

9

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.500 of 1990.

Date of decision 16 July 16,1991.

Baishnab Charan Mohanty ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.S.B.Jena,
S.K.Das, Advocates.

For the respondents ... Mr.Aswini Kumar Misra,
Sr.Standing Counsel (CAT)

C O R A M:

THE HON'BLE SHRI JUSTICE AMITAV BANERJI, CHAIRMAN
A N D

THE HON'BLE SHRI I.P.GUPTA, MEMBER (ADMINISTRATIVE)

J U D G M E N T

AMITAV BANERJI, CHAIRMAN, In this Original Application an interesting question of law is involved. The applicant was proceeded against departmentally under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. He was retired from service with effect from 31.7.1985. The proceedings were completed after the applicant's retirement and the matter was referred to the President for finalisation of the case by the disciplinary authority. The President of India was pleased to drop the disciplinary proceeding and it was communicated to

64

the applicant by order dated 20.5.1987. The applicant was paid Death- cum-Retirement Gratuity of Rs.37406/- on 30.5.1987 and a sum of Rs.40,723/- as commutation of pension on 10.7.1987. The applicant prayed that he is entitled to payment of interest for the delay in making the payment. In the case of payment of D.C.R.G. there was a delay of 1 year and 10 months after his retirement and in the case of commutation of pension one year 11 months 9 days . He has prayed for interest at the rate of 12 per cent per annum.

2. The question is whether the applicant is entitled to the payment of interest as claimed by him.

3. Rule 68 of the Central Civil Services (Pension) Rules, 1972, by Swamy indicates that interest is to be paid on delayed payment of gratuity where it is authorised after three months and the delay is due to administrative lapse. Can the pendency of the proceedings for the finalisation of the order of his compulsory retirement and the subsequent dropping of the proceedings be said to be a delay due to administrative lapse ?

4. We have heard learned counsel for the parties. Administrative lapse occurs when the matter is kept pending for no good reason. Where the matter is kept pending because the law requires it to be kept in abeyance till finalisation of the proceedings, in our opinion, cannot be said to be due to administrative lapse. We are however, conscious of the fact that the order of the President dropping the proceeding against the applicant and setting aside the order of compulsory retirement, the applicant would be deemed to have been in service on 30.7.1985. It was on this basis that he was entitled to be paid Death-cum-Retirement Gratuity

within a reasonable period of three months failing which interest would accrue on the amount^{due.} We are of the opinion that the pendency of the matter before the President of India for his orders cannot be termed as an administrative lapse.

5. However, our attention is being drawn to Government of India's decision dated 11.7.1979 and 10.1.1983 quoted in the book, Swamy's pension compilation (11th Edition-Reprint). It will be relevant to quote the paragraphs 1,2,3 & 4 at page 147 from the said book.

" 1. Admissibility of interest on gratuity allowed after conclusion of judicial/departmental proceedings. Under the rules, gratuity becomes due immediately on retirement. In case of a Government servant dying in service, a detailed time table for finalising pension and D.C.R.G. has been laid down, vide Rule 77 onwards.

2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority.

3. In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of D.C.R.G. may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/ disciplinary proceedings against them and against whom proceedings are consequently dropped. "

4. These orders (paragraph 3) shall take effect from 10th January, 1983."

A perusal of the above would show that the normal rule is that no gratuity is paid until the conclusion of the proceedings^{and} the

issue of final orders thereon. The Government considered the question of hardship of the Government servants and in order to mitigate the same came to the view that where on the conclusion of the proceedings the Government servant is fully exonerated, he would be paid interest on the delayed payment of Death-cum-Retirement Gratuity.

6. The dropping of the proceedings by the Presidential order is tantamount to dropping of the proceeding against the applicant. In other words, it amounts to exoneration of the applicant of all the charges against him. In such a case he would be entitled to the payment of interest. Another decision of the Government of India dated 28.7.1984 makes it clear that the Government has taken a decision that where the payment of D.C.R.G. has been delayed, the rate of interest will 7 per cent per annum where it is beyond three months and upto one year and 10 per cent beyond one year. This provision however applies only to the payment of D.C.R.G. The amount that accrued in favour of the applicant was Rs.37,406/- out of which Rs.36,406/- was paid on 30.5.1987 and Rs.1000/- was kept to be paid later. The above amount was paid after 1 year and 9 months after his retirement from service. It would therefore, be proper to award interest at the rate of 10 per cent per annum for a period of 1 year and 9 months.

7. In regard to the computation of pension we are of the view that the applicant is not entitled to any interest whatsoever. He is entitled to be paid his full pension till the date of communication of ^{the} order.

secondly, he did not suffer any loss of interest till 20.5.1987 when the Presidential order was passed. He could claim interest over the subsequent period but we find that in this case the applicant was paid an amount of Rs.40,723/- on 10.7.1987. This is within three months. Hence there is no question of payment of interest for the above dues. However, Rs.1,326/- was withheld and is yet to be paid to the applicant. Interest may be allowed on this amount from 20.5.1987 at the rate of 12 per cent per annu.

We therefore, come to the conclusion that the Grievance Application is to be partly allowed. The applicant would be entitled to interest at the rate of 10 per cent per annum for the period of one year and ten months on the amount of Rs.36,406/- and secondly he would be also entitled to interest at the rate of 12 per cent per annum on Rs.1,326/- from 20.5.1987. We order accordingly. This order is to be implemented within two months from the date of receipt of a copy of this judgment. Parties to bear their own costs.

[Signature]
16/7
MEMBER (ADMINISTRATIVE)



[Signature]
16/7/91
CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack.
July 16, 1991/Saranghi.