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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application 38/2011

Date of Order : 17.01.2012

CORAM: HON'BLE MR. SUDHIR KUMAR, MEMBER (ADMINISTRATIVE)

Banshi Lal S/o Late Shri Ratan Lal aged about 64 years resident of Village and Post Pur, Near Chhipon Ka Mandir, District Bhilwara (Raj)
Ex. Postal Assistant at HPO Bhilwara (Raj.)

.....Applicant.

By Mr. S.K.Malik, Advocate.

Versus

- 1- The Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
- 2- The Director of Accounts (Postal), Jaipur.
- 3- The Superintendent of Posts, Bhilwara Division, Bhilwara (Raj).


..... Respondents.

By Mr. Ankur Mathur for Mr. Vinit Mathur, Advocate and learned A.S.G.

ORDER

This application has been filed since the applicant is aggrieved by the respondents not paying interest on the delayed payment of his Death-cum-Retirement-Gratuity, which was payable to him when he was compulsorily retired under Rule 14 of the CCS (Pension) Rules, 1962, w.e.f. 25.03.1989 F.N., through Memo dated 28.06.1990 (Annex.A/1).

2. The case of the applicant is that a frivolous Criminal Case had been filed against him, which came to be decided by the Chief Judicial Magistrate Court, Bhilwara only in the year 2009, wherein the applicant has been completely exonerated. Prior to that, due to pendency of the criminal cases, the applicant had been paid provisional pension, but, his gratuity, which was due to him on his retirement, had been with-held. After the disposal of the criminal cases pending against him, the applicant made a representation dated 31.07.2009 (Annex.A/2) before the respondents praying that he should be paid his gratuity and other retiral benefits immediately. When the applicant did not



hear from the respondents, he sent them a legal notice dated 30.06.2010 through his Advocate through Annex.A/3. It was only then that the respondent No. 3 submitted the pension / Death-cum-Retirement-Gratuity case of the applicant before the respondent No. 2, and marked a copy thereof to the applicant on 13.07.2010 (Annex.A/4). Thereafter, through a reply to his petition under Right to Information Act dated 28.12.2010 (Annex.A/5), the respondents have also confirmed to the applicant that no appeal has been filed against the decision of the Chief Judicial Magistrate, Bhilwara. Later, through Annex.A/6 dated 28.12.2010, respondent no. 2 has authorized the payment of DCRG amount of Rs.16,740/- which was due to the applicant as on 25.03.1989, but has not allowed/granted any interest on the same for the two decades' delay in the payment of the same.

3. The applicant contends that since he has been exonerated in all the criminal cases pending before the Chief Judicial Magistrate, Bhilwara, he was entitled to interest also upon the delayed payment of DCRG under Rule 68 of the CCS (Pension) Rules, and the Government of India, Department of Personnel and Administrative Reforms O.M. No. F.7 (1)P.U./79, dated the 11th July, 1979 and No. 1 (4)/Pen.Unit/82, dated the 10th January, 1983. This instruction, as produced in Swamy's Compilation of CCS (Pension) Rules, states as follows :-

"(1) Admissibility of Interest on gratuity allowed after conclusion of judicial / departmental proceedings.-

1. Under the rules, gratuity becomes due immediately on retirement. In case of a Government servant dying in service, a detailed time-table for finalizing pension and death gratuity has been laid down, vide Rule 77 onwards.

2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity, if allowed to be drawn by the Competent



Authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the Competent Authority.

3. In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however not be available to such of the Government servants who die during the pendency of judicial / disciplinary proceedings against them and against whom proceedings are consequently dropped"

4. The applicant has further contended that not making payment of interest on the delayed payment is against the provisions of Article 300-A of the Constitution of India. Since pension and gratuity are valuable rights to property in the hands of a Government employee, any delay in settlement and disbursement thereof must be with interest till the date of actual payment. He has further contended that not making payment of interest on the delayed payment of DCRG is an arbitrary action on the part of the respondents, and violative of his rights under Articles 14 and 16 of the Constitution. He, therefore, prayed that the respondents may be directed to make payment of interest on delayed payment of DCRG w.e.f. 25.03.1989 till the date of payment @ 18% per annum, and an exemplary cost on the respondents may be awarded for having caused undue harassment to the applicant, apart from any other reliefs, which are found just and proper in the facts and circumstances of the case in the interest of justice.

5. In their reply written statement, the respondents pleaded that the OA is not maintainable for the reason that it is preferred only for getting interest on the belated payment, which does not fall within the ambit of service matters, and the



applicant has an appropriate remedy only before the civil courts. It was further submitted that the delay in finalization and payment of DCRG was caused only because the applicant was facing criminal cases, and, therefore, the delay was caused because of the applicant himself, for which the respondent-department cannot be held responsible in any manner whatsoever. The reply written statement then went into the merits of the case on the basis of which the criminal complaint was filed against the applicant, numbered as FIR No. 58/89 dated 28.02.1989, and simultaneously the applicant was proceeded under Rule 14 of the CCS (CCA) Rules, 1965. It was submitted that there were 28 cases of misappropriation of Government money amounting to a total amount of Rs.33,113/-, on which the Chief Judicial Magistrate, Bhilwara, has decided the cases in four parts, on 17.9.2008, 31.07.2008, 07.08.2008 and 10.06.2009. It was only after this that the clearance for release of gratuity was issued through Annex.A/6 dated 28.12.2010, and the amount was actually released through Annex.A/7 dated 05/06.1.2011. It was submitted that the applicant had not made any representation to the respondents authorities for grant of interest, and has directly approached this Tribunal, and, therefore also, the OA is liable to be dismissed. It was denied that the provisions of Article 308 of the Constitution of India or the rights of the applicant under Article 14 and 16 of the Constitution of India have in any manner been impinged upon or violated, and it was, therefore, prayed that the OA deserves to be dismissed ^{as} being devoid of merits.


6. Heard. The learned counsel for the applicant relied upon a case law apart from the provisions of Rule 68 of the CCS

(Pension) Rules and the Government of India OM dated 10.01.1983 part of which has been reproduced above in paragraph No.3. The learned counsel for the applicant submitted that in a parallel case of Raghunath Laxman Shegaje Vs. Union of India and Ors. decided by Bombay Bench of this Tribunal in OA No. 53/1993 on 31.08.1994, as reported in 1994 (2) ATJ 602, it had been held that the gratuity becomes payable immediately on superannuation, and, therefore, the interest is liable to be paid to be calculated at the rate of 7% p.a. beyond the first three months up to one year, and at the rate of 10% p.a. for the period beyond one year. In deciding this, the Bombay Bench had relied firstly on the judgement of Bombay High Court in Smt. Shewantabai Wd/o. Eknath Jambhulkar Vs. Dy. Director of Education, Nagpur and Ors., reported in 1993 (1) Mah. Law Reporter 163, in which it has been held that when there is no satisfactory explanation for delay of seven years in disbursement of retiral benefits, the Court can direct payment of 18% interest on the amount due by way of penal interest, and secondly on the judgement of the Hon'ble Supreme Court in State of Kerala Vs. M. Padmanabhan Nair reported in AIR 1985 SC 356, in which the Hon'ble Supreme Court had observed that pension and gratuity are valuable rights, and property in the hands of the employee, and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

7. In this particular case the departmental inquiry and the criminal case had been instituted almost simultaneously against the applicant, and the departmental inquiry having been concluded earlier, the applicant was removed from service w.e.f.

25.03.1989 (FN), on compulsory retirement basis, as a penalty under CCS (CCA) Rules, 1965, through the order dated 28.06.1990 Annex.A/1. However, the criminal cases remained pending against him, which continued to be pending for long thereafter, the last of which came to be decided on 10.06.2009 by the Chief Judicial Magistrate, Bhilwara, as has been noted above also. It is clear that when the order of the applicant's ante-dated removal from service on compulsory retirement as a penalty w.e.f. 25.03.1989 (F.N.) was passed on 28.06.1990, only the judicial proceedings remained pending against him thereafter, for the subsequent 19 years, till 10.06.2009, when they resulted in the acquittal of the applicant from all the cases against him. Therefore, in terms of the Government Instructions dated 10.01.1983 as reproduced above in paragraph 3, the gratuity amount will have to be deemed to have fallen due on the date following the date of his compulsory retirement, for the purpose of payment of interest on delayed payment of gratuity.

8. In this case, the gratuity fell due on 25.03.1989, the date on which in the Fore Noon the applicant stood compulsorily retired as a penalty imposed under CCS (CCA) Rules. Since the Government has already decided that in order to mitigate hardship to the Government servant, who on conclusion of the judicial proceedings gets fully exonerated, interest on delayed payment of retirement gratuity may be allowed, the applicant herein is also entitled to the benefit of the same. When the Instructions dated 10.01.1983 are read with the subsequent instructions issued by the Government of India, Department of Pension and Pensioners Welfare O.M. No. 7/20/89/P.& P.W.(F), dated 22.01.1991 paragraph 2 (i) (a), it is seen that this later




instruction also prescribes that when the payment of gratuity has been authorized after three months from the date of retirement, interest has to be allowed from the date three months after the date of retirement. Through the Government of India, Department of Pension and Pensioners Welfare, O.M. No. 38/64/98-P.& P.W.(F), dated 05.10.1999, as per para 2 (D), it has been further prescribed that penal interest payable on delayed payment of gratuity under Rules 68 of the CCS Pension Rules would be payable at the rate applicable to GPF deposits.

9. These instructions however do not result in any requirement of responsibility being fixed, and any disciplinary action being taken against anybody under sub Rule 68 (4) of the CCS (Pension) Rules if the delay beyond exoneration from judicial proceedings is not substantive.

10. The respondents have in this case taken a ridiculous initial plea that this OA is not maintainable because it has been preferred only for interest on the belated payment of DCRG, which does not fall within the ambit of service matters, and the applicant has an appropriate remedy only before the Civil Court. This contention of the respondents is rejected with the contempt it deserves. If the payment of DCRG is a service matter, and the CCS (Pension) Rules provide under Rule 68 for delayed payment of gratuity becoming a basis for allowing claim of interest on delayed payment of gratuity, it is very much a service matter, which can be agitated before this Tribunal, and not before the Civil Courts, as has ^{been} wrongly contended by the respondents in their reply written statement dated 01.07.2011.

11. In the result, the OA is allowed, and the applicant is held to be entitled to interest on the delayed payment of his DCRG

w.e.f. 25.06.1989, i.e. three months after he stood compulsorily retired, till the date of the actual payment after the order dated 05/06.01.2011, and the rate of interest shall be the rate of interest on GPF deposits since then, as amended/modified from time to time. No order as to costs.



(Sudhir Kumar)
Administrative Member

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