

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 295 of 1986.

DATE OF DECISION 10-04-1989.

Shri P. G. Nawani,

Petitioner

Party in Person

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Mr. Anil Dave for Res. No. 1

Mr. J. D. Ajmera for Res. Nos.

2 to 4.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr. P. M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(10)

P.G.Nawani, IPS (Retd.)
Flat No.6, Swapnolok Apartments,
Chitralaya Society,
Near Chinoy Bagh, Law Garden,
Opp. Gujarat Nursery,
Behind Gajjar Hall,
Ellis Bridge,
Ahmedabad - 380006.

...

Petitioner.

(Party in Person)

Versus.

1. State of Gujarat,
Notice to be served
through the Chief Secretary
to the Government of Gujarat,
General Administration Deptt.
Sachivalaya, Gandhinagar.
2. Union of India,
Notice to be served through
the Secretary to Govt. of India,
Ministry of Home Affairs,
New Delhi.
3. The Accountant General,
Gujarat,
P.B.No. 220,
Rajkot - 360001.
4. The Accountant General,
Gujarat,
Multistoreyed Bldg.
Lal Darwaja,
Ahmedabad - 380001.

...

Respondents.

(Advo. Mr. Anil R. Dave for Respo.No.1)
(Advo. Mr. J.D.Ajmera for Respo.Nos.2 to 4.)

JUDGEMENT.

O.A/295/86.

Date : 10-04-1989.

Per : Hon'ble Mr. P. H. Trivedi, : Vice Chairman.

The Petitioner retired on 28-2-1985 on attaining the age of superannuation but inspite of 1 $\frac{1}{2}$ years after the respondent Government of Gujrat had not

issued No Dues Certificate and for that reason the petitioner could not get the gratuity of Rs. 36,000/- as determined by the Accountant General. He also received his pension for the period from 1-3-85 to 30-9-1985 after seven months and the commuted value of the pension after about 9 months. The petitioner, therefore, claims relief by way of direction for the issue of No Dues Certificate to the respondent No.1 Government of Gujarat and interest at the rate of 15% from 1-5-1985 to 30-9-1985 on the amount of Rs.12,691 for period from 1-3-85 to 30-9-1985 and on Rs.60,877-20 for the period from 1-5-1985 to 21-11-1985 and return of the amount of Rs.300-75 wrongly recovered. He also claims the costs of the application and a token amount for harassment. He also asked for accountability for culpable delay to be fixed. He has presented an impressive array of documents in support of his case which will be referred to during the discussion of the merits of his case. Different directions sought are referred to at the end.

2. The main defence of the respondents is that the petitioner could not be issued with the No Dues Certificate because he has defaulted in the payment of the instalments due on the house building loan, and had not presented the documents of mortgage deed as required and had not paid the penal interest which was charged. The petitioner has challenged the validity of charging penal interest as being unauthorised and has denied that he had defaulted in his obligation to register the mortgage deed and payment of penal interest. The respondents regard

the delay in the issue of No Due Certificate as entirely due to the defaults by the respondents and that the time otherwise taken has been/normally more than required is due to disturbed conditions. The petitioner has alleged that this was due to petty harassment for which he wants to be duly compensated and the defaulting officer to be made an example of.

3. Since the obligation of charging of interest and penal interest are contended by respondents to be the root of withholding the No Due Certificate, it will be useful to consider the relevant provisions requiring them Rule No. 229 of B.C.S.R. is as follows :

" (vi) A certificate about departmental enquiry and recovery of Government dues in the following form :

2. No Government dues remain to be recovered from his/her..... and amount of Rs..... still remains to be recovered from his/her..... on account of..... and he/she has given he/she has refused to give his/her written consent for the recovery of this amount from his/her pension and/or gratuity. The written consent is kept among the pension papers."

Rule 97(4)(b) on which the respondents have relied is as follows :

" The Government servant shall complete the purchase of the house and shall execute a mortgage deed in GFR Form No.17 mortgaging the house to Government within three months of the

date on which the advance is drawn. If the Government Servant fails to complete the purchase of the house or to execute mortgage deed within the stipulated time, he shall be liable to refund forthwith the entire amount of the advance to Government together with interest thereon, unless, for the reasons to be recorded in writing the competent Officer extends the time."

Letter dated 7-7-1986 (Annexure-37) for breach of conditions for grant of House Building Advance for which the petitioner was earlier informed by a letter dated 8-10-1980 on the basis of a Government Resolution dated 16-10-1976. The relevant extract of which reads as follows :

" Government is pleased to direct that interest should be charged on various loans advanced during the financial year 1976-77 at the rates prescribed for each category of loan as shown in the accompanying statement.

General terms and conditions of Loans :

(iii) If the repayment of the instalments of principal and payment of interest on the loans is not made on due dates, the penal rate of interest should be charged at $2\frac{1}{2}\%$ above the normal rate prescribed for each category of loans. "

This resolution is dated 16th October, 1976. It is not disputed that the relevant loan to the petitioner in November, 1974 was paid as stated in paragraph 22 of the respondents' reply. The Government Resolution

referred to enables the Government to charge penal interest only on loan advanced during the financial year 1976-77. The respondents have not shown any authority enabling them to charge penal interest on the loan to the petitioner or on loans prior to 1976-77. In these circumstances, the decision of the Delhi High Court in the case of V.C.Challapal Vs. Controller & Accountant General of India in which it was held that interest can be charged under law only in three cases viz. where there is an agreement expressed or implied between the parties to pay interest or when there is a statutory provisions regarding a penal interest or when a notice is given by one party to another for the interest to be paid under the ~~Act~~, fully applies. The present case does not fall in any of these categories. On this account, therefore, the ground taken by the respondents for withholding No Due Certificate and for that reason withholding the payment of gratuity cannot be sustained.

4. The second ground taken by the Government is that the petitioner paid interest of Rs.15,432-05 in monthly instalment in August, 1980 and was required to pay that amount in a single instalment. It is to be noted that the petitioner on sale of his flat purchased from out of the loan of Rs.50,000/- paid back the entire principal amount on receiving the notice dated 17-8-1981. The petitioner has not disputed the liability of payment of the interest and on being informed that he had to pay the entire interest in a single instalment, he has done so. We, therefore, do not find that the petitioner is

to blame in any way especially because he made payment in monthly instalment which was accepted by the respondent authorities.

5. There is a dispute whether the petitioner furnished the mortgage deed to the respondents. No proof of redeipt of the mortgage deed is produced by the petitioner. However, it is established that the respondents should have taken up this matter if it was found relevant for settling his retirement dues well ahead of the superannuation and this the respondents have failed to do. The petitioner has heavily relied on the Supreme Court decision in A.I.R.1985 S.C.356 State of Kerala & Others Vs. N.Pandmanabhan Nair and has also ~~been~~ relied upon in our decision in OA/24/86 dated 21-11-1986, R.M.Mandalia Vs. Union of India & Others. The respondents have issued the No Due Certificate only on 16-5-1986 in releasing gratuity of Rs.36,000/- subject to the recovery of penal interest of Rs.4,844/-. This condition cannot be sustained and the order of payment of gratuity subject to this condition cannot be regarded as proper. The petitioner on the date of his retirement had made full payment of the loan together with the interest due thereon and, therefore, there was no valid reason for withholding the No Due Certificate.

6. The petitioner has claimed a relief of refund of Rs.300-75 which has been wrongly recovered from him vide Sub-Para 'D' of paragraph 7 of his application. He claims this because according to him, the payment of interest in one instalment was

acceptable by the authorities and was accepted until August '80 when only he was informed that he had to make the payment of the entire remaining interest of Rs.9,024-05 and he made such a payment on 28-8-1981. It is not disputed that the full interest was paid on 28-8-1981. The petitioner's case is that if the respondents, in this case the Accountant General, delayed in informing him that the entire interest had to be paid in one instalment should the Government be entitled to compute the interest for the period accounted by his delay ? In this case the dues arise from the interest charges on loan and the facts of the case are distinguishable from 1983 (2) S.L.J. 456 in which the Government delayed to pay the gratuity and was profiting from the delay caused by it. So far as this amount is concerned, we do not uphold the claim of the petitioner.

7. The petitioner has asked for payment of interest at the rate of 15% on the sum of Rs.36,000/- for gratuity from 1-5-1985 till the date of his payment. He has allowed three months as a normal period for scrutiny and processing of papers. A copy of the issue of Pension Payment Order dated 21-12-88 was produced before us and it was stated by the respondents during hearing that the petitioner could not be served on account of his not being available at Ahmedabad. The petitioner has denied that he had left Ahmedabad without informing the respondents regarding how the payment was to be made. We consider that the interests of justice will be adequately served for the date of the Pension Payment Order to be treated as the date upto which interest

should be paid. We direct that interest at the rate of 15% be paid from 1-5-1985 until the 21-12-1988 to the petitioner within one month.

8. The petitioner has similarly claimed interest @ 15% for delay in the amount of payment of pension in sub-paras 'B' & 'C'. The respondent, Accountant General, Gujarat State has stated that they received 'no inquiry certificate' on 23-3-1985 and issued the P.P.O. on 5-7-85 due to local disturbances in the city. The petitioner has challenged this as not an adequate ground. We find that the interest of justice will be adequately served if we award the interest to the petitioner from 1-5-1985 to 21-11-1985 on which date the inquiry certificate from the Government was received and allow the plea of respondents, Accountant General that the delay of less than 4 months thereafter was due to local disturbances in the city. Regarding the delay from 1-5-1985 to 21-11-85 in commutation of pension being allowed for which interest is claimed by the petitioner, respondent Accountant General has stated that he received an application only on 4-9-1985 duly signed by the Government and thereon issued the commuted value of pension on 9-10-1985. Now without fixing the amount of pension, amount of commuted value could not be arrived at and in releasing the pension we have held that there was delay and have already awarded interest. If delay in receiving pension is held to be culpable for which interest is paid, commuted value of pension is merely the right of receiving a part of the pension in a lumpsum and the right becomes due at the time when

the amount of pension is fixed. The Accountant General has taken about one month from the date on which application for the commutation of pension duly authorised by the Government was received. It will be fair to allow one more month from the end of the period of 3 months which the petitioner has allowed from the date of his superannuation. We feel that the interest of justice would be adequately met if we allow interest @ 15% from 1-6-85 to 9-10-85 when the Accountant General issued authority of commuted value of pension.

9. The observations made by the Supreme Court and the Delhi High Court in the cases referred to justify taking a severe view of such laxness. It may be some consolation to the general public that Government Servants do not discriminate in favour of fellow Government Servants in disposing the cases of their dues. Even if the delay is held to be due to bonafide and punctilious observance of rules and procedure and not due to motives of harassment, the callousness displayed by it becomes not less reprehensible and indeed in one sense the ~~mindlessness~~ causing it makes to it even worse. The petitioner should not have ~~resort~~ to the Courts by undertaking costly litigation for getting his rightful dues and we feel justified in awarding costs in the facts and circumstances of this case. We award him cost of Rs.1000/-. However, we do not feel that any damages for causing him harassment are merited.

10. We have no doubt that the respondents Government of Gujrat should look into the way in which this

case was examined by its officers because it is not easy to see how the Government Resolution allowing for penal interest was so carelessly read that the fact that the petitioner was advanced the loan in earlier years and that the resolution was not applicable to him was missed. We do not know why the respondent, Accountant General, also missed the point and if he did not, whether he brought it to the notice of the respondent, Government of Gujrat. There is no substitute for the respondent authorities themselves putting their house in order and taking appropriate disciplinary steps if their officer and staff are found to be guilty of negligence or worse.

11. During the hearing a doubt was raised whether directions issued in the case by us would meet with the same response as was experienced by the petitioner and whether the story of remissness will be repeated all over again. We need not repeat the words of Lord Reading C.J. quoted by the learned Judge in the case of the Delhi High Court referred to alongwith his further comments in para-9 but they do merit attaintive reading by the respondents. However, it may help compliance if we strengthen the above directions by a further direction that if there is delay in compliance if the above directions beyond the period of three months from the date of this order, the petitioner will be entitled to the interest of 18 % for the period of further delay.

M.A./580/89

(71)

in

OA/295/86

Coram : Hon'ble Mr. P.H.Trivedi

: Vice Chairman

Hon'ble Mr. R.C.Bhatt

: Judicial Member

26.4.1991

Heard Mr.M.R.Raval for Mr.P.M.Raval, learned advocate for the respondents. O.A. has already been disposed of by the judgment dated 10.4.1989 and this MA/580/89 cannot be entertained. The petitioner is also not present in person. For non-implementation of the directions in the judgment M.A. is not entertained. So disposed of.



(R.C.Bhatt)
Judicial Member



(P.H.Trivedi)
Vice Chairman

a.a.b.