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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 252 OF 2000
Cuttack this the 25th day of June, 2001

Dr. (Mrs.) K.L. Mishra ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

25.6.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.252 OF 2000
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Dr. (Mrs.) Kanaka Lata Mishra
Ex-Senior Medical Officer,
Group Centre, SSB, Ranidanga
PO: Matigarha, Dist - Darjeeling
West Bengal, now residing at 1/B,
Metro Manison, Near Rabi Talkies Square,
PO: Bhubaneswar-2, Dist-Khurda, ORISSA

Applicant

By the Advocates

M/s, S.K. Pattnaik
U.C. Mohanty

-VERSUS-

1. Union of India represented by
Director of Accounts, Cabinet Secretariat,
East Block-IX, R.K.Puram, Level-7,
New Delhi-110 066
2. Commandant, Group Centre,
Ranidanga, PO - Matigarha
Dist - Darjeeling, West Bengal
3. Divisional Organiser,
North Bengal & Sikkim Division,
Silguri, NB, West Bengal

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Respondents

By the Advocates

Mr. S. Behera
Addl. Standing Counsel
(Central)

ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL): Applicant, while in service as Senior Medical Officer in the Establishment of Respondent No.2 was permitted to voluntarily retire on 1.2.1998 (F.N.) by order dated 5.12.1997 of Respondent No.1, passed in response to three months' notice of retirement. In this application, besides pendentilite interest, the applicant claims an amount of Rs.2, 26, 925/- towards interest at the rate of 18% per annum in delayed payment of pension, commuted pension,

gratuity and leave encashment, account of which is furnished under Annexure-15.

2. Facts not in controversy are as follows. Respondent No.2 in letter dated 24.2.1998 (Annexure-3) forwarded the pension papers and other relevant papers to Respondent No. 3 for examination at his level and for onward submission to Respondent No.1, Director of Accounts, Cabinet Secretariat, New Delhi, the pension sanctioning authority. Yet the applicant received letter dated 2.12.1998 (Annexure-6) along with necessary forms from Respondent No.2, with an intimation to return the same with signatures at appropriate places as directed by Respondent No.1. As instructed, the applicant in letter dated 23.12.1998 resubmitted those papers to Respondent No.2, who in letter dated 29.12.1998 (Annexure-8) forwarded the same to Respondent No.3, who in turn sent the same to Respondent No.1 in letter dated 31.12.1998 (Annexure-9). Thereafter Respondent No.1 in letters dated 29.6.1999 (Annexures-11 and 12) addressed to Pay and Accounts Officer, Central Pension Accounting Office, Ministry of Finance, issued Pension Payment Order fixing family pension, commuted value of pension amounting to Rs.4, 11, 886/-, basic pension at Rs.4067/-, requesting the latter for arranging payments, with copies to the applicant.

As to the gratuity, Demand Draft for Rs.2, 62, 488/- was sent to the applicant in letter dated 11.10.1999 and the balance amount of Rs.1000/- was held up for non receipt of N.D.C. was paid in February, 2000. Leave Encashment amounting to Rs.1,50,911/- was sent to the applicant through a draft in letter dated 20.12.1998 (Annexure-10)

3. The grievance of the applicant is that she had issued notice of voluntary retirement sufficiently in advance and submitted her pension papers along with No Due Certificate (Annexure-2) on 31.1.1998 itself and the papers were complete in all respects. As per the decision of the Apex Court in State of Kerala vs. M. Padma Navan Nair reported in AIR 1985 SC 356, pension sanctioning authority was under an obligation to sanction pension, gratuity etc. within a period of two months from the date of submission of pension papers. She is in no way responsible for the delay in payment of these amounts. The delay is due to the callousness and negligence of the respondents.

4. The respondents in their counter maintain that Respondent No. 1 on scrutinising the papers returned the same to Respondent No. 2 on 21.4.1998 with instruction to prepare the same in revised scale of pay, but Respondent No. 2 resubmitted the same in original, i.e., pre-revised form on 5.5.1998 on the ground that it would take more time to submit in revised form. Respondent No. 3, after countersigning despatched the same to Respondent No. 1 through insured parcel No. 368 dated 21.5.1998. However, this was not received in the office of Respondent No. 1. Though new set of pension papers were received in the office of Respondent No. 1 on 6.1.1999, pension orders could be issued only on 29.6.1999 and the delay at this level was on account of verification of papers by various sections after giving priority to finalisation of papers of orders received earlier. Interest on payment of commuted pension is not permissible as the monthly pension is reduced by the amount of pension commuted

only from the date the commuted pension is credited into pensioner's Bank Account by the Bank. Pension at full rates was paid till the commuted pension was paid to her. In case of superannuation pension papers are received six months in advance for processing. Since this is not practicable in case of voluntary retirement, finalisation of pension papers in such case usually takes place 4 to 6 months. In regard to gratuity, an amount of Rs.1000/- was held up by Respondent No.1 till receipt of No Due Certificate from various authorities and the same was released in February, 2000 after settlement in November, 1999. Regarding leave encashment Respondents urge that order could not be issued till 19.6.1998 for want of pay details which had to be collected. After receiving the sanction order, Respondent No.2 sent the bill on 29.7.1998 to Respondent No.1, which was received by the latter on 5.8.1998 and ultimately the amount was paid on 25.9.1998. This delay was unavoidable.

5. No rejoinder has been filed.

6. As the respondents in the counter admit delay in payment of pension, gratuity and leave encashment amount and at the same time deny their liability in payment of interest, the following points arise for determination: (a) Extent of delay; (b) liability of the respondents for payment of interest; and (c) percentage of interest. Yet another point needing determination is whether on commuted value of pension such interest can be claimed.

7. Heard Shri S.K.Patnaik, learned counsel for the applicant and Shri S.Behera, learned Addl.Standing Counsel appearing for the Respondents.

8. We may first take up the issue pertaining to commuted value of pension amounting to Rs.4,11,856/-. Applicant herself applied for commutation of a fraction of pension and this has been forwarded under Annexure-3 dated 24.2.1998 under Serial No.11, along with other persons. Again a fresh application for commutation was sent (Annexure-8 dated 29.12.1998). She is drawing pension from S.B.I., Bhubaneswar (Old Town Branch), a Nationalised Bank. Under proviso (b) to Rule-6(1) of C.C.S. (Commutation of Pension) Rules, 1981, reduction in the amount of pension on account of commutation shall be operative from the date on which the commuted value of pension is credited by the bank to the applicant's account to which pension is being credited. In fact this has been clearly indicated at Para-3(i) in letter dated 29.6.1999 (Annexure-12) addressed to the Pay and Accounts Officer by Respondent No.1. In other words the applicant was paid monthly pension at full rates till the commuted value of the pension had been credited to the pension account by the bank. Since she has claimed interest on the delayed payment of pension at full rates, she would not be entitled to interest on delayed payment of commuted value of pension.

9. Applicant's case is of voluntary retirement on completion of 20 years of service. In case of superannuation retirement date of such retirement can be known sufficiently in advance and as such Head of Office under Rule 58 of C.C.S. (Pension) Rules, 1972 is legally bound to undertake the work of preparation of pension papers two years before that date so that pension would be ready for payment on the date of retirement. In case of voluntary retirement, date

at best can be known three months before and even then there is no guarantee of that date because under Rule-48-A(4) of Pension Rules, 1972, the concerned employee can withdraw such notice at any time prior to the intended date of retirement. Hence in case of voluntary retirement, pension Sanctioning Authority would require reasonable time to finalise the pension. There is no provision under the Pension Rules, 1972, fixing this period. Respondents themselves in counter stated that usually four to six months time would be required. Even in case of superannuation pension, Accounts Officer would need six months for sanctioning the pension as is evident from Rule-60(4) of the Pension Rules, 1972. This apart, analogy can be drawn from the period of six months allowed for payment of gratuity in case of voluntary retirement vide G.D.Dept. of P.P. W. OM dated 27.1.1991 (quoted at Page 171, Swamy's Pension Compilation, 1998 Edn.) Hence in case of voluntary retirement, normally a margin of six months should be left from the date of retirement for finalisation of pension. Beyond this six months period, interest can be demanded for delayed payment, provided further delay in this regard is not attributable to the pensioner.

Contention of the applicant for a margin of two months period by placing reliance on Padmanavan's case (Supra) cannot be accepted. The Apex Court in that case was not concerned with the period of finalisation of pension in case of voluntary retirement. It was a case of superannuation retirement where the date of retirement was very much known in advance and as per rules, pension and gratuity should have been made ready for payment by the date of retirement. Even

then the Apex Court allowed two months margin from the date of retirement.

10. The applicant retired on 1.2.1998 (F.N.). She is entitled to pension from that day onwards. As per the pleadings above, no delay can be attributed to her. On 29.6.1999, Respondent No.1 issued Pension Payment Orders (Annexures-11 and 12) and sent them to Pay and Accounts Officer for arranging payments. Applicant's averment that she could encash pension from September, 1999 onwards has not been denied in the counter. It is, therefore, to be determined whether Respondents are liable to pay interest for the delay occurred from 1.8.1998 to 31.8.1999, i.e., for a period of thirteen months.

Counter of the respondents would clearly indicate that they were fully aware that some delay would occur in finalising the pension. Yet they could not offer any explanation as to why they had not sanctioned provisional pension under Rule-64 of the Pension Rules, 1972. They had also not explained as to when or how many months or days prior to issue of letter dated 2.12.1998 (Annexure-6) requesting resubmission of pension papers afresh, previous papers sent under insured parcel dated 21.5.1998 were lost. This explanation is relevant to know whether the respondents slept over the matter for a considerable time or had taken timely action in instructing the applicant for resubmission of papers afresh. Be that as it may, it is the admitted case that these papers complete in all respects were received by the office of Respondent No.1 on 6.1.1999. Yet there was delay of nearly six months thereafter in issuing P.P.O.

The explanation offered in this regard is too vague in the absence of any information as to the number of pension cases pending for finalisation at the level of Respondent No.1 by the time the papers were received in his office on 6.1.1999. We are, therefore, convinced that the respondents cannot escape liability in payment of interest for the thirteen months period, referred to above.

Next for consideration is the percentage of interest. Applicant claims at the rate of 18% per annum. In Padmanavan's case (Supra), the Apex Court awarded interest at the rate of 12% per annum. Further in Dr.Uma Agrawal's case reported in AIR 1999 SC 1212, at the end of Para-2, the Apex Court observed as follows:

"In several cases, decided by this Court, interest at the rate of 12% per annum has directed to be paid by the State".

In view of this consistent view of the Apex Court we are of the view that the respondents are liable to pay interest at the rate of 12% per annum.

11. Under Annexure-15 (Applicant's account of interest), the applicant had shown the amount of gratuity ^{as} Rs.2,65,734/-. Gratuity was paid to her in two instalments. ^{as} The first one was vide letter dated 11.10.1999 (Annexure-14), through a draft for Rs.2,62,488/-. The other one, i.e., amount of Rs.1000/- paid in February, 2000, as admitted in the counter. Thus the gratuity paid comes to Rs.2,63,488/- only and not Rs.2,65,734/-. As already discussed, in cases of voluntary retirement, as per Govt. Memorandum dated 27.1.1991, the Department should be allowed six months time for payment of gratuity. In Padmanavan's case (Supra) the Apex Court

allowed 12% interest on delayed payment of gratuity. Hence the respondents are liable to pay interest at the rate of 12% per annum on the gratuity amount of Rs.2,62,488/- from 1.8.1998 to 30.9.1999 and on Rs.1000/- from 1.8.1998 to 31.1.2000.

12. In letter dated 20.10.1998 (Annexure-10) a draft for Rs.1, 50, 911/- only was sent to the applicant towards leave encashment. Delay in this regard as has been explained in Para-9 of the counter is that as pay details were not available, the same had to be collected. This explanation besides being vague, is contrary to the Rules.

A reading of Rule 39(2)b) with Rule 39(5) of CCS(Leave) Rules, 1972, will make the position clear. Such encashment is based on pay ^{PLW} rules, D.A. as admissible on the date of retirement and the authority competent to grant leave can suo motu order such encashment, depending on leave at the credit of the retired employee. Hence at best delay of two months is understandable. Hence, the applicant is entitled to interest at the rate of 12% per annum on this amount from 1.4.1998 to 30.9.1998.

13. In the result, while disallowing the claim of the applicant for payment of interest on the commuted value of pension, we direct the respondents to pay to the applicant interest at the rate of 12% per annum as under :

- a) On pension and admissible D.A. thereon for the months - February, 1998 to July, 1998, for a period of 13 months from 1.8.1998 to 31.8.1999; and from then onwards for each successive months, i.e., from August, 1998 to July, 1999 in proportionate descending orders, i.e., 12 months, 11 months and so on till 31.8.1999;
- b) On gratuity amount of Rs. 2,62,488/- for a

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period of 13 months from 1.8.1998 to 30.9.1999 and on the balance amount of Rs.1000/- from 1.8.1998 to 31.1.2000; and

c) On leave encashment amount of Rs.1,50,911/- for six months, i.e. from 1.5.1998 to 30.9.1998

14. As we are not inclined to grant pendetillite interest, out of the amount to be paid as directed above, we direct the respondents to pay an amount of Rs.30,000/- (Rupees thirty thousand only) to the applicant within one month from to-day and the balance within four months from to-day.

15. Original Application is partly allowed, but without any order as to costs.

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN
25.6.01

(Signature)
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//