

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 992 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Nalini Ranjan Samaddar, son of Late Kemanta Kr. Samaddar, aged about 68 years, resident of 3/5, Shribas Dutta Lane, P.S. Howrah, Dist. Howrah, PIN 711 101. Ex-employee of National Sample Survey Organisation (FOD), Deptt. of Statistics, Ministry of Planning.

...Applicant

- v e r s u s -

1. Union of India, service through the Secretary, Ministry of Planning, Deptt. of Statistics, Sardar Patel Bhawan, Samsad Marg, New Delhi-110001.
2. The Director, National Sample Survey Organisation (FOD), Government of India, Pushpa Bhavan, C-Block, Hall 327 3rd Floor, Madan Giri Road, New Delhi-110 062.
3. The Deputy Director, National Sample Survey Organisation, Field Operation Division, Mahalanabish Bhawan 164, Gopal Lal Thakur Rd., Calcutta-35.
4. The Assistant Director, National Sample Survey Organisation (Field Operation Division), W.B. (S), Region, M.S.O. Building, 2nd Floor, Block DF, Sector-I, Block 'E', Salt Lake Calcutta-700 064.

...Respondents.

For the applicant : Mr. P. Chatterjee, counsel.
For the respondents : Mr. S.P. Kar, counsel.

Heard on 14.5.98

Order on 14.5.98

O R D E R

D. Purkayastha, JM

The main question for adjudication before this Tribunal is whether the applicant Sri Nalini Ranjan Samaddar is entitled to get interest at the rate of Rs.18% p.a. on the withholding of gratuity amounting to Rs.13,511.30 for the period from 8.6.93 to 11.1.1996. According to the applicant he went on retirement on 31.1.85 but his gratuity was withheld by the respondents without any reason. According to the applicant he made a prayer for payment of interest in the original application bearing No.1151/94 (Annexure-A/3 to the application). In that application, he sought for release of interest on the withholding of gratuity due to delayed payment of the gratuity by the respondents. But the Id. Tribunal neither discussed this point nor granted any relief as prayed for by the applicant in the O.A.No. 1151/94 which was disposed of on 9.8.95. The applicant was paid gratuity amounting to Rs. 13,511.30 on 12.1.1996. Thereby

he filed this present application by granting benefit of interest at the rate of 18% p.a. for the period from 8.6.93 to 11.1.1996.

2. The respondents filed written statement denying the claim of the applicant. According to the respondents, the applicant is not entitled to get interest as the matter at issue in this case is barred by res-judicata. According to the respondents, the applicant sought relief of interest in the earlier O.A. bearing No. 1151/94 and that has been disposed of 9.8.95 and the Tribunal did not grant any relief in respect of interest as claimed by the applicant. It is also stated that there is no laches on the part of the Department thereby, applicant is not entitled to get any interest as per the provision of ~~Section~~ ~~Section~~ Pension Rules.

3. Mr. Chatterjee, Id. counsel appearing on behalf of the applicant has drawn my attention to the order dated 9.8.95 passed in O.A. 1151/94 & submits that the applicant sought for relief of interest on the delayed payment for gratuity of Rs.13,511.30, but that was not considered by the Tribunal. That issue of payment of interest was neither considered nor rejected. So the present application cannot be said to be a barred by res-judicata. Mr. Chatterjee, Id. counsel has also drawn my attention to a judgment in R.A. No. 26/95 in Ram Gopal Chakraborty Vs. Union of India and Ors. dated 5.8.96 and submits that Id. Tribunal in that case suo moto reviewed the judgment and granted similar relief of interest for delayed payment of gratuity money.

4. Mr. Kar, Id. counsel appearing on behalf of the respondents submits that since the application is barred by res-judicata thereby applicant is not entitled to get any relief in this case and Tribunal has no jurisdiction to grant any relief of interest as claimed in the application. Mr. Kar further submits that the applicant did not justify the claim showing that there was laches on the part of the respondents in delayed payment of gratuity in this case. So the application is liable to be dismissed.

5. I have considered the submission of the Id. counsel for both the parties and perused the documents and judgment placed before me. Before entering into the entitlement the interest as claimed in the application, it is to be decided whether this present application seeking relief of interest for delayed payment of gratuity money of Rs.13,511.30 to the

applicant can be said to be a barred by res-judicata in view of the arguments advanced by the Id. counsel for the respondents.

6. It is an admitted fact that the applicant sought for relief of interest in the earlier application filed before this Tribunal in O.A. 1151/94. It is found that Hon'ble Tribunal disposed of that application on 9.8.95 with a direction upon the respondents to fix basic pay and allowances on attaining the age of 58 years under the normal rules. It is also ordered that applicant is not entitled to get any cost. According to the Rule 68 of CCS(P) Rules, the interest shall be paid to the pensioner at the prescribed rate as notified by the Govt. if the payment of gratuity is delayed. It is a settled law, when the matter at issue directly or substantially is decided by the Competent Court/Tribunal the said issue in the subsequent proceedings would be barred by res-judicata. But in the instant case, I find that the applicant sought for relief of interest on delayed payment of gratuity but the Hon'ble Tribunal has neither considered nor rejected the same. Moreover, it is seen that this matter has been left undecided in prior proceeding. So the res-judicata does not operate. Therefore, I am of the view that the present application cannot be said to be barred by res-judicata for the reasons stated above. Besides the said fact, it is true that in order to substantiate the claim of interest as per provision of rule 68 of the CCS Pension Rule, the applicant is to substantiate the fact that the delayed payment of gratuity was intentional and thereby ^{WM} negligence on the part of the authorities in making inordinate delay of payment of gratuity to the applicant. In the instant case, the applicant retired in the year 1985 and a litigation was pending before the Hon'ble High Court and that was disposed of 23.3.1988 and thereafter the applicant had approached before the Tribunal by filing application bearing O.A. No.1151/94 and that has been disposed of on 9.8.95. With a view to obviate such situation, the authority concerned ought to have been more prompt in granting relief to the pensioner as per the provision of Pension rules. But in the instant case, the applicant could not be paid retiral benefits due to litigation pending before the High Court and the Tribunal. The pending of the litigation was shown to be a reason for delay of

payment. But the applicant claimed interest for the period from 8.6.93 to 10.1.96 on amount of gratuity of Rs.13,511.30 which was paid on 12.1.96. As per decision of the Govt. of India contained in G.I.Deptt. of Personnel & A.R. O.M. No. 7.3.84 Pension Unit, dated 28.7.1984, where the payment of retirement/gratuity has been delayed for more than one year. The rate of interest would be 10% per annum. It is also settled law that under the pension Rules, gratuity becomes due immediately on retirement. I am of the view that the applicant is entitled to get interest at the rate of 10% p.a. on the gratuity amount of Rs.13,511.30 from 8.6.93 to 10.1.96. So, it is ordered that the said interest should be paid to the applicant within four months from the date of communication of this order. If the interest is not paid within four months from the date of communication of this order, the applicant would be entitled to get interest at the rate of 18% p.a. w.e.f. 8.6.93 to 10.1.96. Accordingly application is allowed awarding no cost.

D. Purkayastha
(D. Purkayastha)
Judicial Member