

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 436 OF 2011

Wednesday, this the 17th day of August, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Rajendran T.G., IAS (Retired)
'Archana', Kurumandal
Paravur PO, Kollam District
Pin – 691 301

... Applicant

(By Advocate Mr. S.Sujin)

versus

1. State of Kerala represented by the
Chief Secretary to Government
Government Secretariat
Thiruvananthapuram – 682 001
2. The Principal Secretary to Government
Government of Kerala
General Administration (Special A1) Department
Government Secretariat
Thiruvananthapuram – 682 001
3. The Principal Secretary to Government
Finance (Pension A) Department
Government Secretariat
Thiruvananthapuram – 682 001
4. Union of India represented by Secretary
to the Department of Personnel,
Public Grievances & Pension
Government of India
New Delhi – 110 03 ... Respondents

(By Advocate Mr. N.K.Thankachan, GP(R1-3)
Advocate Varghese P Thomas, ACGSC (R-4))

The application having been heard on 17.08.2011, the Tribunal
on the same day delivered the following:

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ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is a retired IAS officer. He retired from service on 30.06.2005. He was not granted the DCRG and final pension by the Government since two vigilance cases were pending against him before the Vigilance Court, Trivandrum. Annexure A-2 VC 1/94 was numbered as MP 1235/07 in criminal case and subsequently case was registered as CC No.33/2002 in the Court of Enquiry Commissioner and Special Judge, Trivandrum. The applicant has filed MP 1235/07 in the afore said case under Section 239 of the Criminal Procedure Code seeking to discharge him in the case. As per Annexure A-2 judgment dated 04.12.2009 the competent Court of Law discharged the petitioner on finding that there is no evidence made out against the decision. Annexure A-6 and A-7 are silent partners of Jeetu International are not involved in the management of the said company. Thus after considering the statement of witnesses recorded under S.161 of Criminal Procedure Code, and after hearing the prosecution and the accused, the Criminal Court held that the charge against the accused, are without any grounds and that charges are already abated and held that A-1, A-4 to A-7 are entitled to be discharged in the case. As regards the other case, viz., VC 18/2000 even the vigilance had filed a final report seeking to drop the proceedings. This final report was accepted and further action to drop the charge as per Annexure A-3 dated 01.04.2008 was passed by the Enquiry Commissioner, Trivandrum. Thus the first case ended in discharge on 04.12.2009 (Annexure A-2) and the second case on 01.04.2008. It was subsequently that pension and gratuity were paid by order dated 10.06.2010 retrospective from 01.07.2005. But no interest was paid on the delayed payment of retiral



benefits, hence the present OA is filed. The only dispute is regarding the interest payable on the delayed retiral benefits.

2. Two issues arises for consideration.

(i) Whether this Tribunal could adjudicate on the question regarding claim for interest alone? In the light of provisions of Administrative Tribunals Act whether the same is a service dispute. (ii) If so, whether in the factual situation, any interest is payable.

3. Counsel for respondents submits that there is no delay in the matter of payment of retiral benefits and the same has been disbursed to the applicant after the culmination of the two vigilance cases pending against him as on the date of retirement. Even the pension amount was given retrospective with effect from the next date of his retirement i.e. 01.07.2005. Thus the non-payment of retiral benefits and pension is owing to the fact that vigilance cases were pending and it is only after the vigilance proceedings were dropped that the government could release the payment and they have released the payment. Therefore, it is not necessary to pay the interest.

4. We have heard the parties.

5. Issue No.1: As per preamble of the AT Act, 1985 is an act to provide for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or of any local or other authority within the territory of



India or under the control of the Government and for matters connected therewith or incidental thereto. Therefore, the object of the Act is to provide for an adjudicatory machinery by a competent Tribunal with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government and for matters connected therewith or incidental thereto. As per Section 3 (q) service matters is defined as :

(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the union or any State or any other local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any Corporation [or Society] owned or controlled by the Government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) Leave of any kind;
- (iv) disciplinary matters ; or
- (v) any other matter whatsoever.

6. Thus remuneration, pension and other retiral benefits and matters incidental thereto are disputes within the meaning of the Act. Interest on pension being incidental to the payment of pension the same is within the purview of the Act required to be adjudicated under the provisions of the Act. In this connection, we may refer to the decision of the Division Bench reported in 2007 (3) KHC 73 wherein a similar question arose for consideration as to whether Lok Ayukta can adjudicate upon retirement claims. In para 6



it is stated as follows:-

6. Therefore, the Lok Ayukta cannot take any action in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants. But, that prohibition does not extend to take any action in respect of actions relating to claim for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service. Therefore, the Lok Ayukta has jurisdiction to take action in relation to a grievance in respect of any action relating to claims for pension, gratuity, provident fund as also any claim which arise on retirement, removal or termination of service. The entitlement to pension, gratuity and PF arises on retirement. The delay in paying pension, gratuity or PF as the case may be, if found to be objectionable or culpable, would give rise to a claim for compensation for the delay which would be determinable applying the yardsticks of a rate of interest or otherwise. That is the concept of awarding interest for delayed payment of retiral benefits. Therefore, a claim for interest on account of delay in disbursing the retiral benefits is a claim which arise out of retirement. Similarly, the entitlement to pension, gratuity and PF, if not satisfied within the time fixed by the Rules, would attract the legal liability of the Government as the employer to compensate for the delay. As a necessary corollary, that will give rise to an actionable claim in favour of the employee, who suffers out of the delay. This is the jurisdictional equation which works in the later part of Clause (d) of the Second Schedule, thereby generating appropriate cause of action in favour of the employee, like the first respondent to agitate a claim by way of compensation or interest on account of delayed payment of retiral benefits. Such a claim would therefore necessarily fall within the sweep of the second limb of Clause (d) of the Second Schedule. Therefore, the Lok Ayukta has the authority to decide such issue.

7. Therefore the claim for interest on account of delay in disbursing the retiral benefits is a claim which arose out of retirement. The Lok Ayukta was held entitled to decide such issues and the interest on delayed payment was allowed. *In S.K.Dua v. State of Haryana & Another, 2008 KHC 4047*, the Apex Court observed that claim for interest on retiral benefits which was not entertained by the Hon'ble High Court under Article 226 was not proper and the High Court ought to have entertained and

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decided the matter on merits. In para 12 it is stated that "to us the plea of the learned counsel for the appellant that the High Court ought to have entered into the merits of the matter which is based on documentary evidence is well taken. In our considered view, the writ petition ought to have been admitted by issuing Rule nisi and ought to have been decided on merits." The High Court, however, dismissed the petition by a cryptic order which reads thus:

"The petitioner seeks only payment of interest on the delayed payment of retiral benefits. We, however, relegate the petitioner to avail of his remedies before the Civil Court, if so advised. Dismissed with the above observations."

8. Accordingly, the order of the Hon'ble High Court was quashed and set aside.

9. In the light of the above discussion, it has to be held that claim for interest is entertainable to be adjudicated by this Tribunal.

10. Issue No.2 : It is true that retiral benefits were released by the Government soon after culmination of the proceedings of the two vigilance cases. If the claim of interest is by way of delay certainly this is not a case where the applicant could have granted interest. There is no negligence on the part of the Government and when the vigilance cases were dropped, the payment was effected. But if by virtue of any statutory provisions or notification, if interest is payable on the delayed payment of retiral benefits, applicant could certainly claim for interest based on such regulatory provisions. In this connection, we may refer to a notification / guidelines determining the interest payable on delayed payment of retiral benefits issued by the Government of India, Ministry of Personnel, Public



Grievances and Pension, Department of Pension and Pensioners Welfare, New Delhi dated 29.04.2002, a copy of which is made available to us by the learned counsel for applicant during the course of argument. The subject noticed in the O.M dated 29.04.2002 is as follows:

"Sub:- Rate of interest payable on delayed payment of DCRG and rate of interest chargeable on refund of pensionary benefits already drawn, in connection with counting of past service under CCS(Pension) Rules, 1972 and Department of Pension & Pensioners' Welfare O.M.No.28/10/84-PU dated 29.08.1994 as amended from time to time - reg."

In supersession of this Department's O.M No.7/1/93-P&PW(F) dated 25.08.1994 and 31.10.1995, on the above subject, the undersigned is directed to say that the President is now pleased to decide that where the payment of DCRG has been delayed beyond three months from the date of retirement, an interest at the rate applicable to GPF deposits determined from time to time by the Government of India will be paid to retired / dependents of deceased Government servants. As per Clause 3 of the guidelines, the payment of interest on delayed payment of gratuity is, at present, regulated under Rule 68 of the CCS (Pension) Rules, 1972 and the memo goes to say that the payment of gratuity has been delayed due to administrative lapses for no fault of the retiring employee in cases of retirement other than superannuation, the payment of interest may be regulated in the following manner :-

(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 of following the date of retirement vide O.M.No.1(4)/Pen.Unit/82 dated the 10th January, 1983. If the payment of gratuity has been authorized after three months from the date of his retirement interest may be allowed beyond the period of three months from the date of retirement.*

11. Going by the above, interest would be payable on the gratuity after expiry of three months from the date of retirement. Accordingly, we

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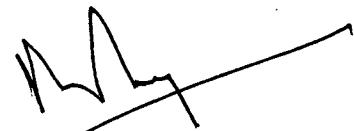
direct that the applicant will be paid interest at the rate of 8% from 01.10.2005 till the actual date of payment , viz., 10.06.2010. The applicant is not entitled for any other reliefs.

12. OA is allowed as above. No costs.

Dated, the 17th August, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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