

01  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No.178 of 1997

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

Mrs. Krishna Chakraborty, W/O late  
Ajay Ranjan Chakraborty residing at  
44/9, B.T. Road, Calcutta-700 050  
P.S. Baranagar, Dist. 24-Parganas(N)

..... Applicant

VS

1. Union of India, service through  
the Secretary to the Govt. of India,  
Department of Mines, Udyog Bhavan,  
New Delhi-110 011

2. The Director, Geological Survey of  
India, Publication and Information  
Division, 29, Jawaharlal Nehru Road,  
Calcutta-700 016

3. The Director General (F),  
Geological Survey of India,  
4, Chowringhee Lane,  
Calcutta-700 016

4. The Accounts Officer, Office of the  
Controller of Accounts, Department of  
Mines, Central Accounts Office, G.S.I.,  
16A, Brabourne Road, Calcutta-700 001

5. The Registrar, Jadavpur University,  
Jadavpur University, Calcutta-700 032

..... Respondents

For the Applicant : Mr. R. K. De, counsel

For the Respondents: Ms. B. Ray, counsel

NO 1, 2, 3 & 4.  
Heard on 18.1.1999

: : Date of order: 18.1.1999

O R D E R


The question involved in this case is whether the applicant is entitled to get interest at the rate of 12% on delayed payment of retirement dues by way <sup>of</sup> pro-rata pension as admissible to the applicant's husband with effect from 1.8.85 till the payment is made on 8.8.95; and whether the applicant's husband was liable to pay any penal interest on the amount of payment of foreign service contribution payable by the applicant's husband on absorption in the Jadavpur University in the post of Chief Librarian to respondents No.1,2 and 3 and

whether the applicant's husband is entitled to get refund of the penal interest or not. The case of the applicant, in short, is that the applicant's husband late Ajoy Ranjan Chakraborty was holding the post of Librarian in the Department of Geological Survey of India (Publication and Information Division), Calcutta and he went on deputation as Librarian in Jadavpur University after rendering service in the said Department for 20 years 10 months 12 days i.e., from 19.9.63 to 31.7.84 having lien with the parent Department. Her husband was subsequently confirmed as Librarian in the Jadavpur University with effect from 1.8.85. Thereby the husband of the applicant deemed to have been retired from service with Geological Survey of India (GSI in short) with effect from 1.8.85 and was entitled to receive pro-rata pension under Pension Rules since he rendered more than 10 years' service but less than 33 years' service in the parent Department. It is alleged by the applicant that due to laches and inaction on the part of the respondents in respect of payment of pension the applicant's husband had to approach the ex-minister, Ms. Mamata Banerjee who was Minister of State for Youth Affairs and Sports, Women and Child Development and after her persuasion the case of the applicant's husband was settled by the respondents and necessary payments have been made on 8.8.95. So, due to inordinate delay in settlement <sup>of</sup> dues of the applicant's husband as per rules, the applicant suffered loss of interest; thereby she is entitled to get interest and other reliefs as sought for in the application. It is alleged that respondents No.1 to 4 charged illegally penal interest of Rs.3704/- for non payment of foreign service contribution by the applicant's husband. So, she is entitled to get refund of Rs.3704/- with interest.

2. The respondents filed written statement denying the claim of the applicant stating inter-alia that late Chakraborty by a letter dated 11.6.84 (Annexure/R1) gave an undertaking to the effect that the relevant foreign service contributions (for

pension, leave salary, etc.) for the lien period will be paid by him, if it is not paid by the University. But after retirement the applicant's husband did not make any payment towards foreign service contribution which was liable to be paid by her husband. It is also stated by the respondents that they obtained concurrence from the Ministry regarding payment of pro-rata pension on 3.2.1993 (Annexure/RIII) and after getting the concurrence from the Ministry vide letter dated 3.2.93 the Controller of Accounts, Ministry of Mines, Govt. of India by a letter dated 21.6.95 authorized the office of the respondents No.1,2 and 3 to recover Rs.5224/- towards foreign service contribution and Rs.3704/- towards penal interest for delayed payment of foreign service contribution from late A.R. Chakraborty's DCRG of Rs.26,277/-. The Controller of Accounts, Deptt. of Mines, Govt.of India also authorized the office of respondents No.1,2 and 3 to draw Rs.1,08,625/- towards payment of lump sum in lieu of pro-rata pension in respect of late A.R. Chakraborty vide letter dated 22.6.95 and the authorisation letters of the Ministry dated 21.6.95 and 22.6.95 are annexed as Annexures 'R-IV' and 'R-V' and thereafter necessary cheques were issued for Rs.1,08,625/- and Rs.17,349/- after making necessary deduction thereon. It is also stated by the respondents that it is seen from the letter of the Finance Officer, Jadavpur University dated 28.8.95 that the Jadavpur University remitted to full payment of Rs.1,25,974/- through cheque on 1.9.95 and it may, therefore, be clear that there had been no lapse and wilful delay at their end in settling the legitimate dues of late Chakraborty. So, there is no intentional delay on the part of the respondents. Hence the application is devoid of merit and is liable to be dismissed.

3. Mr. De, learned counsel appearing on behalf of the applicant contends that the applicant's husband by a letter dated 22.11.91 (Annexure/C to the application ) specifically intimated



the Director of Publication and Information Division, G.S.I. that the Jadavpur University has agreed to pay the foreign service contributions. However, he gave option, if any amount remains unpaid, that may be deducted from his dues or he may be instructed to pay the amount. Despite that assurance given by the applicant's husband vide letter dated 22.11.91, the respondents delayed the payment. Mr.De also has drawn my attention to the instructions contained in clause (ii) at page 382 of CCS(Pension) Rules, Appendix-XII, which runs as follows:

"The amounts of pension/gratuity and the Retirement Gratuity would be concurrently worked out and will be intimated to the Government servant concerned as well as to the undertaking as and when an officer is absorbed."

Mr. De also referred to the similar instructions contained in page 281 of FR 115 under Foreign Service of Swamy's Compilation of FRSR, Part-I, 11th Edition, 1992, which runs as follows:


"In all other cases, the contributions should be payable to and adjustable by the Accounts Officer of the Office/cadre in which the Government servant proceeding on foreign service holds lien."

Referring to the said provisions Mr. De submits that the applicant's husband was admittedly absorbed in the Jadavpur University, and on absorption, her husband should be deemed to have retired from parent's service with effect from 1.8.84, but the respondents No.1 to 4 never intimated the applicant's husband by working out the amount which her husband would have to pay towards foreign service contribution, as deducted by the respondents from D.C.R.G. and Mr. De submits that the delay in payment can be attributed to the respondents since the respondents did not take any action knowing fully well that the applicant's husband shall be deemed to have retired after rendering more than 20 years' service in the Department and he is entitled to get pro-rata pension from the Department.

According to Mr.De, no document has been called for from the applicant's husband for settlement of dues after retirement and the applicant's husband had furnished all requisite information

to the respondents for the purpose of settlement of pension as required under the rules. So, the applicant is entitled to get interest at the rate of 12% in view of the two judgments reported in 1990(12) ATC 63 (P.N. Gopinath Nair vs. General Manager, Heavy Vehicle Factory, Avadi, Madras and others) and 1987 SCC(L&S) 400 (O. P. Gupta vs. Union of India and others). Hence, the application should be allowed directing the respondents to pay interest at the rate of 12% per annum from the due date of payment of retirement dues till the actual payment is made and the applicant is also entitled to get refund of the penal interest or Rs.3704/- which has been recovered from her husband's dues for non-payment of foreign service contribution, since such interest was charged for no fault of the applicant's husband and in violation of principles of natural justice.

4. Mrs. Ray, learned advocate appearing on behalf of the respondents submits that there is no intentional delay on the part of the respondents No.1 to 4 of this application for making settlement claim of the applicant's husband and the ~~respondents~~<sup>applicant</sup> did not ~~take any time~~ to make deposit of the foreign service contribution, as required under the law, <sup>as</sup> ~~since~~ the applicant's husband had given an undertaking to make payment of the foreign service contribution by a letter dated 11.6.84 (Annexure/R1), thereby the responsibility lies with the applicant's husband to make payment of the said contribution without further delay. Since that has not been done, the respondents cannot be held responsible for making delayed payment of the contribution on pro-rata pension under the rules. Mrs. Ray also has drawn my attention to the letters dated 3.2.93(Annexure/R-III), 21.6.95 (Annexure/R-IV) and 22.6.95 (Annexure/R-V), and ~~and~~ submits that regarding prorata pension financial concurrence is required from the Ministry and that concurrence has been received by the official respondents No.1 to 4 in the year 1995 and accordingly payment has been made without any further delay. So, the



applicant is not entitled to get any interest as claimed in the application and hence the application should be dismissed.

5. I have gone through the records and I have considered the submissions of the learned advocates of both the parties. It remains undisputed fact that under the provisions of CCS(Pension) Rules, the retirement benefits including gratuity becomes due to the retired Government servant immediately on retirement and Rule 68 also provides provision for payment of interest on delayed payment of gratuity on the ground that when it is established that the delay in payment is attributable to administrative lapses and the interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time. Here it is found from the Annexure/R1 i.e., letter dated 11.6.84 that the applicant categorically gave an undertaking that foreign service contribution for pension, leave salary etc. for the lien period will be paid by him if it is not paid by the university. On the basis of the said undertaking there should not be any doubt in the mind of the respondents that the foreign service contribution is liable to be paid either by the applicant or by the university. Admittedly, the applicant went on deputation to the Jadavpur University with effect from 1.8.84 after rendering 20 years 10 months 12 days in the parent Department and he was absorbed as Librarian in Jadavpur University with effect from 1.8.84. So, he may be deemed to have retired from parent service from the date of absorption. So, as per provision of Rule 13 read with Rule 49(2) of CCS(Pension) Rules the applicant's husband is entitled to get pro-rata pension for the period of service rendered by him in the parent Department on absorption in the Jadavpur University. For this reason also there should not be any doubt in the mind of the respondents No.1 to 4 for working out the dues to be paid by the applicant's husband towards foreign service contribution as per undertaking given by her husband. In view of the instructions

contained under FR 115 relating to foreign service at page 281 of Swamy's Compilation of FRSR, Part-I mentioned above there is an obligation on the part of the Accounts Officer to work out the amount payable or adjustable towards contribution of foreign service as per undertaking given by the respondents. I do not find from the record that the Accounts Officer had ever intimated the amounts which are to be paid by the applicant's husband towards foreign service contribution at any point of time before 12.6.95 as appeared from Annexure/R4 to the reply. I also do not find any record that the respondents have disclosed the amount towards foreign service contribution or penalty for delayed payment of foreign service contribution before deduction of the same from the dues of the applicant's husband.

6. It is found that the applicant's husband deemed to have retired as per rules on absorption in the Jadavpur University with effect from 1.8.85 and he died on 12.12.91. Moreover, it is found that the Ministry of Steel and Mines, Govt. of India had already issued concurrence regarding payment of pro-rata retirement benefits in respect of the applicant's husband as ex-librarian by a letter dated 15.2.93 (Annexure/R1111 to the reply) and the said letter raised no ambiguity in respect of deduction of any dues to be paid by the applicant's husband and it is clear that the Ministry already instructed the Director General, G.S.I. to make necessary adjustment towards foreign service contribution prior to making payment of his dues. I do not find any reason why the respondents delayed the matter in working out the dues to be paid by her husband towards foreign service contribution despite a clear letter and instruction has been received from the concerned Ministry by a letter dated 15.2.93. It is found that

the respondents had made a deduction

of Rs.5224/- towards foreign service contribution and Rs.3704/towards penal interest for delayed payment of foreign service contribution by a letter dated 12.6.95 (Annexure/RIV to

the reply). The applicant or her husband did not dispute regarding payment or recovery of foreign service contribution from her dues or her husband's dues. Their grievance is against the penal interest which has been recovered for delayed payment of foreign service contribution. I find that no showcause notice has been issued upon the applicant or to her husband before deduction of the penal interest for delayed payment of foreign service contribution as appears from the letter dated 12.6.95. Mrs. Ray also failed to enlighten me as to how such penal interest has been charged or calculated against the applicant's husband. In view of the aforesaid circumstances I am of the view that the penal interest for delayed payment of foreign service contribution has been assessed and realised by the respondents violating the principle of natural justice and that too without affording any opportunity to state his/her case before the authority. In view of the facts the applicant or her husband cannot be blamed for delayed payment of foreign service contribution. The delay in settlement of prorata pension or realisation of money towards foreign service contribution, as claimed by the respondents, is due to laches and inaction on the part of the respondents. So, the applicant is entitled to get refund of Rs.3704/- against penal interest which has been realised from the dues of the applicant's husband and the respondents are directed to refund the same amount of Rs.3704/forthwith and not later than one month from the date of communication of this order.

7. Regarding interest as claimed by the applicant in this case, I find that the applicant or her husband is in no way responsible for <sup>the delay in</sup> settlement of his retirement dues. It is found from the records that the official respondents No.1 to 4 are responsible for making delay in settlement of pension which is admissible to the applicant's husband on absorption in the Jadavpur University and thereby the applicant is also entitled to

get interest at the rate of 12% per annum from the date of the letter marked Annexure/C dated 22.11.91 wherein the applicant's husband specifically requested the Director, Publication & Information Division, G.S.I. that if money is not paid by the University that may be recovered from his dues. And thereafter the applicant's husband died. So, the applicant is entitled to get interest at least from 22.11.91 at the rate of Rs.12% till the payment is made on 8.8.95. Hence the respondents are directed to make payment of interest at the rate of Rs.12% on Rs.1,08,625 and also on the amount of Rs.17,379/- from 22.11.91 till the payment is made within three months from the date of communication of this order. With this observation the application is allowed awarding a cost of Rs.1000/- to be paid by the respondents to the applicant.

  
(D. Purkayastha)

MEMBER (J)