

OPENCOURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ADDL. BENCH
ALIAHABAD

DATED: THE 28TH DAY OF MAY 1997

CORAM : HON'BLE MR. S.DAYAL, A.M.

ORIGINAL APPLICATION NO.615 OF 1995

K.P.Srivastava,
314, Old Katra, Allahabad.
C/A Shri N.L.Srivastava, Adv.

Versus

1. Union of India, through
Secretary (Posts),
Ministry of Communication,
Government of India, New Delhi.

2. The Chief Post Master General,
U.P. Circle, Lucknow.

3. The D.G. (Posts),
New Delhi. Respondents

C/R Shri N.B.Singh. Adv.

ORDER

BY HON'BLE MR. S.DAYAL, A.M.-

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

2. The applicant has come to the Tribunal with a prayer for the following reliefs:-

(i) A direction to the respondents to pay interest @ 20% per annum on the arrears of pay and allowances from the date due to the date of actual payment made, including arrears of stagnation increment.

(ii) A direction for the respondents to pay interest @ 10% on the arrears of pensionary benefits including leave encashment, gratuity and pension.

(iii) A direction to the respondents to pay the costs of this application.

3. The facts as stated by the applicant are that the case of the applicant for promotion to lower selection grade was considered by Circle Office Departmental Promotion Committee which met on 27.10.1980 but kept recommendations regarding the applicant in a sealed cover due to pending proceedings which were commenced in 1974. The proceedings ended with penalty of ~~sanc~~tion due to which the applicant was denied promotion. The applicant filed a writ petition in the High Court in the year 1984 which was subsequently transferred as T.A.No.1336/1987. It was decided on 21.7.1992 in favour of the applicant. The orders of punishment were quashed and the respondents ~~were~~ directed to ^{consider} contest the case of promotion with ~~from~~ retrospective effect ^{from} by opening the sealed cover. The Bench of the Tribunal further directed that if the applicant ~~may~~ retire, in case he was considered fit for promotion, he was to be given notional promotion and also consequential benefits.

4. Shri K.P.Srivastava, the applicant himself and Shri S.K.Anwar, Additional Standing Counsel appear for senior standing counsel Shri N.B.Singh. The pleadings in this case have been considered and confusions are set forth in the

5. In this case no counter reply has been filed by the respondents altho gh notice was issued to the respondents on 12.7.1995. Thereafter opportunities were given to the respondents on 28.1.1995, 14.12.1995, 21.3.1996, 18.7.1996 18.10.1996 and 3.2.1997, inspite of, all the opportunities respondents have failed to file the counter affidavit. Shri S.K.Anwar seeks further time to file C.A. which cannot be allowed as ~~last~~ opportunity was given as far back as on 3.2.1997 and further opportunities were granted to the respondents by way of abundant indulgence. No ~~other~~ ^{further} indulgence is required now.

6. Learned counsel for the respondents has stated that the applicant has filed his claim belatedly because the order of the Tribunal was passed on 21.7.1992 and order for promotion was made on 23.10.1992. It may be mentioned here that the applicant retired on superannuation on 31.1.1991. He has mentioned in the application that he was paid arrears of pay, stagnation increment, leave encashment, gratuity and arrears of pension on various dates from January to April 1993. He has claimed that the retiring benefits were due to be paid to him on 1.2.1991 and the difference of salary as a consequence of promotion was paid in January 1993. This difference was from the year 1982 to the year 1991 amounting to Rs.9,888-90. The respondents who have not filed counter affidavit in this case are now coming up with the plea that the claim is barred by limitation. Since this claim pertains to arrears of salary, pension and retirement benefits, No bar of limitation applies and, therefore, this ground of the respondents is not valid.

7. Learned counsel or the respondents Shri S.K.Anwar has also stated that ^{in this case} ~~it is a part of~~ ^{barred by} constructive resjudicata. ^{in this case} He has contended that the arrears were paid

after the judgment of T.A.No.136 of 1987 and there is no delay in making such payment. He has also contended that the applicant should have, at the time he filed his writ petition, made an entire claim including consequential benefits as well as interest separately. He has cited the judgment of Indore Bench of Central Administrative Tribunal (1990) 13 ATC 402 between K.S.Kali Das an Secretary post, New Delhi. and another. Learned counsel for the applicant has mentioned that the writ petition filed by him was for getting the order of ~~appointment~~ set aside and seeking promotion ~~of~~ to lower selection grade with other benefits. It is contended by ~~the learned counsel of~~ the applicant that he had not sought any payment at this stage in the writ petition and, therefore, the judgment cited by the learned counsel for the respondents does not apply to him. ~~The learned counsel for~~ the applicant has cited the judgment of CAT Ernakulam Bench in O.A.No.49 of 1992 388 Swamy's C.L.Digest 1983. In this case the delay of fixation of pay by 19 years was found to be ~~an~~ unjustified and interest @ 12% was awarded on arrears of pay. The second judgment cited by the learned counsel for is between Dr.J.K.Goyal v. Union of India (1995) 1 UPLBEC 45 (Trib.). In this case the applicant had claimed interest ^{Tribunal to the} and there was a direction of the/respondent to dispose of for payment of arrears of delayed release of selection grade after delay of six years and the respondents rejected the that representation of the applicant on the ground/~~as~~ the delay was procedural and no interest was payable. The Tribunal directed that the delay was on account of action of the respondents and not due to any fault of the applicant and, therefore, interest @ 18% may be paid to them. These two cases do not help the applicant in this case because there was no previous judgment of the Tribunal in which these applicant could have asked for interest but did not do so.

8. The arrears claimed by the applicant were paid to the applicant by the respondents due to his promotion to lower selection grade resulting from the order of the Tribunal. The arrear of stagnation of increment is, however, for a period from 1.11.1977 to 2.11.1980 and is not relatable to denial of promotion to the applicant in 1980. Arrears of leave encashment, gratuity and pension are by way of difference on account of the applicant getting the lower selection grade. Rule 68(2) of C.C.S. Pension Rules 1972 provides for payment of interest ~~on~~ gratuity after a delay of 3 months, if the delay was caused to administrative lapses. ~~in~~ Payment of difference of gratuity on account of enhancement of the pay last drawn as in the present case before me is specifically barred by Sub-rule(5) of Rule 68.

9. One question which has to be answered now, is whether the prayer of ~~the~~ application for promotion in the writ petition ~~was~~ later ^{addition} ~~on~~ ~~controversied~~ in the application "with other benefits" would include interest or not. The prayer in the writ petition does not specifically include request for payment of interest. The applicant started asking for payment of interest only after the receipt ~~of~~ of the amount due from the respondents on account of his refixation of pay consequential to his promotion to the lower selection grade. The first application is made on 8-1-93, the next was on 15.6.1994 and the third was on 5.10.1994. The question is when cause of action for payment of interest arose and whether the term ~~and~~ "other benefits" included interest. The term "other benefits" can only be interpreted ^{to be} the benefits due to the applicant as per rules. I have that the rules are only for payment of interest on delayed payment of gratuity beyond the period of 3 months on account of administrative lapses. The cases cited by the applicant are such in which the applicant was not at fault and the authorities had delayed the payment

In the present case he cannot consider the authorities also to be at fault because there was an order of punishment operating against the applicant. The setting aside of this punishment, ^{entitled} the applicant ~~shall~~ ^{to} get the benefits as per rules. He would, therefore, not be entitled to any more than that, and as such, such claim cannot be accepted. The application is, therefore, dismissed. No order as to costs.

Said
MEMBER (A)

Gcs