

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX XXX XXX XXX~~

O.A. No. 185 OF 1988.
~~XXX No.~~

DATE OF DECISION 9.6.1989

SHRI A.S. YAMANI

Petitioner

PARTY-IN-PERSON.

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent(s)

MR. J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
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? *Yes*

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Shri A.S. Yamani,
(Retired Sr. Section Supervisor,
& Telecom District Engineer,
Super Market, Jamnagar)
Opp. Jain Boarding
Salapas Road,
Ahmedabad - 380 001.

..... Petitioner.

(Party-in-person)

Versus.

1. Union of India
through the Secretary,
Communication Department,
Govt. of India
New Delhi 110 001.

2. The Telecom District Engineer
Super Market
Jamnagar.

3. The Director Telecom
Mohanbhai Hall
Rajkot

4. The A.O. T.A.
& General Manager Telecom
Near Navrangpura Bus Stand
Ahmedabad.

5. The General Manager Telecom
Ashram Road, Navrangpura,
Ahmedabad.

6. The D.G. Telecom
Sanchar Bhavan
New Delhi.

7. The Divisional Engineer Telegraphs
& Telecom District Manager
Rajkot.

..... Respondents.

(Advocate: Mr. J.D. Ajmera)

J U D G M E N T

O.A.NO. 185 OF 1988

Date: 9.6.1989.

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

The petitioner Shri A.S. Yamani, who worked as Sr. Section Supervisor in the office of Telecom District Engineer, Jamnagar and retired with effect from 31.5.1986 A.N., has filed this application, on 14.3.1988, under section 19 of the Administrative

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Tribunals Act, 1985, claiming interest for delayed payment of pensionary benefits. He has shown the pensionary benefits received by him after 4 months of his retirement in Annexure A-15 and additional pensionary benefits received thereafter are shown in Annexure A-16. According to him, the abnormal delay made in payment of pensionary benefits, is due to the failure of administration in not getting back in time the original service book from the Court, which was produced by the Respondent No.7 in R.C.S. No. 667/76 instituted by the petitioner against the Respondent No.1 & Ors. He prayed for the reliefs in the following terms :-

A. declare that :-

- i) the delay in processing and finalising the pension case of the petitioner and consequent delay in payment of the pensionary benefits to the petitioner is caused due to the administrative reasons.
- ii) the petitioner is entitled to the simple interest at the current market rate of 18% p.a. or such other lower/higher rate of interest on the amount shown in Annexure A-17 or such other less or more amount as the Hon'ble Tribunal may deem just and proper, from the date/s of it/ them becoming due till date/s of payment/s.

B. direct the Respondent No.2 to pay to the petitioner:

- i) the amount being due towards interest to which the petitioner be declared entitled to under A(ii) above.

C. award the cost of this petition properly incurred.

2. The respondents in their counter contended inter-alia that the petitioner's application is misconceived and not maintainable at law. According to them, the pensionary benefits admissible to the petitioner have been granted and payment has already been made and no dues are outstanding. But on the contrary, there is over-payment of Rs.3497/- made

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to the petitioner which requires to be recovered. It was further submitted that when the petitioner sought voluntary retirement with effect from 31.5.1986, his service book was lying in the High Court of Gujarat in Second Appeal No. 273/88 and hence, the efforts were made to locate the same from the registry of High Court, which was ultimately obtained on 8.6.1986 and the provisional pension for June, July, August & September 1986 was paid to him in the end of October 1986 and other pensionary benefits were sanctioned after the petitioner signed, his option for the revised scale of pay as per (revised pay) Rules 1986, while meriting the circumstances in fixing the pensionary benefits and giving the details of the payment of respective amounts made to the petitioner. The stand of the respondents is that there is no delay at any stage on the part of the department and the department has taken all the reasonable and expeditious steps to settle the pay and arrears of the pensionary benefits and the payment has been accordingly made to the petitioner.

3. When the matter came up for hearing the petitioner-party-in-person Mr. Yamani and Mr. J.D. Ajmera, the learned counsel for the respondents were heard. The rejoinder and the further reply filed on behalf of the respondents and the documents produced by them are perused and considered.

4. The main grievance of the petitioner is that the respondents have committed inordinate delay in payment of pensionary benefits due to him and hence when the same were withheld unreasonably, he is

(9)

entitled to claim interest. During the course of his arguments the petitioner Mr. Yamani mainly relied upon the provisions contained under section 3 of the Interest Act, 1978. The material portion whereof is reproduced as under :

3. Power of court to allow interest. - (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say, -

- (a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;
- (b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

5. At the very outset, it may be stated that the claim for interest is the only subject matter of the present application and the reliance for the relief is sought on the provisions contained under the Interest Act, 1978. However, it would be pertinent to note that the Interest Act gives power to the Civil Court but does not create any right to interest in favour of a creditor and it can not therefore be a subject matter of the suit (see Municipal Committee Akot V/s. Surajmal Shreeram Ginning & Pressing Factory, A.I.R. 1938, Nagpur, 119, - a case under 1839 Act). However, it is true, that the pension and gratuity are no longer any bounty to be distributed by the Government to its employee on their retirement but have become, by the decision

of the Supreme Court, valuable right and property in their hands. The Hon'ble Supreme Court has permitted interest to the Government servants in respect of their claim for pension and gratuity as they are to be finalised well in time, before the Government servants retires and they should be paid to him immediately as he may be in urgent need of money after his retirement. But even in such matters the Court has to consider whether the petitioner has established ^{any} ~~any~~ culpable delay "in settlement and disbursement thereof on the part of the Government Agency (see Dr. Dhum Singh v/s. Union of India & Ors. 1986 (4) S.L.J. C.A.T. (Allahabad Bench) p. 307).

6. The petitioner, while referring to Annexure A-7 dated 23.7.1986 and Annexure A-10 dated 8th September 1986, contended that he had already made known to the respondents that he will claim interest at the rate of 18% on the amount withheld by them without assigning any reason. I have read the entire correspondence, the copies whereof are available on record. In none of the notice, it is mentioned that in case, the amount is not paid by certain date, he shall claim interest under section 3 of the Interest Act. It is indicated in Annexure A-17 that he claims Rs. 9929/- being the amount of interest at the rate of 18% per annum for the delay caused in payment of his pensionary dues. Somehow or other, he has estimated this amount of claim of interest on the total amount of Rs. 9,42,908/- as shown in column No.8 of Annexure A-17. It is not understood how he has arrived at this figure. Obviously the total amount

payable to him does not reach to that figure at all.

7. The petitioner was informed by the General Manager Telecommunication, Ahmedabad under its letter dated 9th/12th October 1987 that his Service Book was with the Court as the case was filed by him, but in the meantime the pension case has been settled by getting X'erox copy of Service Book from the Court and the payment has been made as under :-

1. Payment of Rs.11,882.10 for leave encashment paid on 13.10.1986.
2. Payment of Rs.4108/- for provisional pension 1.6.86 to 30.9.86 paid on 4.11.86.
3. Payment of Rs.32,326.80 for provisional DCRG paid on 4.11.86.
4. Payment of Rs.1027/- for provisional pension 1.10.86 to 31.10.86 paid on 27.11.86.
5. Payment of Rs.1027/- for provisional pension 1.11.86 to 30.11.86 paid on 11.12.86.
6. Payment of Rs.1027/- for provisional pension 1.12.86 to 31.12.86 paid on 19.1.87.
7. Payment of Rs.1027/- for provisional pension 1.1.87 to 31.1.87 paid on 3.2.87.
8. Payment of Rs.1027/- for provisional pension 1.2.87 to 28.2.87 paid on 10.3.87.
9. Payment of Rs.1027/- for provisional pension 1.3.87 to 31.3.87 paid on 9.4.87.
10. Payment of Rs.1027/- for provisional pension 1.4.87 to 30.4.87 worked out DCRG deducted Rs.1000/- and paid on 30.5.87
11. Payment of Rs. 1027/- for provisional pension 1.5.87 to 31.5.87 worked out overpayment of DCRG deducted Rs.794/- and balance paid on 28.7.87.
12. Payment of Rs.407/- only for difference of payment of provisional pension Rs.37/- only per month w.e.f. 1.6.86 to 30.4.87 (i.e. for 11 months) in accordance with GMT AM No.TAC/15/3/1009 dtd.8.5.87 paid on 28.7.87.
13. Payment of Rs.1064/- for provisional pension 1.6.87 to 30.6.87 paid on 28.7.87.

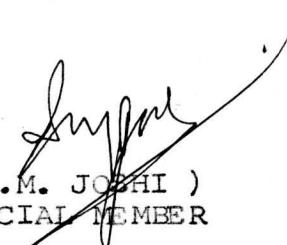
8. It is significant to note that on the basis of his recorded date of birth, the petitioner was likely to retire on or about 1.2.88, on his

attaining the age of superannuation. However, he applied for voluntary retirement vide his application dated 24.1.86 by giving three months notice commencing from 1.3.86. His request was accepted by General Manager, Telecom, Ahmedabad vide his memo No. Staff.File-16/Vol.No./81 dated 15.5.86. Thus, the procedure expected to be adopted in the case of an employee who retires on superannuation, can not be compared with the case of the petitioner as he preferred to retire earlier than the date of superannuation. Moreover, the fact that the Second Appeal No. 273/85 filed by the respondents against the Judgment and Decree passed in Regular Civil Suit No. 667/76, filed by the plaintiff is pending, is not in dispute. In the meantime, the department of the respondents while settling pensionary benefit was required to take into consideration, the claim of the petitioner for promotion raised by him in Special Civil Application No. 447/84 filed before the High Court which was allowed by the Tribunal in its judgment dated 12.8.87 in T.A.No. 320/86, and it was required to be settled after collecting the relevant particulars and information. In addition to this, in the matter of fixing the revised scale of pay for pensionary benefit as per (revised pay) Rules, 1986, the petitioner was required to send his option. Such option was sent by the petitioner, under his letter dated 6.6.87 in response to G.I. letter dated 14.4.87. Mr. S. Penchalaiah, Assistant Account Officer, in his further reply dated 23.1.89 on behalf of the opponents has elaborately explained by indicating the detailed circumstances, in which the case of the petitioner has been finalised and has shown the dates on which the

payment has been made on each count including commuted value of the pension, DCRG, etc. According to him, as a matter of fact, there is an over-payment of Rs. 4639/-.. Ofcourse, the petitioner in his rejoinder has denied the stand of the respondents, in this regard. According to him, there is no over-payment of any amount made to him.

9. Apart from the controversy regarding over-payment, in case of the petitioner, there seems to be no deliberate delay in clearing his dues and in some matters delay was caused due to the settlement of pending litigation filed by the petitioner and the fixation of revised scale of pay on the basis of the petitioner's option sent by him under his letter dated 6.6.87. It is evident, that substantial amount including the provisional pension was paid to the petitioner within 4 to 6 months after his retirement. I am, therefore, of the view that the petitioner is not entitled to any interest in this case, as prayed for.

10. In the result, the application fails and accordingly, it stands disposed of with no order as to costs.


(P.M. JO SHI)
JUDICIAL MEMBER