

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ADDITIONAL BENCH JODHPUR**

I/7

Date of Order: 17 .04.2003.

.....

ORIGINAL APPLICATION No. 194/2002

.....
Dr. A.K. Doshi, Ex. Member, Company Law Board, Government
of India, Dalalon Ki Pole, Sirohi 307001 (Raj).

.....Applicant.

Versus

1. Union of India through Secretary to Government of India,
Department of Company Affairs, Ministry of Law, Shastri
Bhawan, 5th Floor, 'A' Wing, Dr. Rajendra Prasad Marg,
New Delhi.



Joint Secretary to Government of India (Administration)
Department of Company Affairs, Ministry of Law, Shastri
Bhawan, 5th Floor, 'A' Wing, Dr. Rajendra Prasad Marg,
New Delhi.

.....Respondents.

.....

Applicant present in person.

Mr. N.M. Lodha, Advocate, present on behalf of the respondents.

.....

CORAM:

Hon'ble Mr. J. K. Kaushik, Judicial Member

ORDER

BY THE COURT:

Dr. A.K. Doshi, has filed this Original Application under
section 19 of the Administrative Tribunals Act, 1985, inter alia
praying for release of with-held amount of Gratuity of Rs. 2000/-
Interest on delayed payment of Gratuity and Interest on delayed
payment of Pension Commutation amount.

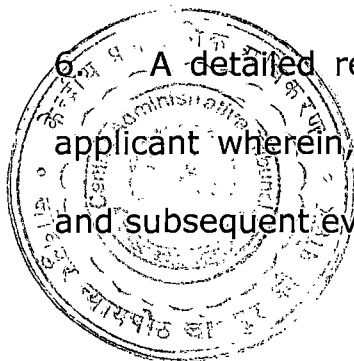
2. With the consent of both the parties this case was heard for final disposal at admission stage. The relevant facts necessary for adjudication of this case, as gathered from the pleadings of the parties are that the applicant retired as Director of Inspection and Investigation, Department of Company Affairs, New Delhi on 31st of December, 1997 on attaining the age of superannuation. He was faced with a departmental proceeding initiated against him under Rule 14 of the CCS (CCA) Rules, 1965, which was dropped vide order dated 1st April, 1998 (Annex.A/3). The applicant was paid an amount of Rs. 3,06,968/- on account of Gratuity vide letter dated 29th April, 1998. On this amount, interest at the rate of 7% per annum for a period of one month was also allowed.

3. Applicant's further case is that an amount of Rs. 4,08,945/- was paid to him vide letter dated 29th April 1998, towards the commutation of pension. He submitted a representation on 17.6.1998 for payment of interest on the delayed payment of commutation of pension.

4. An amount of Rs. 2,000/- was with-held from the Gratuity on the pretext of adjustment of an unassessed due. The further ground on which this application has been dragged are violation of Articles 14 and 16 of the Constitution and that there has been undue delay in making the payment of his dues in addition to that there was an abuse of administrative power and the retrial benefits are vested right of an employee.



5. The respondents have contested the case and have submitted an exhaustive reply to the application. They have placed on record letters dated 31st December, 1992 (Annexs. R/1 and R/2) by which the with-held amount of gratuity has been ordered to be released and also the additional interest has been allowed for one month on the delayed payment of gratuity. It has been submitted that the retrial benefits could only be released after the applicant was exonerated from the departmental proceedings and there is no power or provision as such. The O.A. , therefore, deserves to be dismissed with costs.



6. A detailed rejoinder has also been filed on behalf of the applicant wherein, the facts and grounds have been reiterated and subsequent events have been brought on record.

7. I have heard applicant, who has appeared in person and Shri N.M. Lodha, the learned counsel for the respondents, at considerable length and have carefully perused the pleadings and records of this case.

8. As far as the material facts are concerned, the parties have no dispute. There is no dispute that the applicant has been allowed the retiral benefits w.e.f. 1.1.1998 in accordance with the rules and instructions in force. All the amounts have been reckoned taking 1.1.1998 as the date of retirement. Now, I proceed to deal with the various issues involved in this case.

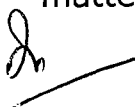
9. At the very outset, it would be expedient to dispose of the preliminary objections. Preliminary objection No. 1 does not give

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any details of alleged misconduct whatsoever and the same is, therefore, been over ruled being misconceived and without any substance. As regards the preliminary objection No. 2 i.e., regarding mis-joinder of different causes, there is no substance in this also since the matter relates to the retrial benefits in as much as gratuity and commutation of pension and interest thereon relates to the pensionary benefits of the applicant. Hence, this objection also has no force and, therefore, the O.A. is being decided on merits.

10. Adverting to the main facts of the case. As regards interest on delayed payment of gratuity is concerned, the applicant has submitted that he was entitled for interest for a period of 123 days instead of one month and that too at the rate of 12% per annum and not at the rate of 7% per annum. On the other hand, the learned counsel for the respondents has submitted that the applicant has already been ordered to be paid interest at the rate of 12% per annum for the admissible period of one month. He has submitted that he is not entitled for interest on the gratuity for first three months from the date of retirement and whatever is due on this account, he has already been paid. The applicant has strenuously objected to this and has stressed that he is entitled for the interest for a period of 123 days and he has also not been paid any amount even as per the order on which the respondents have subsequently passed.

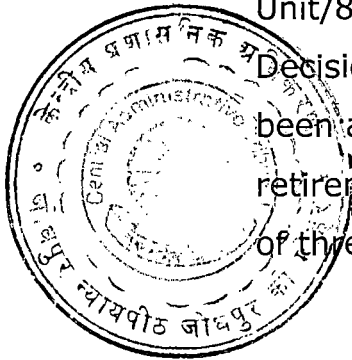
11. I have considered the rival arguments on the said issue and it would be significant to refer to the guidelines in the matter. The Guide-line No. 3 (2) (i) of the CCS (CCA) Pension



Rules, 1968, below Rule 68 of the said Rules, prescribes the instructions which is relevant to this case and the same is extracted as under :-

"i) In case of Government servants against whom disciplinary/judicial proceedings are pending on the date of retirement and in which gratuity is withheld till the conclusion of the proceedings :-

(a) In such cases if the Government servant is exonerated of all charges and where the gratuity is paid on the conclusion of such proceedings, the payment of gratuity will be deemed to have fallen due on the date following the date of retirement vide O.M. No. 1(4) Pen. Unit/82, dated the 10th January 1983 [Para. 3 of Decision (1) above]. If the payment of gratuity has been authorised after three months from the date of his retirement interest may be allowed beyond the period of three months from the date of retirement."



As per the Instructions, I do not find that there is anything wrong in the action of the respondents on this point besides that the applicant should be paid his dues as per the order Annexure R/2 dated 31.10.2002 which ^{would be} further subject to the law position mentioned in Para No.14 of this order.

12. Now, I shall take up the second issue regarding the payment of gratuity of withheld amount of Rs. 2000/-. The controversy is already set at rest vide letter dated 31.10.2002 (Annex.R/1), wherein, an order has been passed for releasing the same. There is nothing to indicate that there was any delay attributable to the applicant in issuance of No Objection

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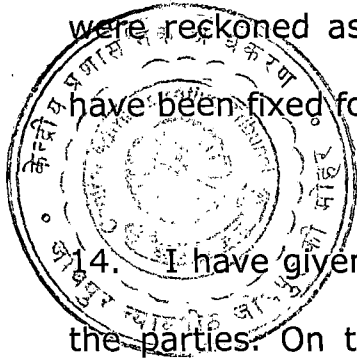
Certificate. It was also no part of his duty. There was no fault on his part. The only ancillary question would remain regarding the payment of interest on the with-held amount of gratuity. The respondents by now, have very well understood that they are required to pay interest on the gratuity amount in case of delay of more than three months and the rate of interest is also well within their knowledge i.e. at the rate of interest which is admissible on General Provident Fund. Since very recently and in this very case, they have passed order dated 31.10.2002 (Annex.R/2), thus, hardly any detailed discussion is necessary in this case on this issue and inevitably the contention of the applicant will have to be accepted. But, interest cannot be paid for periods of three months upto 1.4.1990 i.e. date of

exonerated.



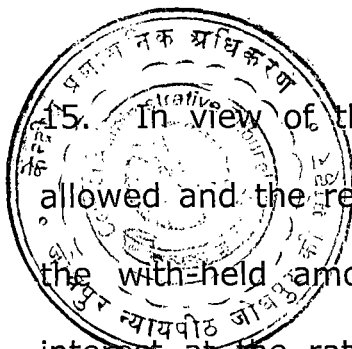
13. Now comes to the last point regarding interest on the delayed payment of commutation of pension. The pension commutation was released vide order dated 21.4.1998 and the commutation has been made effective from 1.1.1998. The contention of the applicant in this case is that he was paid the commutation amount after about four months from the date of its due and he should be paid interest for the delayed payment. The other contention of the applicant though not pleaded in the O.A. but referred to in the rejoinder is that an amount of Rs. 9774/- was recovered from him and this amount is said to be the amount towards commutation for the period January 1998 to March 1998. This amount is said to have been recovered in the month of August 1998. On the contrary, the learned counsel for

the respondents has submitted that there are no such pleadings in the O.A. and no such relief has been prayed therein. Thus, no such plea can be examined and question of any such relief does not arise.. Further, there is no provision of paying any interest on the amount of the commutation in the rules. He has also strenuously argued that otherwise also, there was no inordinate or deliberate delay in release of the commutation amount since the disciplinary proceedings initiated against the applicant were closed only on 1.4.1998 and after that date only the commutation of pension could be released. It has also been submitted that since all amounts relating to his retrial benefits were reckoned as on 1.1.1998, no separate cut off date could have been fixed for the commutation of pension.



14. I have given my considerable thought to the contention of the parties. On the face of it, the contention of the applicant looks very attractive but the same is in fact deceptive. There has been no illegality or unfairness in the action of the respondents in releasing commutation of the pension to the applicant. The applicant has also not been able to show as to under what rule, the interest could be paid on the delayed payment of commutation in case, there is any delay (which is also not the case here). The judgement of the Hon'ble Supreme Court in R. Virabhadram Versus Government of Andhra Pradesh, reported in 1999 (9) SCC 43, comes to my mind, wherein, their Lordships has held that 'where there is delay in making payment of gratuity/leave encashment etc. was due to the pendency of criminal/departmental proceeding, no interest shall

be payable till the final order in the matter is passed'. This judgement has been relied upon by this Bench of the Tribunal in O.A. No. 176 of 1998 – Smt. Laxmi Devi versus Union of India and others, decided on 11.7.2001 and the interest on the retrial benefits was denied. The same principle could have been applied even in case of release of the gratuity amount also but since the respondents have themselves passed the order for grant of the interest for a period of one month on the gratuity amount, I abstain from making any comment on the same.



15. In view of the foregoing discussions, the O.A. is partly allowed and the respondents are directed to make payment of the with-held amount of gratuity of Rs. 2000/- along with interest at the rate applicable to the General Provident Fund during the relevant time, to the applicant as per rules. The respondents are also directed to release the amount due as per their order dated 31st of October, 2002 placed at Annexure R/2. This exercise shall be done within a period of three months from the date of receipt of a certified copy of this order. Other reliefs stand declined. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

J. K. Kaushik
[J . K. Kaushik]
Judicial Member

Jrm

Part II and III destroyed
in my presence on 7-4-70
under the supervision of
section officer (1) as per
order dated 5/2/58

N. G. A.
Section officer (Records)

Recd

Apri 2003
22/4/2003

Original
for 22/4/2003
for 22/4/2003
for 22/4/2003