

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 29th day of July 1998.

Original Application no. 149 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member.

V.K. Pandey, S/o Late Shri Pandit Devi Dayal Pandey,
R/o 128/635 K block, Kidwai Nagar, Distt. Kanpur Nagar.

... Applicant

C/A Shri P.K. Sinha

Versus

1. Union of India through Secretary Ministry of Finance,
New Delhi.
2. The Employees State Insurance Corporation, Sarvodaya
Nagar Kanpur, through Regional Director, Employees State
Insurance Corporation, Sarvodaya Nagar, Kanpur.

... Respondents

C/R Shri B.N. Asthana, Sri P.K. Asthana

ORDER

Hon'ble Mr. S. Dayal, Member-A

This is an application under section 19 of the
Administrative Tribunals Act, 1985.

2. Application has been filed with the prayer for
direction of the Tribunal for setting aside order dated
27.01.95. A direction is also sought for payment of inter-

est as there was delay in payment of claim of the applicant. The applicant also seeks the cost of the application.

3. The facts as mentioned in the application are that the applicant was posted as Assistant Regional Director (Ad-hoc) Employees State Insurance Corporation, Regional Office, Kanpur in December 1988 and retired from there on Superannuation on 31.12.90. The applicant was served show cause notice on 29.12.90 that he had committed misconduct in passing medical bills of some employees amounting to Rs. 3991/-.. The incidence resulting show cause notice related to the year 1984. The entire amount of gratuity, leave encashment and commutation of 1/3 of pension was withheld by the respondents. This was challenged in O.A. 847/91 which was allowed by order dated 03.09.92. A direction was given that amount of leave encashment would be released within a month and remaining retiring benefits of the applicant would also be paid if disciplinary proceedings were not completed within 6 months. The extension of this time limit was sought by the respondents on which the Tribunal granted the extension of one month for submission of report by the enquiry officer and ordered that rest of the amount of gratuity and commuted value of 1/3 of pension shall be paid to the applicant alongwith interest within a period of one month. The applicant was exonerated of charges by order dated 08.10.93. The applicant was paid 1/3 amount of commuted value of pension amounting to Rs. 6875/- on 15.01.93 instead of on 25.12.91. The applicant was paid Rs. 36563/- as part payment of gratuity on 22.12.92 and Rs. 15000/- as remaining part on

06.04.94. The applicant was paid leave encashment of Rs. 35752/- on 07.03.92 instead of on 31.01.91. The applicants claims interest in all these delayed payment.

4. Arguements of Shri P.K. Sinha learned counsel for the applicant have been heard. None is present for the respondents. Pleadings on record have been taken into account.

5. The respondents have stated in their C.A. that memo dated 28.12.90 was served for major penalty. His allegation was that fraudulent payment was made on fictitious medical certificate in the year 1984-85. The respondents have challenged the claim of the applicant for interest on delayed payment of leave encashment by stating that the order dated 13.02.92 in O.A. 847/91 contains direction for payment of amount of leave encashment within a month from the date of receipt of the order dated 13.02.92 and the payment was made in compliance of that on 07.03.92. With these facts it is clear that no interest can be granted to the applicant for delay in payment of amount of leave encashment.

6. As regards payment of gratuity amount of Rs. 36563/- is concerned the respondents have stated in their counter affidavit that by order dated 16.11.92, a copy of which was received by the respondents on 02.12.92 payment of gratuity amounting to Rs. 36563/- was made after detaining Rs. 15000/- which was permitted by the Tribunal vide its order dated 15.11.92. This payment was made on 22.12.92 and thus there was no delay requiring payment of interest of this amount also.

7. As regards the remaining Rs. 15000/- is concerned it is claimed by the respondents in their CA that after receiving of final order dated 08.10.93 from the disciplinary authority, the payment of remaining amount of Rs. 15000/- was made on 06.04.94. Thus there is delay of nearly 6 months in making payment of this amount.

8. The respondents have stated that leave encashment amounting to Rs. 35752/- was paid on 07.03.92 which was within one month from the date of receipt of certified copy of Tribunal's order dated 13.02.92. The certified copy is claimed to have been received on 26.02.92. Hence, no interest is payable to this amount also.

9. The applicant has claimed interest on delayed payment of retiring benefits on the basis of the order of the Tribunal in O.A. 847/91 dated 16.11.92 in which it has been stated that the corporation has paid the applicant, the amount in excess together with interest there on as permissible under law. The respondents in this connection have referred to rule 69 of CCS (Pension)rules in which it is laid down that no gratuity is payable to Govt. servant until conclusion of departmental or judicial proceedings or issue of final orders. The order annexed to the O.A. as annexure A-3 shows that the proceedings against the applicant were for major penalty. Hence, the claim of the respondents that they have not made any delay in payment of all amount barring Rs. 15000/- is tenable. The claim of the applicant for payment of interest from 31.01.91 or on subsequent date can not be allowed as it would not be consistent with the

AS

11. 5. 11

rules on this issue.

10. In effect the respondents have delayed payment of Rs. 15000/- by nearly 6 months and the applicant should be compensated for this delay by payment of ~~remaining~~ ^{remaining} ~~Rs~~ gratuity amounting to Rs. 15000/- with the interest @ 12% p.a. within three months from the date of communication of this order.

11. Respondents are also liable to pay cost of the application to the applicant as per rules.


Member-A

1/pc/