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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 228/2008

Date of order: 28-10-2007

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

T R Chawla son of Shri C L Chwala, aged about 60 years, resident of 20, Imartia Bera C Road, Paota, Jodhpur, last employed on the post of Dy. Commissioner of Income Tax, Central Information Branch (CBI), Jodhpur.

:Applicant.

Mr. J.K. Mishra, counsel for applicant.

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. Chief Commissioner of Income Tax (CCA), C R Building, Statue Circle, B D Road, Jaipur.

... Respondents.

Mr. Varun Gupta, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The applicant was working as a Deputy Commissioner of Income Tax in Jodhpur. He joined the Income Tax Department

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in January 1978. Prior to that, he had served as a 2nd grade teacher under the State Government. On 5.5.2008 the applicant submitted a notice for voluntary retirement under Rule 56(k)(1) of Fundamental Rules read with Rule 48(1) of CCS (Pension) Rules. (A/2). On the expiry of the three months' notice period on the 4th of August 2008, the applicant relinquished his charge. (A/5). On the same day i.e. 4.8.2008 a letter was also given to the applicant by the respondents stating that "as a decision on the notice for VRS is yet to be taken by the Central Board of Direct Taxes, you are not allowed to retire on expiry of your notice period". It is contended by the applicant that the said letter was given to him at 6.30 PM i.e. after he had relinquished the charge. The applicant submitted a representation on 8.9.2008 for releasing his pension and pensionary benefits. Till the filing of the Original Application, his pension and pensionary benefits had not been paid. The applicant has prayed for the following relief in the Original Application:

"(i). That impugned order dated 04.08.2008 along with letter dated 6.6.2008 (Annexure A-1) may be declared illegal, of no consequence and the same may be quashed. The respondents may be directed to treat the applicant as retired on dated 4.8.2008.

(ii). That the respondents may be directed to grant and release forthwith the pension and all other retiral benefits e.g. DCRG / leave encasement, commutation of pension, PF amount etc. to the applicant and the due arrears thereof may be paid along with interest at market rate.

(iii). That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

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(iv). That the costs of this application may be awarded."

2. It is contended by the applicant that the communication dated 04.08.2008 addressed to the applicant does not amount to refusal of his request for voluntary retirement. As there is no refusal, his request for voluntary retirement stood accepted under the rules. That he fulfils all the conditions for seeking voluntary retirement. He has completed 50 years of age and has a total service of over 35 years. He was also not under suspension.

3. The respondents filed a reply. It is contended in the reply that on 04.08.2008, the applicant was informed that as the CBDT had not taken any decision on the notice of the applicant for VRS, he is not allowed to retire on the expiry of notice period. The communication dated 04.08.2008 amounts to refusal of the request for VRS. The applicant had received the communication dated 04.08.2008 before he decided to relinquish charge as per his own admission at A/5. Rule 48 (A) provides that notice of voluntary retirement under sub-rule (1) shall require acceptance by the Appointing Authority.

4. While the Original Application was pending, an additional affidavit was filed by the applicant stating that he has received the following pension and pensionary benefits:

Sl. No.	title/head	Date of payment	Amount
1	GPF amount	24.03.2009	Rs. 12,87,473/-
2	DCRG	08.02.2009	Rs. 5,64,587/-
3	Pension	02.06.2009	Rs. 1,51,805/-
4	Commutation of pension	08.02.2009	Rs. 5,87,715/-
5	GIS	26.03.2009	Rs. 45,334/-
6	Leave Encashment for 150 days	25.05.2009	Rs. 1,71,390/-

In view of the aforesaid development the applicant's prayer is now limited to the issue of the remaining 150 days of leave encashment and interest on delayed payment of pension and pensionary benefits. On the issue of restricting the encashment of leave to 150 days the respondents have relied on Rule 39(6)(a)(ii) of CCS Leave Rules, which deals with resignation/quitting of service.

5. We have heard the learned counsel for the applicant Shri J. K. Mishra and the learned counsel for the respondents Shri Varun Gupta. We have also perused the records carefully.

6. The issue for consideration in this Original Application is whether the applicant stood voluntarily retired on the expiry of three months' notice period. It is not disputed that the notice was given by the applicant on 05.05.2008. It is also not disputed that the three months notice period expired on 04.08.2008. The only bone of contention is that while the respondents claim that the communication addressed to the applicant on 04.08.2008 conveying that no decision has been

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taken on his request for VRS tantamounts to refusal, the applicant's stand is that it is not a refusal and therefore he stood retired on that date. We have perused the relevant rules in this regard. Rule 56.(k) (1) of Fundamental Rules states as follows:

"F.R. 56 (k) - (1). Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years, if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years:

Provided that -

- (a) Not printed (Since Clause (e) has been Omitted)
- (b) nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes,, (ii) is posted abroad in a foreign based office of a Ministry/Department and (iii) goes on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year: and
- (c) It shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause."

Rule 48 (1) of CCS (Pension Rules) reads as follows:

48. Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service -

- (a) he may retire from service, or
- (b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement

the Government servant shall be entitled to a retiring pension:

Provided that -

- (a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and
- (b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowance in lieu of such notice:

Provided further that where the Government servant giving notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule:

7. It is amply clear from the aforesaid rules that what is required is only a notice of three months. No acceptance is contemplated under Rule 48(1) of the Pension Rules. It is to be noted that the applicant gave notice under 56(k)(1) of FR read with Rule 48 (1) of Pension Rules, and not under Rule 48A(1). Rule 48(1) deals with voluntary retirement after 30 years of service while Rule 48A deals with voluntary retirement after 20 years service. In that view of the matter the contention of the respondents that acceptance of the notice was required in this case cannot be sustained. In any case this is now only a matter of academic interest, since the respondents themselves have tacitly accepted rule position and released the pension and other benefits of the applicant. There are only two pending issues now - one relates to the decision to restrict leave encashment to 150

days, and the other relates to interest on delayed payments. We shall take the issue of restricting leave encashment first. The respondents have restricted the leave encashment to 150 days relying on Rule 39 (6) (a) (ii) of CCS Leave Rules which reads as follows:

Rule 39 (6) (a) (ii) - If a Government servant resigns or quits service, he may be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit on the date of cessation of service, to the extent of half of such leave at his credit, subject to a maximum of 150 days including the number of days for which encashment was availed along with LTC."

The reliance of the respondents on Rule 39(6)(a)(ii) is completely misplaced. The applicant has not resigned or quit the service. He sought voluntary retirement as per rules. His entitlement for seeking voluntary retirement is not disputed. The respondents themselves have treated it as voluntary retirement and released his pension. This is clearly mentioned in documents produced by the applicant at A/12 and A/13. The decision to restrict the leave encashment to 150 days is therefore clearly illegal and arbitrary.

8. We shall now turn to the issue of interest on delayed payment of pension and other benefits. The counsel for the applicant has relied on the judgment of the Lucknow Bench of this Tribunal in OA No. 513 of 1994 to support his argument for interest on delayed payments. The Lucknow Bench of this

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Tribunal in turn had relied on the Hon'ble apex Court judgment in **State of Kerala & Others Vs. M. Padnamanabhan Nair** (1985) 1 SCC 429. The relevant extract from the judgment of the Hon'ble apex Court is reproduced below:

“Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government Servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal market rate should commence at the expiry of two months from the date of retirement.”

9. In the case of normal retirement, preparatory work for processing pension papers begins almost an year in advance, since the date of superannuation is known well in advance. This cannot be said to be true in the case of voluntary retirement where it can be argued that the authorities should have started preparing the papers after the notice was received. In a recent judgment, the Hon'ble Supreme Court in the case of **A. Sulekha vs. N.A. Das and Others** - (2009) 1 SCC (L&S) 885 has allowed interest after completion of 6 months from the date of retirement. The official in that case had retired on 31.03.1998. Interest was allowed from 30.09.1998. The following extract from the said judgment is relevant:

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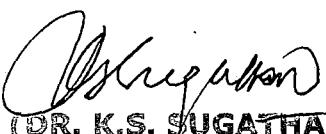
6. In our opinion, since both the courts have concurrently held that the liability certificate ought not to have been issued, there was no reason for any delay in the payment of the appellant's retiral benefits. We are also not convinced that the appellant could have withdrawn the amount of retiral benefits without giving up her challenge to the deduction on account of an alleged liability towards the missing books. We are of the view that the appellant had just cause to claim interest from the respondent College. Were it not for the illegality committed by the respondent College, the issues of delay and payment of interest would never have arisen. In the circumstances, we direct the respondent College to pay interest to the appellant for a period of three years commanding from 30-9-1998 to 30-9-2001 or until the appellant was in fact paid her retiral benefits, whichever is earlier together with interest at the rate of 9% per annum. The interest of the amount to be paid within a period of 12 weeks from the date. In default, the rate of interest will be 12% per annum.

10. While deciding on the issue of liability to pay interest, the circumstances of the case also needs to be kept in mind. In the present case the applicant took voluntary retirement on 04.08.2008 and the pensionary benefits had been paid on 24.03.2009 (GPF), 08.02.2009 (DCRG), 02.06.2009 (Pension), 08.02.2009 (Commutation), 26.03.2009 (GIS) and 25.05.2009 (Leave encashment). If we adopt the same grace period of 6 months in this case as was done by the Hon'ble Supreme Court in the case cited at para 9, all the benefits should have been paid before 04.02.2009, whereas they have been paid on dates ranging from 08.02.2009 to 02.06.2009. Considering the peculiar circumstances of this case as there was some controversy about the refusal/deemed acceptance of the request, the aforesaid delay that took place cannot be described

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as unreasonable. We are, therefore, of the considered view that this is not a fit case to allow any interest on delayed payment.

11. For the reasons stated above, this Original Application is partly allowed. The respondents are directed to pay to the applicant the cash equivalent of the remaining period of leave of 150 days, if leave to that extent was available to his credit at the time of retirement, within a period of two months from the date of receipt of copy of this order. No order as to costs.


(DR. K.S. SUGATHAN)

ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)

JUDICIAL MEMBER

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Recd Copy of order
Dhaka
30/10/09

Recd com of order
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31/10/09

Part II and III destroyed
In my presence on 8/10/09
under the supervision of
section officer () as per
order dated 07/07/15

Section officer (Record)