He was asked to send the option alongwith form no.5. The principal of the insititute again on 6.11.90 ~~has~~ desired some more information as per annexure X. The applicant gave a reply on 13.11.90 to the Principal of the Institute that the following amount be paid to him :

Je

i) A lump-sum amount not exceeding the commuted value of one-third of pension, and

ii) Terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension. It is further added that he will surrender the right of drawing two-third of my pension in case the above is agreed to by the Administration. and

iii) Other admissible retirements benefits - leave encashment, gratuity, etc.

3.

3. He also completed form No.5 and enclosed the same with this information. He has also sent a form for commutation of 100% pension. In form 2, the applicant has to be examined medically but the form enclosed with the application is not filled up. However, learned counsel at the time of hearing, stated that the applicant was examined medically in the month of Dec., 90. Thereafter, the applicant was paid the pension on 26.8.91 though in para 4.14 this date is mentioned as 26.5.91 and the learned counsel states that the date of May, 91 is a typographical error and may not be taken as a correct statement. The gratuity and the leave encashment has been paid in Sept., 91. The ground taken by the applicant is that on the basis of the decision of the D.S.Nakra v. U.O.I. (AIR 1983 SC 130), State of Kerala v. M. Padmanabhan (1985 Vol.I SCC p.429), the applicant had to be paid interest on the delayed payment of these terminal benefits along with the cost of the case.

↓

4. A notice was issued to the respondents time and again but none appeared on behalf of the respondents. The matter, therefore, has been taken up for final hearing. Learned counsel for the applicant has been heard for a considerable time. The applicant as referred to in the earlier part of the order was got medically examined in December, 90. According to one version in the application, the 100% of commuted value of pension was paid in May, 91 and according to para 4.15, he was paid in August, 91. Any averment made in the pleadings is taken in a manner that if an advantage has been given to the other side, that benefit has to be given if the plaint has not been got amended. Irrespective of the date of payment when the payment has been shown to be paid in May, 91, the respondents cannot be taken by surprise and in the present case when none appears for the respondents by changing this date as August, 91. The date of medical examination of the applicant has not been mentioned anywhere in the body of the applicant. The form annexed with the application of medical examination is blank. Thus, it cannot be said that the applicant has not contributed himself to the delayed settlement of pension. In the letter of Aug. 90, the applicant has reserved himself to a right of commutation of 2/3rd portion of the pension also and a perusal of the aforesaid letter will show that after commutation of 1/3rd portion of the pension, if acceded to by the authorities, then only 2/3rd portion of the pension for full commutation, i.e., 100% is to be taken as an option. this was not unconditional option.

15

5. The interest is payable to an aggrieved party on the theory of unnecessary enrichment. That is, if other party has got benefit by retention of that amount, then in that case, the aggrieved party has to be compensated. This is not the case here. The other aspect of payment of interest is that had the amount been paid to the aggrieved party in time, he would have got some benefit monetary or otherwise by investing this amount. This is the case here. However, it is to be seen that whether there was a administrative lapse on the part of the authorities or not. The applicant himself was a Deputy Registrar in IIT and was holding dual capacity ^{and sent} reply on behalf of Dy. Registrar corresponding concerning himself. He should have been aware that unless he gives unconditional option and that the necessary pension papers are filled up and after proper medical examination, the 10% commutation in the case of the applicant who was absorbed in a substantive capacity in IIT, Delhi, an autonomous body, can only be considered. When these formalities have not been processed on behalf of the applicant well in time, he has to blame himself for the late payment of pension. The applicant, therefore, cannot be allowed any interest on this account.

6. Regarding the amount of DCRG, the respondents were duly informed about the absorption of the applicant in October, 90. The applicant has claimed interest on DCRG from 1.12.90. This amount has been paid in September, 91. Thus, the applicant has to be given interest @ 10% p.a. on the amount of DCRG from 1.12.90 till the date of payment by cheque.

le

7. The 3rd item claimed is interest on delayed payment of leave encashment and group insurance. Again at page 5, in the bottom of para 4.15, the learned counsel has during the course of the arguments stated that it is a correct statement and is in supersession of the statement given at ^{top} ~~bottom~~ of the same page. In this case, in the leave encashment the amount of group insurance is also said to have been merged. It is, therefore, not evident what was the leave encashment equivalent to the leave due on his retirement and what was the amount of group insurance. The plaint or the application is vague in this respect. In view of this, the applicant cannot be granted interest on this account also.

8. In view of the above facts and circumstances, the application is partly allowed. The applicant shall be paid interest on the delayed payment of DCRG @ 10% p.a. wef 1.12.90 till the date of payment by cheque. The relief for payment of interest on pension, leave encashment for G.I.S. is disallowed, leaving the parties to bear their own costs. *The respondents to comply with the direction in 3 months from the date of receipt of the copy of the judgment.*

9. After the judgement was dictated, learned counsel for the applicant ^{again} argued but no argument can be advanced at this stage.

J. P. Sharma

(J.P.SHARMA)

MEMBER(J)

'kalra'

14011994.