

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 472 of 2007

Allahabad, this the 28th day of July, 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)

P.N. Tiwari Son of Late Sri B.D. Tiwari, Resident of C-17,
Dhomanganj, Allahabad.

Applicant

By Advocate: Mr. Pankaj Srivastava

Vs.

1. Union of India through Chairman C.B.D.T. (Central Board of Direct Taxes) North Block Central Secretariat, New Delhi.
2. Chief Commissioner of Income Tax, 5, Ashok Marg, Lucknow.
3. Commissioner of Income Tax, Civil Lines, Faizabad.
4. Income Tax Office, Pratapgarh.
5. Zonal Account Officer (CDDT) 38, Mahatama Gandhi Margh, Allahabad.

Respondents

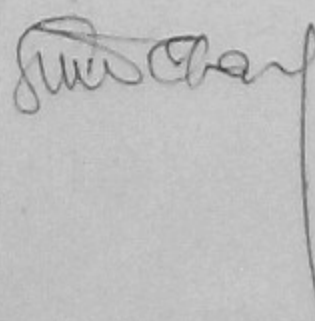
By Advocate: Mr. Firoz Ahmad

ORDER

Instant O.A. has been instituted for the following
relief (s): -

"(a) to issue an order or direction in the nature of mandamus to Respondent to pay the interest of 18% on the amount Rs.233185/- for the period of 24 months delayed payment;

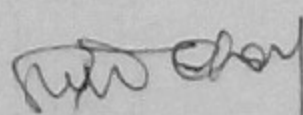
(b) to issue, any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case;



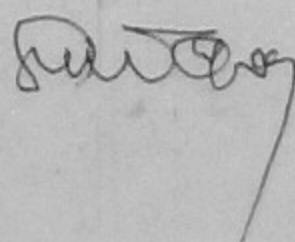
(c) to award cost to the application."

2. The facts of the case, in brief, are as follows: -

It has been stated by the applicant that after completion of 33 years of service in the respondents' department, he retired from service on 30.11.2004. However, after retirement the respondents withheld the retiral benefits of the applicant on the ground that due to mistake of the department, certain over payment was paid to the applicant, for which recovery is pending. Against that order of recovery and for payment of retiral benefits, the applicant filed an O.A. No. 83 of 2005. The respondents took the plea that due to mistake of the respondents, certain over payment has been paid to the applicant. vide Judgment dated 16.09.2005, the O.A. was allowed, and the respondents were directed to pay the entire retiral dues to the applicant as early as possible. The respondents failed to obey the directions of the Tribunal hence the applicant has no option but to approach this Tribunal by filing Contempt Petition No. 182 of 2005. The Tribunal in the Contempt Petition directed the contemnors-respondents to comply with the order of the Tribunal otherwise charge sheet shall be framed against the contemnor for contempt of the order. The respondents thereafter vide order dated 19.12.2006 paid



the amount which was withheld by them without any interest. The applicant is entitled for payment of interest on the delayed payment of retiral benefits as per CCS (Pension) Rules. The respondents' No. 3 and 4 had already made a request to respondent No. 5 vide letter dated 07.09.2006 and 06.09.2006 to make the payment along with interest but the respondent No. 5 paid no heed to it, and interest was not paid intentionally, copy of letters in this regard have been filed. It is stated that being aggrieved from the Judgment of this Tribunal in O.A., the respondents filed a Writ Petition No. 47517 of 2006 before the Hon'ble High Court of Allahabad but the said Writ Petition was dismissed by the Hon'ble High Court vide order dated 31.08.2006. After dismissal of the Writ Petition, the Standing Counsel of the Income Tax department advised the respondents to pay the gratuity along with interest but, the advice of the Standing Counsel was not taken into consideration while making the payment of withheld amount. The applicant is entitled for retiral dues and in case of delay, applicant is also entitled for interest on the retiral dues, and the respondents have not discharged their duties in payment of dues along with interest. There is delay of 24 months in the payment of Rs.2,33,185/-. The applicant is entitled for the interest at the rate of 18% per annum for 24 months.



3. The respondents have contested the case and filed the Counter Reply. It has further been alleged that all the retiral benefits have been released in favour of the applicant vide letter dated 14.12.2006 as per the Judgment dated 16.09.2005 passed by this Tribunal in O.A. No. 83 of 2005. The question of payment of interest does not arise as there was no direction of the Tribunal in the Judgment for payment of interest. The applicant retired on 30.11.2004 after serving for 33 years in the department of the respondents. It is wrong to allege that retiral benefits of the applicant have been withheld. The applicant was only asked the vigilance clearance certificate for authorized PPO from the competent authority vide letter dated 18.11.2004 but the applicant lost his patience and approached the Tribunal by filing the O.A. The respondents fully obeyed and complied with the Judgment of the Tribunal and all the retiral benefits had been paid to the applicant in pursuance of the Judgment. There is no administration fault on the part of the respondents for making delayed payment. All the papers regarding payment of DCRG were forwarded in time for necessary action for payment and there is no question of payment of interest. The respondents further alleged that as there was no direction by this Tribunal for payment of interest vide order dated 16.09.2005 in O.A. No. 83 of

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2005 which was ancillary to cause in the said O.A. hence the present O.A. is liable to be dismissed as barred by res-judicata. O.A. lacks merit and is liable to be dismissed.

4. In response to the Counter Affidavit of the respondents, the applicant filed the Rejoinder Affidavit and disputed the allegations made in the Counter Affidavit. It is claimed that the respondents have deliberately delayed the payment towards retiral benefits. After the Rejoinder Affidavit, one Supplementary Counter Affidavit was also filed on behalf of the respondents wherein it is reasserted that as there was no direction by this Tribunal for payment of interest vide order dated 16.09.2005 in O.A. No. 83 of 2005 which was ancillary to cause in the said O.A. hence the present O.A. is liable to be dismissed as barred by res-judicata.

5. I have heard Mr. Pankaj Srivastava, Advocate for the applicant and Mr. Firoz Ahmad, Advocate for the respondents and perused the entire facts of the case.

6. Undisputedly the instant O.A. has been instituted for payment of interest due to delayed payment of gratuity amount. There is no dispute that the applicant had put in 33 years of service in the department of the respondents,

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and he was entitled for payment of DCRG, and the respondents also admitted that a sum of ₹ 2,33,185/- was paid to the applicant. In the present O.A. prayer is regarding interest on the delayed payment. It is an established fact that the amount of DCRG was paid with delay to the applicant, and moreover the amount of the DCRG was paid in pursuance of the direction of the Tribunal in O.A. No. 83 of 2005, decided on 16.09.2005. It has been argued by learned counsel for the respondents that the applicant is not entitled for payment of interest on delayed payment of DCRG. Firstly it is stated by the respondents that the payment was made after fulfillment of the entire formalities. It has also been argued by learned counsel for the respondents that the Tribunal in the Judgment of O.A. No. 83 of 2005 ^{did} not ~~ordered~~ regarding payment of interest, only order was passed by the Tribunal regarding payment of retiral dues, and learned counsel for the respondents also argued that as there was no direction by this Tribunal for payment of interest vide order dated 16.09.2005 in O.A. No. 83 of 2005 which was ancillary to cause in the said O.A. hence now the issue of payment of interest on DCRG is barred by res-judicata.

[Signature]

7. Learned counsel for the applicant disputes the arguments of learned counsel for the respondents, and he also produced the copy of the Judgment of O.A. No. 83 of 2005 dated 16.09.2005. I have also perused the Judgment of earlier O.A. filed by the applicant. It has also been alleged by the applicant that the respondents passed an order for recovery of ₹ 1,15,293/- on account of certain over payment since 1983, and the O.A. was filed in order to challenge the order of recovery passed by the respondents, and the order passed by the respondents for recovery of this amount of ₹1,15,293/- was quashed by the Tribunal, and further ordered as follows: -

"(a) Order directing recovery of the amount of Rs.1,15,293/- is hereby quashed. Respondents shall not recover any amount from the DCRG in pursuance of the order dated 18.11.2004 (impugned). Any amount withheld out of the terminal benefits shall be paid forthwith.

(b) The applicant shall be paid provisional pension on the basis of the last pay actually drawn.

(c) It is open to the respondents to take action under the due process of law for rectification of their error in fixation of pay of the applicant and for re-fixation of pay and allowance of the applicant and re-schedule the pension that the applicant is entitled to.

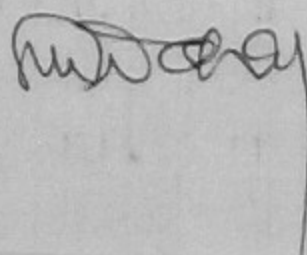
(d) Needless to mention that before processing the case for re-fixation of pay, the applicant shall be put to due notice."

On the strength of these facts, learned counsel for the applicant argued that in the earlier O.A. there was no issue involved regarding the payment of interest. The main and substantial issue for decision of the Tribunal was whether the recovery can be made of a sum of ₹

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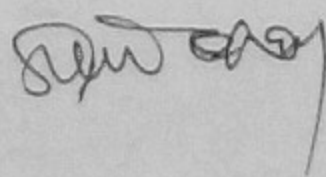
1,15,293/- and considering the grievance of the applicant, the Tribunal also ordered for payment of retiral benefits to the applicant. Although no specific prayer was made in the O.A. for payment of retiral benefits along with interest, and this is the reason that no prayer was made for payment of interest and no finding was recorded by the Tribunal hence this contention of the respondents' Advocate is not correct as perusal of earlier Judgment of this Tribunal shows that there was no dispute regarding payment of interest on DCRG and hence there was no question of recording a finding on that point. I agree with the argument of learned counsel for the applicant that the matter of payment of interest on DCRG was not in issue before the Tribunal in O.A. No. 83 of 2005 hence the principle of res-judicata will not be applicable in the present O.A.

8. Learned counsel for the respondents argued that immediately in pursuance of the Judgment of the Tribunal dated 16.09.2005, the amount of DCRG was paid but this argument of learned counsel for the respondents appears baseless. The respondents were not satisfied by the Judgment of the Tribunal in the O.A. and being aggrieved from the Judgment of the Tribunal, the respondents challenged the Judgment of the Tribunal before the



Hon'ble High Court by filing a Writ Petition No. 47517 of 2006 hence this contention of learned counsel for the respondents cannot be relied that immediately, in pursuance of direction of the Tribunal, they have paid the DCRG amount to the applicant hence payment of interest does not arise. As the respondents have themselves challenged the order of the Tribunal before the Hon'ble High Court hence it does not lie in the mouth of the respondents to say that immediately in pursuance of direction of the Tribunal, payment regarding DCRG was paid. Learned counsel for the applicant also produced the copy of Judgment of the Hon'ble High Court dated 31.08.2006. The Order of the Tribunal was passed on 16.09.2005, and the Writ Petition was dismissed on 31.08.2006 thus near about one year period was consumed by filing the Writ Petition before the Hon'ble High Court.

9. Learned counsel for the applicant further argued that the respondents were not satisfied from the Judgment of the Hon'ble High Court dated 31.08.2006 and as the payment was not made to the applicant at the earliest in pursuance of direction of the Tribunal, the applicant had to approach the Tribunal by filing a Contempt Petition before this Tribunal, and thereafter the respondents make



the payment of DCRG in the month of December 2006. Undisputedly, the applicant retired from service on 30.11.2004, and it is also a fact that there is delay of about two years. Learned counsel for the applicant argued that it has been provided in the CCS (Pension) Rules in para-68 that interest on delayed payment of gratuity is payable. It will be material to quote the relevant portion of CCS (Pension) Rules, which is as under: -

"(2) Every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and the employees of its attached and subordinate officers and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on account of administrative lapse, the Secretary of the Ministry or the Department shall sanction payment of interest.

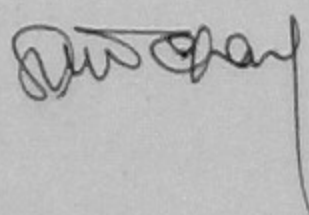
(3) The Administrative Ministry or the Department shall issue Presidential Sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2).

(4) In all cases where the payment of interest has been sanctioned by the Secretary of the Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant or servants who are found responsible for the delay in the payment of gratuity."

Hence, it is an established fact that the applicant retired from service on 30.11.2004, therefore, within a reasonable time the amount of DCRG ought to have been paid to the applicant, and the applicant had to approach the Tribunal for redressal of his grievance, and Judgment of the Tribunal was delivered on 16.09.2006². Even after

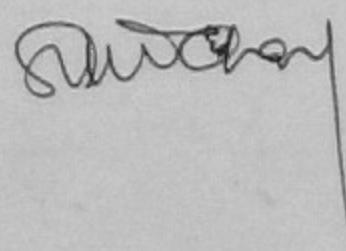
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the Judgment of the Tribunal, the amount was not paid to the applicant, and the Judgment of the Tribunal was challenged before the Hon'ble High Court by filing a Writ Petition, and even after disposal of the Writ Petition, the amount was not paid. In this connection, learned counsel for the applicant attracted my attention towards annexure-1, letter of Mr. R.K. Upadhyaya, Standing Counsel for the respondents' department. In this letter, learned Standing Counsel advised the respondents that the amount of DCRG be paid to the applicant at the earliest along with interest. The respondents have not cared even to follow the advise of Standing Counsel, and in spite of advise of Standing Counsel, the amount of DCRG was paid to the applicant without interest. In this connection learned counsel for the applicant also attracted my attention towards other correspondences of the respondents' officers. There is one letter annexure-1 of dated 07.09.2006 written by Income Tax Officer, Pratapgarh to the Zonal Accounts Officer, Central Board of Direct Taxes, 38 M.G. Marg, Allahabad. In this letter there is a reference of the letter of the Standing Counsel for payment of the amount of gratuity due to the applicant-Mr. P.N. Tiwari along with interest up to date. There is one another letter annexure-3, and in this letter also the Assistant Commissioner of Income Tax directed to



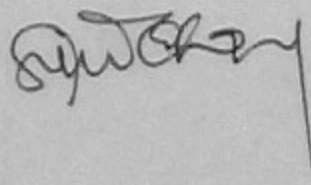
pay the amount of interest to the applicant. But the respondents ignored the advise of all these officers and Standing Counsel, and no payment was made of the interest, and that is why the applicant had to file this O.A. again. This is a sheer wastage of the Government money.

10. Learned counsel for the respondents instead of stating anything regarding this letter, raised a question that how the applicant procured this letters of internal correspondence of the respondents. In the present case, I am not concerned that how the applicant procured these letters from the respondents and how this letters have been filed because the genuineness of these documents have not been challenged. In case the genuineness and bonafide of these documents might have been challenged by the respondents, then I might have required the applicant to disclose the source from which he procured this letter of the internal correspondence of the officers. But all of a sudden, raising this question is not justified. Moreover, it is not required to be decided in this proceeding. It can be relevant fact to be decided by the Civil Court as per the provisions of Evidence Act. Incase, secondary evidence is produced regarding the document then a person is required to prove that.

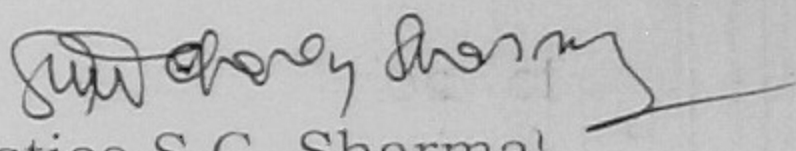


11. For the reasons mentioned above, I have arrived to the conclusion that there was delayed payment of DCRG to the applicant. A sum of ₹ 2,33,185/- was paid to the applicant in the month of December 2006 whereas applicant had retired on 30.11.2004, and within the reasonable time the payment should have been made of this amount of DCRG, otherwise as per CCS (Pension) Rules, interest is payable on the amount of DCRG in case of delayed payment. I have decided above that there was intentional delay on the part of the respondents in making payment of the amount of DCRG hence due to delayed payment interest is due. The interest has been claimed at the rate of 18% per annum but in these prevailing circumstances it will be just and proper to award the interest @ 12% per annum on the amount of DCRG, and the interest shall accrue w.e.f. 30.11.2004 after calculation of amount of interest, the respondents shall make payment. O.A. deserves to be allowed.

12. O.A. is allowed. The respondents are directed to pay the interest on the delayed payment of the amount of DCRG i.e. ₹ 2,33,185/- @ 12% per annum. The interest shall accrue w.e.f. 30.11.2004 till the date of actual payment. The respondents shall calculate the interest at the aforesaid rate, and make the payment to the applicant.



within a period of two months from the date when a copy of this order is produced before them, and a copy of calculation sheet shall also be supplied to the applicant for ascertainment of correctness of the calculation of interest. In case the applicant has got any objection against calculation of the amount of interest then he will be at liberty to file objection against that. The applicant shall produce the copy of this Order to the respondents' No. 2 to 5 at the earliest. No cost.


{Justice S.C. Sharma}
Member - J
28.7.11

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