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J U D G M E N T

O.A.No. 24 OF 1986.

Date: 21-11-1986

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner, Rasiklal M. Mandalia, retired on 30.6.1985 A.N. as Inspector of Income-Tax, on attaining the age of superannuation. According to him, despite several representations, his pension papers are not finalised and he has not been paid pension, commuted value of pension and D.C.R. Gratuity as per the Central Civil Service (Pension) Rules, 1972. Being aggrieved by the inaction on the part of the respondents, in this regard, he has filed this application on 9.7.1986 before this Tribunal, under Section 19 of the Administrative Tribunals Act, 1985. He has prayed that the respondents be directed to pay all the amount payable to him on his retirement with interest in view of the ratio laid down by their Lordships of the Supreme Court in their judgment dated 17.12.84 in the case of Mr. Padmanabhan Nair of Kerala (1985 S.C.C. (L & S) p. 278). Mr. M.H.I. Dadi, Income-Tax Officer, Ahmedabad has filed Affidavit-in-Reply on behalf of the Respondents. It is stated inter-alia that the pension papers of Mr. Mandalia could not be finalised as a Zonal Accounts Officer, Ahmedabad raised two contentions viz; (i) objection relating to the date of birth and (ii) the fixation of pay.

2. While opposing the application, it is contended by Mr. R.P. Bhatt, the learned counsel for the respondents that in view of the facts stated in

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para-6(4) of the Affidavit-in-reply, it can not be stated that the petitioner has made out a case of culpable delay which may justify the claim for interest. The relevant statement (6.4) reads as under :

In regard to paragraph 6(iii) of the application I say that the pension papers were prepared in September, 1984. However, as some further informations were required, the papers were sent back to the I.A.C.AR.III, Ahmedabad, and the same were duly completed and received in my office on 13.2.1985. The pension papers along with the service book of the applicant were forwarded to the Zonal Accounts Officer under his communication dated 26/28.3.1985 was received in my office on 29.3.1985 which were sent to the IAC. AR.III, Ahmedabad, on 9.4.1985, for compliance. The papers were received back from the IAC.AR.III, Ahmedabad on 29.5.1985. A clarification was made to the Zonal Accounts Officer on 18.7.1985. On 20.8.1985, a letter was received from the Zonal Accounts Officer with his observation on the date of birth of the applicant. The Zonal Accounts Officer, while making reference to note 5 under F.R. 56, interpreted that when the date of birth as per S.S.C. certificate was available in the case of the applicant, it alone should have been taken as a documentary evidence for the date of birth. The certificate of the Mamlatdar based on an affidavit of the individual would have been necessary only when the S.S.C. certificate or Higher Secondary certificate could not be produced. The Zonal Accounts Officer, therefore, requested for orders of the CBDT for continuation of the services beyond the date of superannuation i.e.30.6.1984

3. Before adverting to the contentions raised by the parties, it may be stated at this stage that an adhoc provisional pension was sanctioned in March 1986 for six months from 1.7.1985 to 31.12.85 and before the reply of the respondents was filed on 8.10.1986. The petitioner has been paid a sum of Rs. 33,561/- being the amount of gratuity on 21.8.86; whereas a sum of Rs. 14,953/- and a sum of Rs. 38,409-10 ps. being the arrears of pension and commuted value of pension, respectively, have been paid on 17.9.1986. Now, the question of the claim for interest only remains to be decided. The provisions contained in Rule 68 of the Central Service (Pension) Rules 1972, relied upon by

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the respondents do provide for the payment of interest, in case the payment of gratuity has been delayed due to administrative lapse. It is too well known that in the matters of pension the authorities are required to initiate the pension papers one year in advance to the date of the retirement in the case of Government Servant and it should be completed before the date of the retirement, so that the payment of the gratuity amount could be made to the Government Servant on the date he retires or on the following day and pension at the expiry of the following month.

4. In M. Padmanabhan Nair (Supra), it has been observed as under :-

"The necessity for prompt payment of the retirement dues to a Government Servant immediately after his retirement can not be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement".

5. In the present case the petitioner retired on 30.6.1985. The petitioner's claim for pension and gratuity and other benefits were not settled till 9.7.1986 and hence, he was constrained to file the application before this Tribunal. He has set out the details regarding the representations made by him to vindicate his grievances stated by him in his application. In this regard, he has spent Rs. 543/-. The amount of gratuity was paid on 28.8.1986; whereas the arrears of pension and commuted value of pension was paid to him on 17.9.1986, i.e., more than 12 to 13 months after his retirement. Two main reasons are assigned for the delay -. Firstly in respect of the controversy regarding the birth date raised by the Zonal Accounts Officer and secondly with regard to the

fact that the original service book sent to Central Board of Direct Taxes was not traceable during the relevant period. It is undisputed that 11.6.1927 has been recorded as the date of birth in the service book of the petitioner. It is even admitted by the respondents that the then I.T.O. Jamnagar has attested on 27.6.1956, the entry already made in the service book and the department has admitted the said date as the date of birth of the petitioner Mandalia, for all purpose including superannuation and it is on that basis he has been made to retire on 30.6.1985. Simply because the Zonal Accounts Officer, preferred to aggritate such an issue at the fag end of the retirement of the petitioner it would not justify the delay in finalising the pension papers of the petitioner. If the service book was not traceable by the department during the relevant time, the petitioner can not be allowed to suffer the loss for the same or put to any inconvenience or disadvantage. These and other reasons assigned by the respondents are hardly convincing. The pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, by the decisions of the Supreme Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. Hence, it would be reasonable to direct the payment of panel interest, on the amount of arrears of pension, commuted value of pension and gratuity which were due to the petitioner, at the current market rate i.e., at the rate of 12% per annum at the expiry of two months from the date of the retirement.

6. In this view of the matter, the application succeeds and accordingly we pass the following order:

: O R D E R :

The application is allowed. The respondents are directed to work out the interest at the rate of 12% ^{pa.} on the amount of gratuity of Rs. 33,561/- from 1.9.1985 to 21.8.1986 and on the amount of arrears of pension and commuted value of pension from 1.9.1985 to 17.9.1986, after deducting the interest attributable to provisional pension of Rs. 4878/- (for six months i.e., 1.7.85 to 31.12.85) paid on 9.3.1986. They are further directed to make the payment of the said interest within three months from the date of this order. There will be however no order as to costs.

27/11/86
(BIRBAL NATH)
ADMINISTRATIVE MEMBER.

(P.M. JOSHI)
JUDICIAL MEMBER.