

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

(Order reserved on 27.04.2021)

O.A.No.060/0515/2020

Chandigarh, this the 17th day of May, 2021



CORAM: HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Harkesh Singh Sidhu, Aged 67 years S/o S. Dalip Singh, IAS
 (Retd.) Special Secretary, Labour, Government of Punjab,
 R/o House No. 6, Phulkian Enclave, Jail Road, Patiala.

(BY ADVOCATE: MR. R.K.SHARMA)

Applicant

Versus

1. Union of India through Secretary to Government of India,
 Ministry of Personnel, Public Grievances and Pensions,
 Department of Personnel and Training, North Block, New
 Delhi-110001.
2. State of Punjab through Chief Secretary, Government of
 Punjab, Punjab Civil Secretariat, Chandigarh-160001.
3. Secretary to Government of Punjab, Department of
 Personnel, Punjab Civil Secretariat, Chandigarh-160001.
4. Accountant General (A&E), Punjab, Sector-17, Chandigarh-
 160017.

**(BY ADVOCATE: MR. SANJAY GOYAL FOR R.NO.1.
 MR. NAVDEEP CHHABRA FOR R.NO.2&3.
 MR. H.S. JUGAIT FOR R.NO.4.**

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Respondents



ORDER
HON'BLE MRS.AJANTA DAYALAN, MEMBER(A)

The present Original Application has been filed by the applicant Harkesh Singh Sidhu seeking quashing of the order dated 6.7.2020 (Annexure A-1) rejecting his request for payment of interest on delayed release of retiral dues to him. The applicant has also sought payment of interest @18% per annum for the period of delay.

2. The facts of the case are undisputed.

3. The applicant is a retired Indian Administrative Service Officer of 2001 batch allocated to the State of Punjab. He retired on attaining the age of superannuation on 31.1.2014. On his retirement, he was released full pension on provisional basis. However, gratuity amounting to Rs.10 lac and part of leave encashment of Rs.99,354/- were withheld. At the time of retirement of the applicant, no disciplinary or criminal case was pending against him. Notification retiring the applicant on 31.1.2014 is annexed as Annexure A-2. This does not indicate any condition or limitation.

4. An Enquiry Committee was earlier constituted by the Hon'ble High Court of Punjab and Haryana in CWP No.18396 of 2007 which was a Public Interest Litigation alleging misappropriation of funds of Red Cross Society by various officers in the State of Punjab. This Committee made certain observations in its findings regarding purchase of a luxury car by the applicant for his official use by incurring an expenditure of Rs.10,44,489/- out of District Red Cross Society funds on



14.6.2011 when the applicant was posted as Divisional Commissioner-cum-President District Red Cross Society, Kapurthala. Based on this Report, the applicant was issued a charge-sheet on 13.6.2015. On denial of charges by the applicant, inquiry proceedings were initiated and Inquiry Officer submitted a report on 21.10.2015 partially proving the charges. The applicant submitted his defence vide letter dated 13.11.2015.

5. As no decision was taken by the respondents and the retiral dues were withheld, the applicant filed O.A.No.060/1112 of 2017 for dropping of disciplinary proceedings and payment of gratuity etc. This Tribunal vide order dated 23.10.2018 (Annexure A-4) disposed off the O.A. in limine with directions to the respondents to expedite the final decision on the disciplinary case and consider the request of the applicant for release of gratuity in terms of rule formation in a time bound manner.

6. As no final decision was still taken in the disciplinary case, a legal notice was issued on 27.3.2019 (Annexure A-6). Finally, order exonerating the applicant in the disciplinary case was passed on 20.6.2019 (Annexure A-7). Orders releasing regular pension, gratuity and other dues were passed in September 2019 (Annexure A-8).

7. The applicant thereafter made a request for payment of interest @18% per annum on delayed payment vide his representation dated 31.10.2019 (Annexure A-10). This has been decided by the respondents vide impugned order dated 6.7.2020 (Annexure A-1).



8. The respondents have contended that the Enquiry Report was placed before another committee, as directed by the Hon'ble Court, comprising of 5 senior IAS Officers constituted by the State Government. Thereafter, it was decided to initiate action against the applicant under Rule 10 of the All India Services (Discipline & Appeal) Rules, 1969. As the applicant had already retired from service, the departmental proceedings could be initiated only after approval of Union of India. As such, the matter was referred to Government of India. Vide its order dated 2.6.2015, Government of India advised Government of Punjab to initiated action against the applicant under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969 instead of under Rule 10 and directed the State of Punjab to furnish proposal for initiating major penalty proceedings against the applicant. The proceedings were accordingly initiated under Rule 8. Finally, the State Government after considering all aspects including the inquiry report and the comments of the Deputy Commissioner, Kapurthala, decided to drop the charge-sheet under Rule 8 of the All India Services (Discipline & Appeal) Rules, 1969, as neither mis-utilisation of funds nor any financial loss was found established. Approval of the Government of India was sought for dropping the charge sheet.

9. In view of the pending case against the applicant, no due certificate was not issued by the Administrative Department in his favour. This resulted in delay in sanction and release of regular pension and gratuity to him. However, 100% provisional pension at the rate of Rs.34,175/- was sanctioned to the applicant w.e.f. 1.2.2014 vide letter dated 15.4.2014. Leave



encashment amounting to Rs.12,15,947/- was also sanctioned to him vide letter dated 15.4.2014.

10. Finally, decision to drop the charge-sheet was taken by Government of India vide their order dated 20.6.2019 (Annexure A-7). Thereafter, vide letter dated 2.8.2019, sanction for release of gratuity of Rs.10 lac as well as Pension Payment Order were issued to the Accountant General, Punjab who in turn issued the necessary authorities vide its letter dated 5.9.2019.

11. Besides above, payment of Rs.1,20,944/- towards Group Insurance Scheme was also not released to the applicant after his retirement and was credited to his account only on 8.8.2014.

12. These are facts of the case and are admitted by both the applicant and the respondents as well.

13. The case of the applicant in short is that he stood retired on January 31, 2014 and on that date there was no disciplinary or vigilance case pending against him and as such, he was entitled for full retiral benefits immediately after his retirement. Even the disciplinary case initiated against him subsequent to his retirement was dropped and as such, there were no charges against him. Accordingly, he deserves to be paid interest on delayed payment of retiral benefits.

14. On the other hand, the respondents' case is that there was no intentional delay on their part in release of retiral benefits by them to the applicant. The Enquiry Committee set up in the case was ordered by the Hon'ble High Court of Punjab and Haryana and consisted of two Judges - Hon'ble Mr. Justice A.L. Bahri and Hon'ble Mr. Justice R.K. Nehru. In their findings, they had noted that a luxury car was purchased by the applicant out



of Red Cross Society fund which was uncalled for as District Red Cross Society undertakes its activities on donations and the funds so collected are required to be spent on social upliftment. This report was subsequently placed before another committee as directed by Hon'ble Court and further action was taken as per the relevant Rules under All India Services (Discipline and Appeal) Rules, 1969. However, finally after considering the inquiry report as well as comments of the Deputy Commissioner, Kapurthala, the Government decided to drop the charge-sheet as the applicant was not involved in mis-utilisation of funds and no financial loss was found to have been established. After dropping of charges, the case regarding retirement dues of the applicant was processed and his retiral dues were released. In this background, there was some delay in release of retiral dues. However, as the respondents are not responsible for the same, no interest is payable to the applicant for delayed payment. The respondents have also relied upon Rule 6(2) of All India Services Retirement Benefit Rules, 1958, in reaching this conclusion.

15. I have heard the views of both the counsel and have also gone through the pleadings. I have given thoughtful consideration to the mater.

16. Firstly, I note that as stated above, facts of the case are not disputed. That the applicant retired in January 2014 is not disputed. That no disciplinary or vigilance case was pending against him on the date of retirement is also not disputed. It is also not disputed that a charge-sheet was issued against him after his retirement. However, even the same was dropped by the competent authority after considering the views of the



Deputy Commissioner, Kapurthala. It is also admitted by the respondents in clear terms that there was no mis-utilisation of the funds and there was no financial loss involved. It is also not disputed that due to the pending disciplinary case, the retirement dues were delayed by over 5 years - both in respect of gratuity of Rs.10 lac and balance payment of leave encashment of Rs.99,354/-. Even Group Insurance Scheme payment of Rs.1,20,944/- was delayed, but this was only for a period of about 6 months.

17. Next, I observe that the respondents have relied on Rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. The whole Rule 6 reads as follows:-

"Recovery from pension.-"

6(1) The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that no such order shall be passed without consulting the Union Public Service Commission:

Provided further that-

- (a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.
- (b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;
 - (i) shall not be instituted save with the sanction of the Central Government;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;
- (c) such judicial proceeding, if not instituted while the pensioner was in service whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of



action which arose or an event which took place more than four years before such institution.

Explanation: - For the purpose of this rule

- (a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and
- (b) a judicial proceeding shall be deemed to be instituted-
 - (i) In the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and
 - (ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.

Note-1- Where a part of the pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem or at the rates provided under the corresponding rules of the Central Civil Service (Pension) Rules, 1972.

Note-2- Where Central Government decides not to withhold or withdraw pension but orders recovery of any pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the member of the service.

6(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceeding, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under suspension on the date of retirement, upto the date immediately preceding the date on which he was placed under suspension; but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceedings and the issue of final orders thereon.

Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in clause (i), (ii) and (iv) of sub-rule 1 of rule 6 of the said rules and continuing such proceeding under sub-rule (1) of this rule after his retirement from service, the payment of gratuity or death-cum-retirement gratuity shall not be withheld.

6(3) Payment of provisional pension made under sub-rule (2) shall be adjusted against the final retirement benefits sanctioned to the pensioner upon conclusion of the aforesaid proceeding, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

18. It is seen from the above that this Rule basically gives the Government authority to withhold pension or gratuity or both, either in full or in part, in case the pensioner is found to be guilty of grave misconduct or of having caused pecuniary loss to the Government. It elaborates on various issues like consultation with Union Public Service Commission, sanction of



Central Government in case the proceedings are initiated after retirement etc. However, this Rule does not discuss the issue of payment of interest at all. So, the relief claimed by the applicant is, not at all, covered in any manner under this Rule.

19. In fact, it is important to note that this Rule in a manner goes against the respondents. This is because Rule 6(1) (b) (ii) clearly states that no inquiry shall be instituted after retirement in respect of an event which took place more than four years before the institution of such proceedings. Further, explanation below this Rule clarifies that 'a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him'. In the instant case, the event of purchase of luxury car is of 14.6.2011. The charge-sheet was issued to the applicant on 13.6.2015 – that is exactly when four years after the event were getting completed. So, even though the charge-sheet is issued within the timeline given in the Rule – but then, it is just that. It does not build much confidence to the elimination of the possibility of an element of bias or harassment to the applicant.

20. In view of the above facts, I am of the clear view that the applicant is entitled for interest on delayed payment of retiral dues to him especially as there was no disciplinary or vigilance case pending against him on the date of retirement. Even the charge-sheet issued after retirement of the applicant was dropped by the respondent departments themselves and no case of misutilisation of funds or of having caused financial loss to the Government was proved against him. Hence, the applicant will be entitled to interest for delay in payment of retiral dues namely gratuity and part of leave encashment beyond the



normal period of 3 months upto the date of their actual payment.

21. Further, I observe that the applicant has sought interest @ 18% per annum. But, I note that there was no inordinate or intentional delay on the part of the respondents in release of retiral dues. The respondents were acting under the order of the Hon'ble High Court of Punjab and Haryana. It is true that some delay in processing of the case can be attributed to them. However, considering the level of the applicant and the long process involved in issue of charge-sheet to such a senior ranking officer in the top echelons of the Government of India/Government of Punjab and also the fact that the applicant had already retired and as such, sanction of the Government of India was required, the delay cannot be said to be avoidable or intentional. As such, I consider that the normal rate of interest that the applicant would have earned had he kept the retiral dues in the Bank instruments would be a reasonable rate on which he needs to be compensated. Accordingly, I order that the applicant may be paid interest at the normal bank rate of interest on fixed deposits during this period. Keeping this in mind, it is directed that the applicant be paid interest at the rate of 7% per annum for the period of delay beyond 3 months from the time when the payment became due till the date of actual payment.

22. I also observe that the applicant has claimed interest on the amount of Rs.1,20,944/- of Group Insurance Scheme. However, I note that as per his own admission, this payment has already been made to him on 8.8.2014 itself – that is just 6 months after his retirement. Besides, GIS table, on the basis of



which amount of GIS is worked out, was notified by the Finance Department only on 14.5.2014 – that is more than 3 months after the retirement of the applicant. As the amount of GIS has been paid to the applicant on the basis of this table, there is no delay by the respondents in payment of this amount. Moreover, it can even be argued that Group Insurance Scheme is not, very technically speaking, a retiral benefit. In the O.A. the applicant has not stated anywhere as to when he actually submitted complete papers regarding release of this amount. In any case, both the delay and the amount are not substantial. As such, payment of any interest on this amount is not found justified.

23. To sum up, the respondents are directed to pay the applicant interest @ 7% on the amount of gratuity of Rs.10 lac and part of leave encashment of Rs.99,354/- for delay beyond 3 months from the date these became due till the date of their actual payment. Let this order be complied with within a period of 3 months from the date of receipt of a certified copy of this order.

24. O.A. stands disposed of in the above terms.

25. There shall be no order as to costs.

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh
Dated: May 17, 2021

HC*