

4
4
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 800 OF 1996
Cuttack, this the 30th day of July, 1997

Arjun Behera Applicant.

Vrs.

State of Orissa and another Respondents.

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or *Yes*.
not?
- 2) Whether it be circulated to all the Benches
of the Central Administrative Tribunal or
not? *No*.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *30.7.97*

5
5

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 800 OF 1996
Cuttack, this the 30th day of July, 1997

CORAM:

HON'BLE SRI SOMNATH SOM, VICE-CHAIRMAN

.....

Arjun Behera,
s/o late Sugrib Behera,
resident of 215, Dharmavihar, Jagamara,
PO-Bhubaneswar-751 030 Applicant.

Vrs.

1. State of Orissa, represented
by Secretary to Government,
General Administration Department
Secretariat Building,
P.O-Bhubaneswar-1.

2. Union of India, represented by
Secretary to Government of India,
Department of Personnel, Public
Grievances & Pension,
North Block,
PO-New Delhi-1.

Respondents.

Applicant - In person.

For Respondents - Mr.K.C.Mohanty
(For Respondent 1)

Mr.U.B.Mohapatra
(For Respondent 2)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the applicant has prayed
for payment of interest at the rate of 12% per annum on his
arrear salary, arrear on account of unutilised leave, and

*Somnath Som
30.7.97*

arrear pension and T.I.

2. Facts of this case are that the applicant was a member of Orissa Administrative Service. In O.A.No.32/87 he claimed promotion to Indian Administrative Service. That O.A. was disposed of in order dated 29.1.1988 and Union of India and State Government were directed to appoint the applicant to Indian Administrative Service with effect from 1.12.1986 with all consequential service benefits. Against this order, the State of Orissa went on appeal to the Hon'ble Supreme Court and their Lordships of the Supreme Court in order dated 19.3.1991 upheld the order of the Tribunal. In spite of this, the respondents did not implement the order and the applicant retired from Government service on superannuation on 31.1.1992. His pension, gratuity and other post retirement dues were fixed and paid to him on the basis of his pay drawn in the scale of Orissa Administrative Service. Ultimately, the applicant was appointed to Indian Administrative Service in Government of India notification dated 30.9.1992 (Annexure-3). This was, however, communicated to the applicant in Government of Orissa notification dated 24.10.1992. But in spite of that, his arrear salary on account of re-fixation of his pay in Indian Administrative Service, consequent arrears on account of his encashment of leave on superannuation and arrear pension and T.I. were not

Comm. 30.7.92

paid to him. The arrear salary on account of re-fixation of his pay amounting to Rs.51,446/- was paid to him on 22.9.1995. The arrear with regard to unutilised leave was paid to him on 26.11.1995 and arrear pension and T.I. on account of revision of pension from 1.2.1992 to 31.12.1992 were paid to him on 15.6.1996. Other arrear pension and T.I. from the month of January 1993 to April 1996 were paid to him on different dates, the last of which is 15.6.1996. The applicant has claimed interest at the rate of 12% per annum on the above amounts, which according to him, works out to Rs.18,833.00, as per the details furnished by him at

*Jawna M. Jom
30.7.97*
Annexure-4. In calculating this interest, he has taken the period from 24.1.1993 till the date of payment on the logic that after communication by the State Government of the notification appointing him to Indian Administrative Service in their order dated 24.10.1992, the respondents should have made the payment of arrear salary on account of re-fixation of pay within a period of three months, i.e., by 23.1.1993, the arrear on account of unutilised leave and arrear pension and T.I. on account of revision of pension for the period 1.2.1992 to January 1993 within a period of four months, i.e. by 24.2.1993, and the arrear of pension and T.I. from the months of February 1993 to April 1996 on their due

dates. On the above basis, the applicant has claimed interest. His case is that in spite of personal approaches to the officers of Government of Orissa at different levels, his arrear salary and pension were not re-calculated and paid to him in time and lot of delay was made. After getting the payment, he had moved the Government of Orissa claiming interest in his representation dated 15.11.1995 which is at Annexure-5. He first came up in O.A.No.500 of 1996 which was disposed of at the stage of admission in order dated 16.7.1996 with a direction to the Secretary to Government of Orissa in General Administration Department to dispose of his representation dated 15.11.1995 through a speaking order and communicate the decision to the applicant within a period of eight weeks. It was also ordered that before passing orders on the representation, the applicant should be heard in person. In accordance with this order, Chief Secretary and Secretary to Government of Orissa, General Administration Department, in his order dated 14.10.1996, which is an enclosure to Annexure-6 to this Original Application, rejected his prayer for payment of interest on the above amounts. That is how the applicant has come up in the present application.

*Sanmathi Sam.
30.7.97.*

3. Respondents in their counter have submitted that the judgment of the Hon'ble Supreme Court was to be implemented by Government of India and not by the

State Government. On receipt of copy of the judgment of the Hon'ble Supreme Court, the State Government asked the applicant to intimate if he was willing to be appointed to Indian Administrative Service on the basis of his earlier consent so that his case would be processed accordingly. The applicant gave his consent subject to certain conditions regarding pay to be drawn by him on his appointment to Indian Administrative Service. Considering his representation, the State Government moved Government of India on 24.9.1991 for appointment of the applicant to Indian Administrative Service with effect from 1.12.1986.

Government of India referred the matter back to the State Government stating that unconditional consent for termination of lien from the State service was a pre-condition for appointment to Indian Administrative Service and therefore, the State Government was directed by the Government of India to ask the applicant to give his unconditional consent for appointment to Indian Administrative Service. The applicant in his letter dated 8.10.1991 did not furnish unconditional willingness but insisted that the pay which he was drawing as Additional Secretary to Government of Orissa in the Orissa Administrative Service should be protected. He also mentioned that his pay should be fixed in Indian

Committ. Jcm 30.7.97

✓ 10
10
administrative Service in pursuance of the decision of the Central Administrative Tribunal in O.A.No. 327/89 (**Giridhari Das v. Union of India and others**) . That decision was under examination at that time and the State Government informed Government of India that it was not possible for the State Government at that stage to offer any views on the implementation of the said judgment in respect of fixation of pay of the applicant in Indian Administrative Service. Government of India informed the State Government that the question of fixation of pay would arise only after the applicant was actually appointed to the Service and on his appointment to Indian Administrative Service, his pay would be fixed strictly in accordance with the Rules and no assurance regarding protection of pay, etc., could be given to him. Ultimately, the applicant in his letter dated 27.7.1992 furnished his unconditional willingness to join the Indian administrative Service and this was informed by the State Government to the Government of India on 12.8.1992. Thereafter the notification appointing the applicant to Indian Administrative Service was issued on 30.9.1992. Thus the respondents have asserted that delay in his appointment to the Indian Administrative Service in pursuance of the order of the Hon'ble Supreme Court was attributable to the action of the applicant himself and the

*Govt of M/s Jm
30.7.92*

State Government are in no way responsible for the same. It is further submitted by the respondents that immediately on receipt of the notification appointing him to the Indian Administrative Service, which was communicated to him in Memo dated 24.10.1992, the applicant filed a further representation on 7.11.1992 requesting for fixation of his initial pay by taking into account the decision of the Tribunal in O.A.No. 327/89 and that his position in the gradation list should be fixed below Sri Gangadhar Das and he should be given Junior Administrative Grade. This representation of the applicant was forwarded to Government of India, and the Government of India assigned 1982 as the year of allotment to him and his position was also fixed in the seniority list below Sri Gangadhar Das. The respondents have further asserted that the pay fixation and payment of arrears, etc., were referred to Law Department which took time. Moreover, the final order of Government of India regarding his year of allotment was received by the State Government only on 27.9.1993 and therefore, no delay had been made in payment of his dues. On the above ground, the State Government have opposed the above prayer of the applicant. As earlier mentioned, the representation at Annexure-5 was disposed of under order of the Chief Secretary and Secretary to Government of Orissa, General

(W)

*Commr. Jdm.
30.7.93*

12
12

Administration Department, and the order of the Chief Secretary has been enclosed to Annexure-6 to the O.A. From this order, it is seen that the Chief Secretary has taken the view that delay in payment of the dues to the applicant has occurred entirely due to unavoidable process of consultation involved in taking various decisions. It has been noted that service matters generally are very complicated and they do take lot of time in finalisation. Further it has been noted that there is no provision in Government for payment of interest on the arrear dues and on these grounds, the representation of the applicant for payment of interest made to the State Government was rejected in order dated 14.10.1996 of Chief Secretary & Secretary to Government of Orissa, General Administration Department.

4.I have heard the petitioner in person and learned Government Advocate appearing on behalf of State Government and learned Additional Standing Counsel appearing on behalf of Union of India. I have also perused the records. It is clear that the delay in issuing the notification on 30.9.1992 appointing him to Indian Administrative Service in pursuance of the judgment of the Hon'ble Supreme Court dated 19.3.1991 is apparently partly attributable to the applicant himself because he had failed to give unconditional consent for his appointment to the

*Somnath Jan.
30.7.92*

Indian Administrative Service. But that aspect is not relevant for determining the present prayer of the applicant because his claim of interest is for a period beyond three months and four months after 24.10.1992 on which date his appointment notification of 30.9.1992 was communicated to him. The applicant has not claimed interest for the period prior to actual issue of notification appointing him to Indian Administrative Service. The applicant has claimed that his arrear salary should have been paid to him within a period of three months from the date of notification, i.e., by 23.1.1993 till the date of payment which was on 22.9.1995. Similarly, arrear on account of unutilised leave and arrear of pension and T.I. from 1.2.1992 to January 1993 he has claimed interest from 24.2.1993. That is to say that the applicant has submitted that within a period of four months from 24.10.1992 these amounts should have been paid to him and the claim of interest is beyond the period of four months till the date of payment. The point for determination is whether the period of three months and four months, as mentioned earlier, is a reasonable period for the State Government to make payment of the arrear of salary, arrear on account of unutilised leave and arrear pension and T.I. from 1.2.1992 to January 1993. Before considering that question, another point is to be considered first. In the order of the Chief Secretary, the prayer of the applicant

*Connam Jm
30.7.97*

for payment of interest has been rejected on the ground that in Government there is no provision for payment of interest on arrear dues. It is no doubt true that financial rules do not provide for payment of interest but as a matter of fact under orders of Court interest is paid by Government on amounts payable by Government to various parties. A decree against Government carries interest allowed by the Court on the decretal amount. In land acquisition cases, the law itself provides for payment of interest on the quantum of award. In the matter of service benefits, there is a series of decisions of Hon'ble Supreme Court allowing interest on the amounts due to be paid by Government. In case of **Union of India v. Justice S.S.Sandhawalia (Retd.) and others**, (1994) 26 ATC 922 it has been held that interest is payable on delayed payment of cash equivalent to allowances. To quote the words of their Lordships of the Hon'ble Supreme Court:

.....Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year....."

*Somnath Jha
30.2.97*

In the case of **O.P.Gupta v. Union of India and others**, AIR 1987 SC 2257, in paragraph 23, the following observation has been made:

"23. Normally, this Court, as a settled practice, has been making direction for payment of interest at 12% on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."

From the above pronouncements of the Hon'ble Supreme Court, it is clear that for delayed payment of pension and other service benefits, the person concerned is entitled to get interest if the delay is not in any way attributable to him.

5. The next question which arises for consideration is whether a period of three months or four months is a reasonable period for the State Government to calculate and pay the arrears to the applicant. The State Government in their counter have stated that after appointment notification was issued, the delay in making the actual payment was also partly attributable to the applicant because he wanted his year of allotment to be fixed as 1982 and his position in the seniority list to be fixed below Sri Gangadhar Das and in the matter of fixation of pay he wanted that it should be done in accordance with the decision of the Tribunal in O.A.No. 327/89. It is also submitted by the respondents that Government of India's order fixing his year

*Venmanum Jm
30.7.97.*

16
16

of allotment as 1982 came only on 27.9.1993 and therefore, the State Government are not responsible for the delay in fixation of his pay and payment of the arrears, etc., to him. It is not possible to accept the above contention because year of allotment has nothing to do with fixation of pay. The order of the Tribunal upheld by the Hon'ble Supreme Court was that he should be appointed to Indian Administrative Service from 1.12.1986 and naturally his year of allotment would have been 1982 on that basis. As a matter of fact, Government of India and State Government did fix his position in the seniority list below Sri Gangadhar Das and as had been earlier clarified by Government of India, on his appointment to Indian Administrative Service, his pay had to be fixed strictly in accordance with the Rules. From the above, it does appear that all that the applicant wanted is that his case should be dealt with strictly in accordance with the Rules and because he had written a letter saying so in specific details, that cannot be a ground for the delay in fixing his pay and giving him the arrears. It is no doubt true that fixation of pay and payment of arrears involve consultation with several Departments, but in urgent cases such consultations are done in a matter of days and not months and years. In this case, the applicant was allowed to retire without giving him due

*Comm Jm
30.7.97*

-13-

promotion. Thereafter the question of fixation of his pay and payment of the arrears was also apparently taken up in a routine fashion which took considerable time. The assertion of the applicant that pay fixation and payment of his arrears should have been done within a period of three months is unexceptionable. In many cases, the Tribunal is passing orders requiring the respondents to make payment to the applicant within a period of sixty days or ninety days, as the case may be. Therefore, a period of ninety days cannot be taken to be too short a period for the State Government to fix his pay and give him arrears.

6. In consideration of the above, I hold that the applicant is entitled to get interest at the rate of 12% per annum on his arrear salary from 24.1.1993 to 22.9.1995 which, according to him, works out at Rs.16,423/-.

*Commuted sum
30.7.97*

The next two claims of his regarding arrears on account of surrender leave and arrear pension and T.I. from 1.2.1992 to 31.12.1992 for which he had taken four months as the reasonable period for the State Government to make payment are also allowed accepting his logic that these amounts should have been paid within a period of four months. One month extra time allowed for this payment should have been than more adequate because once the pay has been fixed, there is nothing very much more to do in the matter of payment of his

arrears in respect of surrender leave. These two claims amounting to Rs.1,892/- and Rs.72/- are also allowed. Next set of claims are forty in number. These relate to delay in payment of arrear pension and T.I. from the month of January 1993 to April 1996 and the amount of interest ranges from Rs.4/- to Rs.43/-. I have looked into the statement at Annexure-4 to the O.A. and I find that many of these claims are based on the T.I. relief allowed from time to time. For example, the arrear on pension and T.A. receivable by the applicant for the month of March was Rs.25/-, which, according to him, was paid with a delay of 444 days and he has worked out the interest entitlement at Rs.4/- for that month. For the next month, i.e. April 1995, the arrear has been shown as Rs.316/-. Presumably, with effect from that month, some arrear of T. I. was allowed and that is how he has worked out a delay of 413 days and because of that on the amount of Rs.316/- he has claimed interest at 12% per annum which works out to Rs.43/-. It is relevant to note that in all these cases he has presumed that the arrear of pension and T.I. falling due in a month should have been paid to him on the first day of the next month and from that day he has calculated and claimed interest. I am not inclined to allow these claims for the reason that when pension or T.I. is increased, it naturally takes some time for the Accountant-General to authorise the Treasury Officer

*Commn'd Jm
30.7.97*

and it cannot be said that once Government had issued orders increasing pension /T.I., the same should be made available from the first day of the very next month. These are also very small amounts. In the process of calculation of pension by the Accountant-General and the pension sanctioning authority, some time is taken. If the claim of the applicant on these amounts is allowed, then in respect of every increase in pension or T.I., pensioners would be prone to come up with the prayer for payment of interest from the first day of the very next month. That will be an unworkable proposition. These claims at Sl.Nos. 4 to 43 of Annexure-4 to the O.A. are, therefore, rejected.

7. In the result, therefore, the application is partly allowed. The respondents are directed to pay interest to the applicant in the manner indicated above within a period of 90 (ninety) days from the date of receipt of copy of this order. There shall be no order as to costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
20.7.97