

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No./411/92  
T.A. No.

DATE OF DECISION 16 - 12 - 93

Issa Ali Vadha

Petitioner

Mr. P. H. Pathak

Advocate for the Petitioner(s)

**Versus**

Union of India & others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. N. B. Patel

: Vice Chairman

The Hon'ble Mr. K. Ramamoorthy

: Member (A)

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 ?

No.

Issa Ali Vadha,  
Nr. Jumma Masjid,  
At Post : Beyt Okha,  
District: Jamnagar

: Applicant

Advocate : Mr. P. H. Pathak

versus

1. Union of India,  
Notice to be served through:  
Secretary, Central Board &  
Excise & Custom,  
Ministry of Finance,  
Department of Revenue,  
New Delhi
2. Dy. Collector (P&E),  
Custom & Central Excise,  
Rajkot.
3. Pay & Accounts Officer,  
Custom & Central Excise,  
Rajkot

: Respondents

Advocate : Mr. Akil Kureshi

JUDGEMENT

O.A.411/92

Date: 16-12-93

Per : Hon'ble Shri K. Rammoorthy,  
Member (A)

Shri Issa Ali Vadha has vide O.A.411 of 1992 approached this Tribunal for grant of retirement benefits including encashment of leave. He has also sought payment of interest at the rate of 18% for the period for which his payment has been delayed.

2. The applicant had joined the service of Government of India in the Customs and Central Excise Department as Seaman Grade II in 1969. The applicant was

given promotion to the post of Tindel with effect from 16.12.74 which appointment was regularised with retrospective effect from 01-4-1974. The applicant retired from service on 31-12-1989 as he attained the age of 58 years on 26-12-89. In spite of a specific retirement order, passed by Deputy Collector, Customs and Central Excise Collectorate, vide order No.F.No.II/25-1-1988-Estt., dated 07.09.1989, the pensionary benefits were not granted to applicant. Hence, the application of 27-04-1992. The Tribunal, thereafter, passed interim orders for leave encashment vide the Tribunal's order dated 25-11-92 and also interim order for gratuity vide order dated 20-1-93.

3. The delay in the grant of pension order has been attributed to the fact that formal orders regarding regularising the over-age factor at the time of appointment had not been passed till the date of retirement. Admittedly, the applicant was already more than 38 years old at the time of appointment and thus, exceeded to the extent of 13 years 1 month and 9 days, the prescribed age limit for the purpose. However, thereafter, the necessary sanction condoning the over-age was received on 18-12-1992 and all the pensionary benefits were paid to the applicant as under:-

- (1) D.C.R.G. Rs.16000/- (D.D. No.Mo1/A19-348654) - (23.2.93)
- (2) Commuted value Rs.20,209/- (dated 23.2.93. of PAO Rajkot of Pension.
- (3) Arrears of pension from 01.01.1990

- (3) to 31.1.1993 -Rs.22,403/- (amount sent for disbursement to Supdt.C.H.Okha on 08.2.1993.)
- (4) Leave encashment Rs.17,152/- (amount sent for disbursement to Supdt.C.H.Okha on 27.1.1993).
- (5) GPF Final Payment Rs.18,264/- (paid on 09.2.1990 positively)
- (6) C.G.E.I.S. Rs.2,514/- (paid on 30.4.90)

4. The main reliefs sought for by the applicant by way of retirement benefits have, thus been granted by the government. The counsel for the applicant, therefore, limited his plea at the time of final hearing on 08-12-1993 to the question of grant of payment of interest at the rate of 18% for the period, the payment has been delayed. In reply, the respondents had contended that the department had taken steps to see that the pension papers were prepared in time. They had in fact sent the papers for pension preparation as early as on 22-11-1989 i.e. one month prior to the date of retirement of the applicant. However, it was then observed that the technical requirement of condoning the age at the time of appointment had not been complied with. This condonation had to be obtained at the level of Ministry and the department had not lost any time in obtaining the necessary sanctioned also. However, because of the need for securing necessary condonation of approval at the proper levels, formal order condoning the age-bar

could be passed only on 09-12-1992 vide letter No.F.No. A-12034/100/91.Ad.III of the Under Secretary to Government of India, Ministry of Finance, New Delhi, which was received by the Assistant Collector on 18-12-1992.

5. While, it is true that the payment due to the applicant has since been paid after rectifying the infirmity at the time of appointment, the responsibility for the delay lies squarely on the department. It is a fact, well known to the department that the applicant had exceeded the prescribed age limit for the purpose of government employment. However, because of the urgent need for Seaman this appointment was necessary and it was the duty of the department to secure the necessary sanctiones. It is seen from the papers that the department had only after the filing of the present applicants' pension papers moved the Government to regularise the appointments not only of the present applicant but also <sup>of</sup> 18 others employees of the department vide Assistant Collector of Customs letter No.II/25-8-/89-Estt./9570. The argument of the counsel for the respondents that the department did take action to get the formalities completed once the infirmity was detected is accepted, and for this reason, the Tribunal rejects the contention of the applicants' that it should be paid interest at the rate of 18%.

6. However, the applicant when he belong to a cadre like Seamen cannot be denied the normal benefits

of retirements being paid in time and the department cannot escape its responsibility of paying a reasonable rate of interest for the delays in payment. As regards delayed payment of gratuity, there is already a norm prescribed in the G.I. Department of Personnel and A.R.O.M. dated 11th July, 1979. The relevant portion is reproduced below:-

" 1. It has been decided that where the payment of retirement/death gratuity has been delayed, the rate of interest will be as follows:-

1. beyond 3 months and upto one year-7% per annum.
2. beyond one year-10% per annum."

7. In this particular case, the gratuity was paid on 23-2-1993 and therefore, interest will be payable at the rate of 7% from 01.04.1990 to 01.07.1990 and at the rate of 10% for the period from 01.07.1990 to 31.1.1993 for the delayed payment of the gratuity amount of Rs.16,000/- The counsel for the respondents himself has brought to the notice of this Tribunal this norm.


8. As regards interest on payment of the other amounts delayed such as leave encashment amount and pension arrears amount and commuted pension amount, the

the respondents will have to pay to the applicant interest at the rate of 12 % from 01-04-1990 to 31-01-1993. In granting this rate, this Tribunal has gone by the judgement as delivered by the Hon'ble Supreme Court in its Civil Appeal No. 3582 of 1986, as reported in AIR 1987, pages-2257 to 2267, wherein it has been specifically stated as under :-

" Normally, this Court as a settled practice has been making direction for payment of interest at 12 % on delayed payment of pension."

8. The above interest payment should be effected within a period of 4 months, whereafter, the interest will be payable of 15 % above 10 % and 12 % respectively.

With the above directions, the application stands disposed of. No order as to costs.

  
( K.RAMAMOORTHY )

MEMBER (A)

DATE : 16-12-93

  
( N.B.PATEL )

VICE CHAIRMAN

DATE : 16-12-93

SSH