

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXX~~

O.A. No. 2 OF 1987
~~P.A. No.~~

DATE OF DECISION 21-2-1990.

SHRI D.L. RAMNANI

Petitioner

PARTY-IN-PERSON

~~Advocate for the~~ Petitioner(s)

Versus

THE UNION OF INDIA & ORS.

Respondent s.

MR. M.R. BHATT FOR MR.R.P.BHATT

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

- yes 1. Whether Reporters of local papers may be allowed to see the Judgement?
- yes 2. To be referred to the Reporter or not?
- No 3. Whether their Lordships wish to see the fair copy of the Judgement?
- No 4. Whether it needs to be circulated to other Benches of the Tribunal?

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Shri D.L. Ramnani,
Ex-Income Tax Inspector,
95, Anand Bhavan,
Narnarayan Society,
Maninagar,
Ahmedabad.

.... Petitioner.

(Party-in-person)

Versus.

1. The Union of India,
(Notice to be served through)
The Secretary,
Ministry of Finance,
Central Board of Direct Taxes,
Secretariate, North Block,
New Delhi - 110 001.

2. The Chief Commissioner of Income Tax,
Aykar Bhavan,
Opp. Akashawani,
Navrangpura, Ahmedabad.

3. The Income Tax Officer,
Circle-III-B,
C.U. Shah College,
Ashram Road, Ahmedabad.

..... Respondents.

{Advocate: Mr. M.R. Bhatt for
Mr. R.P. Bhatt.}

J U D G M E N T

O.A. NO. 2 OF 1987

Date: 21.2.1990.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

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Mr. D.L. Ramnani, Ex-Income Tax Inspector who last worked as such in the office of the Income tax officer, Circle III-B, C.U. Shah College, Ashram Road, Ahmedabad, has filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for the award of Rs. 8031-48 ps. as interest at the rate of 12% on the amount of his pension for the period of 34 months, award of Rs. 3802-50 ps. as interest at the rate of 10% for 36 months on the amount of his gratuity and interest at the rate of 6% on these two amounts of interest from 19.9.1986, the date he gave legal notice to the respondents, to the date they are paid.

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2. The short facts of the applicant's case are that he joined services as Lower Division Clerk on 13.12.1958 and came to be promoted to the rank of Inspector. He had applied to the Assistant Commissioner of Income tax, Ahmedabad, on 13.5.1982 for voluntary retirement with effect from 13.6.1982. The Asstt. Commissioner informed the applicant to apply to the Chief Commissioner (Admn.) and CIT, Gujarat-I, Ahmedabad, for voluntary retirement which the applicant did vide letter dated 29th November, 1982. However, for reasons of change of circumstances dilated in the application, the applicant, vide his letter dated 26th June, 1983, applied for permission to join his duties as his application for voluntary retirement had not, by then, been accepted. This request was turned down. He vainly challenged this decision by filing a Special Civil Application in the Gujarat High Court and, as seen from the reply of the respondents, by a representation to the Chairman, Board of Direct Taxes. He received the communication of acceptance of his voluntary retirement application vide letter No. III/DLR/84-85 dated 12th November, 1984. He repeatedly approached the respondents vide his representations dated 18.7.1985, 25.8.1985, 3.9.1985, 20.8.1985, 10.10.1985, 24.10.1985, 21.11.1985, 17.1.1986, 14.2.1986, 24.2.1986, 4.4.1986, 14.4.1986, 23.6.1986 & 28.7.1986 for expeditious payment of pension and gratuity. The pension for 37 months amounting to Rs. 23,622/- was paid to him as late as on 1.5.1986 in lump and gratuity amounting to Rs. 11,984-25 ps. on 28.7.1986. Thus the pension having been paid late of 37 months and the gratuity by 39 months and 21 days from the due date of retirement of the applicant, he has claimed the relief mentioned above.

3. The respondents have contested the allegation of undue delay. According to the respondents' written reply, after the applicant failed in getting his

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voluntary retirement notice dated 29.11.1982 cancelled, he submitted the pension papers for the first time in June, 1985 and pension payment order was issued on March 20, 1986. According to the reply, the applicant was deemed to have retired from service with effect from 6.4.1983, the date on which three months expired from the date of receipt of notice of voluntary retirement. Even after the applicant submitted his pension papers in June, 1985, finalisation of the same was delayed as the applicant had not timely filed application for leave for the period from 8.8.1982 to 5.4.1983 and certain recoveries were outstanding against him which also contributed to the delay. The applicant himself was responsible for the delay as he failed to comply with the procedure laid down in the Central Civil Service (Pension) Rules, 1972, (Pension Rules, for short). These rules contain no provision for payment of interest on delayed payment of pension and gratuity and no administrative lapses were responsible for the delay. The respondents have also disputed the applicant's calculation of interest on pension on the ground that though the pension accrues from month to month the applicant has calculated the interest on total arrears of pension instead of on pension for each month. The respondents have also disputed the applicant's invoking rule 68 for his claim of interest on account of delayed payment of gratuity as the delay was caused by the applicant who failed to comply with the provisions of the pension rules. The applicant submitted the pension papers in June, 1985 which were incomplete as the applicant had not filed application for leave for the period from 8.8.1982 to 5.4.1983 for want of which his service could not be certified. His pension was fixed by letter dated 20th March, 1986. Even the provisional pension could not be sanctioned to the applicant as

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he had not submitted the pension papers till June, 1985 and there were outstanding recoveries against him.

4. In his rejoinder, the applicant, on the contrary, persists in blaming the respondents for not sending him pension papers for completing and returning the same duly filled in after his application dated 29.11.1982 and for intimation of voluntary retirement late vide letter dated 12.11.1984 (Annexure 'E'). He also blames the respondents for not asking him to submit his leave application from 8.8.1982 to 5.4.1983 as he himself could not figure out that his request to cancel his voluntary retirement application will come to be rejected as late as by letter dated 12.11.1984 and voluntary retirement effective from a deemed date, namely 6.4.1983. He also submits that the respondents should have sent the pension papers to him in time as laid down in rule 60 of the Pension Rules and as pension papers were not so sent the respondents are to be blamed for delay in sanction of pension and gratuity. According to the applicant, no recoveries were due and outstanding against him when he made his application dated 29.11.1982 for voluntary retirement as House Building Advance and interest on the same had already been paid by him on 9.3.1981 before he proceeded on leave ex-India.

5. The party-in-person and respondents' advocate Mr. M.R. Bhatt for Mr. R.P. Bhatt have been heard and the record perused.

6. The decision in this contest will rest on the duty of the respondents to comply with the provisions of rule 59 of the Pension Rules. The respondents' reply with regard to the voluntary retirement of the applicant is that the applicant was deemed to have retired from service with effect from 6.4.1983. Though the applicant had moved the High Court of Gujarat against the

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respondents' decision to reject his request for cancelling his application for sanction of voluntary retirement, the High Court had not issued any interim order directing the respondents not to take due steps towards preparation of pension papers and finalising the pension case. The applicant's application to the Chairman, Board of Direct Taxes, also did not come in the way of the respondents taking these steps essential and consequential to their decision to rely on proviso to Sub rule (2) of rule 48-A of the Pension Rules making the voluntary retirement notice effective from the date of expiry of the notice period of three months instead of the appointing authority issuing an express order of acceptance of the notice. With their such decision, devolved on the respondents the further responsibility to immediately move for completion of the pension papers of the applicant in accordance with the provisions of rule 59 of the Pension Rules. This rule breaks down the tasks ^{upto} timely sanction of pension into three stages the responsibility to implement which is cast on the head of office. The first stage comprises the verification of service of the employee (already retired in this case), the second stage consists of making good omissions in the service book and the third being the Head of Office obtaining from the employee Form 5 duly completed.. It is not an expressed or implied defence of the respondents that these steps were launched soon as the applicant was treated as deemed to have retired with effect from 6.4.1983. It will be seen from what follows that the respondents delayed the initiation of these steps to comply with the provision of rule 59 of the Rules.

7. The applicant has alleged as follows in para (f) of his application :

(f) The applicant thereafter made so many endeavours with the respondents by personal approaches and requests that either they should expedite acceptance of voluntary retirement or they should allow him to join the duties because in absence of income of pension or salary the survival of the applicant and his family members became very difficult. Finally, the Income-Tax officer, Cir-III, Ward-C(Admn) Ahmedabad communicated acceptance of voluntary retirement of the applicant vide his letter No. III/DLR/84-85 dated 12th November, 1984 after almost 2 years from the date 29th November, 1982 the application, if the applicant for seeking retirement which shows utter negligence for remaining silent for 2 years on the part of respondents and having tortured the applicant without any income of pension amount or gratuity funds for the survival of his family members. A copy of the said letter is annexed and marked as Ann. 'E'.

The respondents have covered the above para by their following reply:

"5.4. With reference to para 6(f) of the application I say that the applicant became serious about retirement only in May, 1985 when he submitted some incomplete pension papers."

8. A clear inference from the above record is that only when the respondents found the applicant becoming serious about his retirement in May 1985 when he submitted "some incomplete pension papers" did the respondents also become serious about initiating various steps to deal with the pension case. This is clearly not expected from the respondents if they are - as they should be - strictly put to discharge the duty cast on the head of office under rule 59 of the Rules. The duty is clear, specific and fixed and does not admit of the respondents leaning on ^{alleged} any negligence of the applicant to explain their own negligence to timely proceed to comply with the provisions of rule 59 of the Pension Rules.

9. It is apparent and clear from the above that the respondents initiated in June 1985, albeit after receiving incomplete pension papers from the applicant, what they, as part of the duty cast on them, were

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(12)

required to initiate in April 1983 as the respondents deemed the applicant to have retired with effect from 6.4.1983 and also seriously contested the applicant's efforts to withdraw his voluntary retirement application.

10. No doubt the respondents appeared to have proceeded with due disputes after June 1985 after the applicant submitted the pension papers. But for failing to initiate the steps to comply with Rule 59 of the Pension Rules from April 1983 to June 1985, the respondents are squarely to blame.

11. In view of the above, the application has strong merits for relief only in the following terms:

(i) The respondents are directed to pay simple interest at the rate of 12% per annum on each months' pension from April 1983 to June 1985, both months inclusive, upto June 1985.

(ii) The respondents are further directed to pay simple interest at the rate of 12% per annum to the applicant on the amount of due gratuity for the period April 1983 to June 1985, both months inclusive.

12. The respondents are directed to implement the above directions within three months from the date of issue of this order.

The parties to bear their own costs.

M. M. Singh
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(M.M. SINGH)
Administrative Member

M.A./63/90

in

O.A./2/87

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CORAM : Hon'ble Mr. M.M. Singh .. Administrative Member

19.2.1990

Mr. D.L. Ramnani party in person and Mr. M.R. Bhatt for Mr. R.P. Bhatt, learned advocate for the respondents present. For the reasons mentioned in the misc. application, the application O.A./2/87 is restored in file. Both, party in person and learned advocate for the respondents are prepared for final hearing and argument. The same ^Mis taken up. With this order, M.A./63/90 stands disposed of.

M. M. Singh.

(M M Singh)
Administrative Member

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