

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 19th day of **MAY** 2005.

Original Application No. 1106 of 2002.

Hon'ble Mr. K.B.S. Rajan, Member (J)

V.S. Sharma, S/o Late Krishna Murari Lal,  
R/o B-564, Kamla Nagar,  
AGRA.

...Applicant

By Adv: Sri H.S. Srivastava (Absent)

V E R S U S

1. Union of India through the Secretary,  
Ministry of Defence,  
NEW DELHI.
2. The Garrison Engineer (East),  
JABALPUR.
3. Comptroller of Defence Accounts,  
Ridge Road,  
JABALPUR.
4. Joint Comptroller of Defence Accounts (Fund),  
MEERUT CANTT.

...Respondents

By Adv: Sri S. Srivastava (Absent)

O R D E R

As none represented either side, invoking  
the provisions of Rule 15 of the C.A.T. (Procedure)  
rules, 1987, this case is disposed of on the basis



of the materials available in the records and the relevant authorities on the subject.

2. The applicant is aggrieved on account of non payment of interest in-respect of delayed payment of his Provident Fund (PF) dues which fell due as on 01.02.2002, but which had been paid to him on 19.10.2002. Similarly, the applicant also ventilates his grievances relating to non payment of interest on the delayed payment of leave encashment of Rs. 1,56,450/- which was due as on 01.02.2002, but which was paid only on 09.12.2002. Interest claimed by the applicant is 18% per annum on the amount of Provident Fund accumulations and leave encashment from 1-02-2002 till the dates of their respective payment.

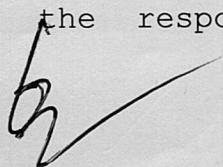
3. It is found from the record that diligently the applicant did write to the department after retirement for payment of terminal benefits and also reflected the details of bank account in which the accumulations should be credited, vide his letter dated 16.06.2002 and vide annexure A-3, letter dated 17.07.2002 office of the CDA, had written to the Accounts Officer (In-charge) to expeditiously settle the payment to the applicant. However, it is only

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after inordinate delay that the payment of the respective dues was made and it is on account of the delayed payment that the applicant claims interest.

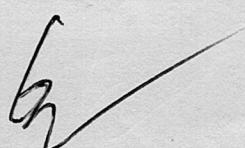
4. The respondents have contested the OA, but certainly have admitted as to the date of payment as mentioned above and the reasons which emanate in para 4 of the counter affidavit was that Demand Draft (DD) of Rs. 8,36,329/- towards final settlement of GP Fund Account was sent to the applicant but the same was returned by him stating that the account earlier given by him at the time of retirement has since been closed and as such it became necessary for the respondents to get a fresh DD issued which obviously took some time. It has also been stated that the delay in payment of the dues was also due to certain objections raised by the Audit authorities; but what these objections were have not been explained in the counter affidavit filed on behalf of the respondents.

5. The applicant has rebutted the counter affidavit and in regard to the charge in the account maintained by him, he has asserted that the fact relating to the change of account was made known to the respondents by his letter dated 19.06.2002

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(Annexure A2) and as such the respondents were wrong in getting the DD prepared in some other account earlier maintained by the applicant. This contention has been raised in para 7 of the Rejoinder Affidavit and in reply to the rejoinder Affidavit, the respondents have not denied this position.

6. G.P. Fund is an amount that belongs to the applicant and compared to other dues payable to a government employee, it is in a separate pedestal as for example, it enjoys certain statutory provisions relating to immunity. Provisions exists for closure of the GP Fund Account months in advance and the precise purpose of this provision is with a view to enabling and facilitating the authorities to work out the exact amount due on the date of retirement of the applicant and make the payment **immediately** on retirement. The purpose of allowing to close the PF Account months in advance would therefore, be thoroughly frustrated, if department takes its own sweet time to workout the accumulation and disburse the amount at their leisurely hours. The money essentially belongs to the applicant and the Respondents are the party responsible to pay the same to the applicant immediately on retirement. It

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is settled law as laid down in the case of **Union of India v. Justice S.S. Sandhawalia, (1994) 2 SCC 240**, at page 247 "Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court." Hence, the applicant is entitled to interest at the same rate specified for GP Fund Account for that relevant financial year i.e. 2001-2002. which is 9.5% as could be seen from para 4 of the counter filed by the Respondents. And the respondents are duty bound to pay the same to the applicant.

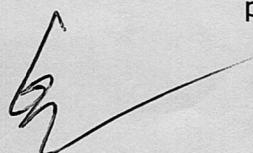
7. As regards the leave encashment also, the same principle that the person withholding the payment due has to pay interest, holds good. However, in this case unlike the case of payment of P.F. dues, which provides for closure of the PF account months in advance, consequent to which the PF accumulations should be paid immediately on retirement, as it was well within rights of the applicant to be avail of leave till the last date of his service, calculation of leave encashment could be made only after the date of retirement, and hence a reasonable time can be taken by the respondents to workout the accumulated leave and make the due



payment. As such a period of 3 months could well be taken to complete the entire drill of working out the extent of leave encashment and pay the same. And in the instant case, as the applicant retired on 31-01-2002, the amount due to leave encashment ought to have been paid on or 30-04-2002. Against this, the amount paid was in the month of December 2002, and hence the applicant is entitled to interest on the delayed payment of leave encashment at the rate of 12% per annum w.e.f. 01.05.2002 till the date of payment.

8. The question now is that who is the bare brunt - the respondents? or the erring individuals in the organization of the respondents who are responsible for making the delayed payment. The Hon'ble Supreme Court in case of Lucknow Development Authorities Vs. M.K. Gupta (1994 (1) SCC 243) and followed in a subsequent judgment in the case of Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65, held as under:-

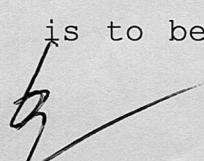
"11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in

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circumstances be payable. *But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead.* Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public-oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. *When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the taxpayers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law.* It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then *it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.*" (Emphasis supplied)

We are in full agreement with what is observed herein."

9. Telescoping the above law as laid down by the Hon'ble Supreme Court on the facts of the case, it is to be decided whether it is for the respondents



to make the payment of interest or it would be recovered from the individuals. In my view, the amount has to be realized from the erring individual (subject of course, to the Respondents conducting a proper inquiry in this regard). A specific order by this Court is thus fully warranted in this regard as well as the same would work as a deterrent.

10. The OA is allowed. The respondents are directed as under :-

i. Interest at the rate of 9.5% on the Provident Fund accumulation of Rs. 8,38,329/- be worked out from for a period 8-1/2 months from 01.02.2002 till 15.10.2002 shall be worked out and the same shall be paid within Eight Weeks from the date of communication of this order.

ii. The respondents shall also work out interest at the rate of 9.5% on Rs. 1,56,450/- (being the leave encashment) for the period 7 months from 01.05.2002 till 30.11.2002 and this amount shall also be paid within Eight weeks from the date of communication of this order.

iii. The respondents are further directed to examine the reasons for delay and fix the responsibility upon the erring individuals and decide whether any amount should be realized from the individual, of

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course, by following the due procedure for such recovery, and if so held, the amount so fixed to be recovered from such erring individual(s) be realised.

11. Under the above circumstances there shall be no order as to costs.



Member (J)

/pc/