

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 60 of 2006

Monday, this the 24th day of July, 2006

C O R A M :

HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER


K.G. Vimala,
W/o. P.N. Pankajakshan Pillai,
(Retd. Senior Clerk),
Central Institute of Fisheries
Nautical and Engineering Training,
Kochi - 16,
Residing at "Railview",
Old St. Augustine Road,
Ernakulam, Kochi - 18

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s s u s

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Agriculture,
Department of Animal Husbandry & Dairying,
New Delhi.
2. The Director,
Central Institute of Fisheries
Nautical and Engineering Training (CIFNET),
Kochi - 16.
3. Sri G.H. Manickfan,
Director,
Central Institute of Fisheries
Nautical and Engineering Training (CIFNET),
Foreshore Road, Kochi - 16.
4. P.M. A. Hakeem, Secretary,
Department of Animal Husbandry, Dairying &
Fisheries, Ministry of Agriculture,
Government of India, New Delhi : 110 001.



5. The Senior Accounts Officer,
Pay & Accounts Office, Department of
Agriculture & Co-operation, Fine Arts Avenue,
Ernakulam, Cochin- 682 018.

... Respondents.

(By Advocate Mr. P.S. Biju, ACGSC)

This application having been heard on 20.7.06, the Tribunal on 24.7.06 delivered the following:

O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

Substantial part of relief (release of terminal benefit) having been granted to the applicant, what survives in this case is whether the applicant is entitled to interest on delayed payment.

2. The following list of dates would be sufficient to have a hang of the facts of the case:-

<i>Date</i>	<i>Event</i>
06/07/69	Applicant joined the government service
28-01-82	Granted one promotion
09/08/99	Granted the 2 nd Financial Upgradation in the scale of 5000 - 80
12/02/04	Memo withdrawing the 2 nd Financial upgradation
10/03/04	Interim stay granted in OA 172/2004 of above order
13-12-04	OA 172/2004 allowed by the Tribunal
25-05-05	WP against the above order is dismissed by the Hon'ble High Court
31-08-05	Applicant superannuates
05/09/05	Applicant requests for payment of terminal dues
16-09-05	Respondents stated that since review petition was proposed to be filed before the High Court, instructions from higher authorities not to disburse payment of pension etc.,

<i>Date</i>	<i>Event</i>
30-09-05	Applicant received DCRG, Commuted value of pension, G.P. Fund subscription, provisional pensions for the month of September, 2005. Payment has been worked out on the basis of the pay without taking into account the pay worked out by grant of 2 nd ACP. No encashment of leave was granted on the ground that the excess payment made from 1999 to 2004 would have to be adjusted.
15-11-05	Review petition filed before High Court dismissed.
30-01-06	Present OA filed in which by way of interim relief, respondents were directed to release the balance due to the petitioner.
10/02/06	SLP filed by the respondents against the High Courts order in W.P. And Review Petition dismissed.
20-02-06	Difference in DCRG, etc., released and full leave encashment has also been afforded.

3. As stated at the very outset, the principal amounts having been paid, what is to be decided is whether the applicant is entitled to interest on the delayed payment.

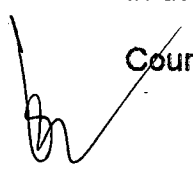
4. The applicant claims interest on the aforesaid delayed payment. His contention has been that the respondents had decided not to pay the amount due to the applicant and there has been delay in filing of Review petition. Even after dismissal of the SLP payment was not made within a reasonable time.

5. Per contra, the respondents have stated that after the retirement of the applicant on 31-08-2005, on 26th September, undisputed amounts, on the basis of pay without taking into account the 2nd ACP have all been paid. This shows the bonafide of the respondents. Again, the balance amounts have been released, after the special leave petition filed before the Apex Court was

dismissed. The withholding of the leave encashment was due to the fact that in case the respondents became vicarious in the W.P. Or S.L.P excess amount paid would have to be recovered and hence, the Leave Encashment was withheld , which was however released on 20-02-2006.

6. The counsel for the applicant submitted that leave encashment worked out to Rs. 1.17 lakhs plus, while the recovery on account of excess payment would work out to Rs 40,000 plus and as such, there was no justification for withholding the entire leave encashment.

7. Arguments were heard and documents perused. Though the general rule is that a retired employee is entitled to interest on delayed payment, see *Vijay L. Mehrotra v. State of U.P., (2001) 9 SCC 687*, wherein the Apex court has held, " 3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement." Where, due to certain reasons beyond the control of the respondents, delay has occurred, (e.g when there has been a dispute about fixation of pay) whether the government servant is entitled to interest on delayed payment or not came up before the Apex Court in the case of *State of Haryana v. D.L. Uppal, (1996) 2 SCC 344* : The Apex Court in that case has held as under:



"2. We have heard counsel on both sides. This appeal by special leave arises from the Order of the Division Bench of the Punjab and Haryana High Court made in CWP No. 8687 of 1994 on 25-7-1994. The respondent had retired on 31-1-1994 and he claimed his pension and since his pension has not been paid, he invoked the jurisdiction of the High Court. In the impugned order, the High Court has directed to pay to the respondent the gratuity with 12% interest thereon within one month from the date of judgment. It further directed to determine the pension of the respondent on the basis of the emoluments last drawn by him which would be subject to the final decision that may be made in regard to the actual scale of pay to which he is eligible on the basis of which pension may be computed. Arrears paid would be adjustable thereafter. Accordingly, direction was given to pay the pension with interest at the rate of 12% p.a. Thus, this appeal by special leave.

3. We issued notice only to see that when the dispute as regards the computation of pension is pending, how the liability could be fastened with interest for non-fixation of the pension. Mr Pankaj Kalra, learned counsel appearing for the respondent has stated that the respondent's entitlement is to be computed on the basis of the last drawn scale of pay as found by the High Court which would be adjusted after the fixation of pay. According to the learned counsel, even fixation of pay has been correctly done. Therefore, there is inaction on the part of the State in computing the pension payable to the respondent. He further contends that persons similarly situated are being paid pension while the same is being denied to the respondent. It is contended by the appellants that the scale of pay was provisionally fixed and this is the matter under consideration. Until it is decided, the State is unable to determine the pension payable to the respondent. Under these circumstances, there is no slackness on the part of the State in determining the pension payable to the respondent.

4. Having considered the respective contentions, we are of the view that the High Court's view is not correct. So long as the scale of pay to which the respondent is entitled has not been determined, necessarily the State Government cannot fix the pension and that is the matter now pending decision in the High Court. No doubt, specifically no reference is made to the respondent before fixing the scale of pay and the action of the other subordinates has been impugned by the State.

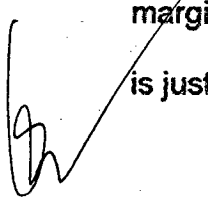
5. Under these circumstances, the order of the High Court is reversed. The appellants are directed to compute the pension on the undisputed scale of pay and pay the same within a period of



two months from the date of decision. It would be subject to the decision in the pending cases. The State is directed to decide within six weeks from the date of receipt of a copy of this order. The State is also directed to release the gratuity payable to the respondent within four weeks from today.

6. The appeal is allowed. No costs."

8. In the case in hand, the respondents cannot be blamed for non payment of certain terminal dues they were prosecuting the Writ petition, review petition and the Special leave petition and had these been allowed, there was no question of payment of any amount over and above the payments made in September, 2005, save some amount of leave encashment. As regards withholding of leave encashment, the respondents have stated that the same was keeping in view the contingency of recovery of the excess pay granted to the applicant from 1999 to 2004. The counsel for the applicant, however contended that even if such a provision was to be made, that should not have exceeded the amount of so called excess payment which, as per calculation worked out to Rs 40,000 plus, while the leave encashment amounted to Rs. 1.17 lakhs. True,. The respondents could have accordingly released the leave encashment withholding an amount approximately equal to the excess payment made. Since the respondents have not done so, cannot mean that they had any deliberate intention to withhold the payment. It must be noted that the respondents as early as 26-09-2005 released major portion of the amount. Thus, keeping in view the decision of the Apex Court in the aforesaid case of D.L. Uppal (supra) the marginal delay occurred in payment of the balance amount due to the applicant is justified.



9. As the applicant has already received the principal amount, the OA has become infructuous in respect of that relief. The applicant is not entitled to any interest as claimed by him.

(Dated, the 24th July, 2006)



K B S RAJAN
JUDICIAL MEMBER

cvr.