

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad This The 1 Day of June, 2000.

Original Application No. 143 of 1999

CORAM:

Hon'ble Mr. S. Biswas, A.M.

C.J. Lartius, aged about 77 years

Retired Auditor, Office of the

A.G., U.P., I, Allahabad resident of

House No. 13, Muirabad, Allahabad

----- Applicant

(C/A Shri O.P. Khare)

Versus

1. Comptroller and Auditor General of India,

10, Bahadur Shah Zafar Marg, New Delhi.

2. Principal Accountant General,

Office of the P.A.G., U.P. Allahabad.

3. Senior Accounts Officer (Cash),

Office of the P.A.G., U.P., Allahabad

4. Pay and Accounts Officer,

Office of the A.G., U.P., Allahabad

----- Respondents

(C/R Shri Satish Chaturvedi)

S. Biswas

ORDER

1. The applicant, a pensioner, who was compulsorily retired on 18.09.75, but reinstated on 30.03.79, finally retired from service on 31.05.79, has sought direction ^{to} respondent 2 for paying interest on delayed settlement of pension and other retirement dues after 17/18 years of his retirement and legal cost.
2. Heard both the parties. Certain undisputed facts have emerged from the projection of the cases of rival sides. Accordingly, the applicant was compulsorily retired from service on 18.09.75 but he was reinstated on 30.03.79 and rejoined the service on 16.04.79 - thus in all he was out of service for 43 months 18.09.75 to 16.04.79. This period of absence was however regularised by the respondents and ~~but~~ soon after rejoining he finally superannuated on 31-5-79 and provisional pension order was passed on 22-9-76. After the applicant was compulsorily retired but whatever benefits were availed of ~~this~~ were adjusted towards leave for 43 months period.
3. The applicant ultimately retired on 31.05.79, but the respondents took no action on settlement of his pension till for about 17 years. The applicant made several personal sorties to the respondents office from Lucknow, and finally suffered from nervous breakdown. He was always told orally that service book was not available. Even pension forms to be filled were not allegedly supplied.

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He made several representations dated 03.05.79, 20.04.82 without any avail.

He had to finally give legal notice. At last, when he contacted the Principal A/G; the P.C. section supplied him the forms for claiming pension. The pensions were ultimately processed and paid by the respondent as per the following schedules of date:-

	<u>Date of Payment</u>	<u>Amount</u>
1. Pension from 01.05.79 to 30.04.98 (Provisional with arrears.)	22.05.98	1,79,965/-
2. (a) D.C.R. G (Provisional)	14.05.98	9,240/-
(b) Revised D.C. R. G.	15.10.98	2,495/-
3. (a) G.P.F. (Provisional)	31.08.98	10,386/-
(b) G.P.F. (Residuals)	02.07.98	105/-
(c) G.P.F. (Residual)	06.01.99	817/-
4. Arrear pay (without details)	13.01.99	18,087/-
5. C.G.E. Insurance	07.10.98	120/-

4. The applicant has alleged that pension due w.e.f 01.06.79 were actually settled in phases from 14.05.98 to 13.01.99. Same provisional pensions paying order 22.09.79 were ultimately settled only by 22.05.98 after about 19 years. Even G.B.F were paid in 3 installments.

5. The applicant contends that as per pension rules ~~and~~ ^{5/2} circulars cited in this behalf these are to be settled within 2 months of retirement. Whereas, he was forced to starve and suffer a lot, nervous breakdown for a long period.

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It is not the case of the respondents that he failed to cooperate with them in any way. Despite several visits the forms were not even supplied as not available. Ultimately in the year w.e.f 4.6.97 responses began to be there after he contacted the Chief A/G.

6. The applicant has cited several court ruling, in support of his claim of interest on the delay and payment of pensionary benefits. The apex court has held in the case of state of Kerala & others Vs M. Padmanathan Nair 1985 (1) S.C.J. (106) S.C. :

"Pension and gratuity are no longer any bounty to be distributed by the Govt. to the employees after their retirement but have become under the decision of this court valuable rights and property in the hands and any culpable delay in settlement and disbursement thereof must be visited the penalty of payment of interest, of current market rate till actual payment."

7. The govt. of India vide their order dated 25.08.94 has decided payment of interest ~~of~~ on delayed disbursement of retirement dues under C.G.S. pension Rule 72 : " In suppression of O.M. No. 07/3/84 dated 28/07/84 it has been decided that when the payment of D.C.R.G. has been delayed beyond 3 months from the date of retirement, an interest of 12% compounded annually will be paid."

8. According to 5 (a) to above, "the rate of interest in Para 1 above will be applicable in all cases where D.C.R.G has not been paid as on the date of issue of this O.M."

S. B. *[Signature]*

Hence the authorities, the applicant contend, are liable to pay him interest on the delayed ~~and~~ SM disbursement of post pension dues.

9. Similarly it is contended by the applicants counsel that in (1998) 3 4 P.L. B.E. C.2214 decision in Sushila Bhatnagar (Smt) vs. State of U.P. & others case it is held that arrears of retirement benefits admissible but not paid are liable to be paid with 18% interest.

10. The respondents have briefly contended that the delay if any is contributory and due to the applicant himself who failed to comply with the request dated 13.09.79 for filing ^{the} application for G.P.F., D.C.R.G., Pension etc. The reminder dated 25.09.79 sent by Rgd. letter was also not responded and pension papers filed by the applicant. He was again asked by respondent on 28.09.79 to file papers for disbursement of the dues. But he did not comply. It does not seem to be the case of the applicant that in reply to these requests, he asked for the requisite forms which are normally as per the pension rules distributed well in advance of ^{the} due date of retirement.

11. The applicant is silent on the above references which were made by the respondents to obtain the pension papers from the applicant. If he had any difficulty to do so, there is no evidence to show that the applicant made any reference to the respondents seeking any clarifications or the requisite forms till in the year 1997. Even in 1997 when he made request for pension papers on

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25.02.97 Principal Accountant General., he was required to be reminded thrice vide letter dated 20.07.97, 18.09.97 and 03.10.97 for filing the pension papers.

The respondent made the proverbial attempt *applicant by* to take the force to the water, but could not succeed to make him drink till after 03.10.97.

12. As far as the O.A. is concerned, the applicant has kept these facts concealed from the court even at the stage of hearing. It is absolutely ~~incumbent~~ upon the applicant that he comes with clear hand for justice. The concealment tantamounts to suggest that the delay if any was quite contributory and it was far from "culpable delay". Hence the Appex Court order has been quoted quite out of context.

13. The pension rules cited by the applicant in R.A. are swamy's compilations ~~are~~ These ⁱⁿ three sets. Set (i) is corrected upto 74. Set (ii) is corrected ~~85 and~~ upto 97. The Rules are in different sequence. ~~153~~ This implies that many amendments to the rules have taken place over the years.

14. Generally in Pension Cases, steps are to be taken at least ~~one~~ month before retirement vide letter No. dated 28/02/76 for issue of P.P.O. If any unsurmountable delay is anticipated provisional pension order should be made ~~so~~ that the pensioner does not go with ^{on} pension for long. The first provisional pension order was issued on 22/09/76 following the compulsory retirement of the applicant

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following the compulsory retirement of the applicant. The respondents, have contended that the applicant was reinstated by the deptt itself after he failed to get the order quashed by Hon'ble High Court and even his S.L.P. before Hon'ble Supreme Court was dismissed. In all he was out from service for 43 months from 18/09/75 (date of compulsory retirement to 30.03.79 (actually rejoined on 16.04.79) Therefore, on rejoining the pension benefits availed by him were refunded and this interim period of 43 months were regularised by leave or adjustment from the availed Pensions etc.- as averred by the respondent These relevant details were also not disclosed by the applicant.

15. The rule cited by him are compilation of Swamy. under R 59(i)e(ii) amended in 1993 it is warranted that form 4 and 5 he forwarded ^{to} _{to} the retiring officer. This needed a compliance by the respondents It is not their case that they acted according to these provisions.

16. I have however looked into the plea that for delay in payment of retirement benefits, interest is payable. The petitioner has submitted in Para 4.10. of O.A. That having no other alternative to get the interest on delayed payments which were made in 1998 and 99, Whereas, he had retired in 1979, he has come to this court.

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17. The pension rules cited by the applicant are self-contained. There is a separate section in the rules dealing with interest in delayed payment of pensionably benefit R 68 (2) provides for a clear alternative if there is a grievance regarding non-payment of interest under this rule, the secretary of the concerned deptt is only competent to consider interest on delayed payment of gratuity. Mutatis mutaudis, the applicant should have represented to the secretary first for payment of interest on all items, The applicant has come to this court before exhausting the appellate channel open to him under the Rules quoted by him.

18. The O.A. is premature. Hence, disposed of with the direction that after two weeks of receipt of this order the applicant would make a detailed representation before the secretary of the concerned deptt, who would decide on the same within a period of 3 months thereafter.

The applicant would be at liberty to make a fresh O.A. if he thinks his dues have not been paid.

No costs.

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