

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 96 of 2006

Monday, this the 18th day of June, 2007

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

P. Lakshmanan,
S/o. Late P.C. Raman Nair,
'Parvathi', Vengara Vayal,
Chirakkal, Kannur. ... Applicant.

(By Advocate Mr. K.P. Dandapani)

v e r s u s

1. Union of India represented by
P.C.D.A. (Pension),
Draupadi Ghat, Allahabad : 211 014
2. Joint Secretary (Trg. & C.A.O.),
Ministry of Defence, C-II, Hutmants,
Delhousie Road, New Delhi : 110 001
3. The Director,
Combat Vehicle Research &
Development Establishment, Avadi, Chennai
4. The Chairman,
Cochin Port Trust, Cochin. ... Respondents.

[By Advocate Mr. Sunil Jose (R1-3) & M/s. Menon & Pal (R-4)]

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

"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court."

Union of India v. Justice S.S. Sandhawalia, (1994) 2 SCC 240

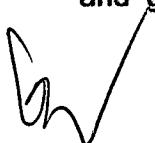
2. The question involved in this OA is whether the applicant is entitled to interest on the terminal benefits paid to him by the first respondent for the



services rendered in the office of 2nd and 3rd respondent.

3. Facts capsule: The applicant joined the office of the 2nd respondent as Technical Assistant on 14-12-1970. He was confirmed in the said post in 1975. He, having been selected to the post of Senior Scientific Assistant (a post higher than Technical Assistant) in the office of Combat Vehicle Research and Development Establishment (CVRDE) on deputation, the applicant joined that office in that capacity on 27-02-1978. Lien in the office of second respondent was retained.

4. The applicant, while working at CVRDE, was selected as System Analyst in the New Mangalore Port Trust (NMPT) where he joined on 28-07-1983. The applicant having exercised his option to have his past services rendered in the 2nd respondent's office counted for the purpose of terminal benefits in the NMPT, correspondence took place between the two Institutions for passing suitable orders by the 2nd respondent under the provisions of the extant order as available prior to the notification of Annexure A-2 order dated 28-10-1984. The provisions that governed the counting of past services and grant of pro rata pension in respect of cases involving such move anterior to 28-10-1984 were contained in OM dated 8th April, 1976. Accordingly, the 2nd Respondent had issued Annexure A-3 order dated 28th April, 1997 as per which, vide para (ii), "on his permanent absorption in NMPT, Shri P. Lakshmanan shall be eligible for pro-rata pension and retirement gratuity based on the length of his qualifying service under the Govt. of India till the date of his permanent absorption in NMPT as admissible under the rules applicable to officers of the Central Civil Services in force .." Thus, the 2nd respondent calculated the pro rata pension and gratuity for the period from 14-12-1970 to 28-07-1983 and informed the



Cochin Port Trust where the applicant at that time serving, for furnishing a pre-receipted contingent bill for the amount so calculated so that the amount could be remitted to that organization or the NMPT as the case may be. Order dated 28-10-1998 (Annexure A-4) refers. The Port Trust Authorities promptly rendered the necessary contingent bill vide Annexure A-5 communication dated 21-01-1999 and requested for early credit of the amount in question. As nothing happened at the end of the 2nd respondent, the Port Trust again sent an expeditor vide Annexure A-5(a) communication dated 18-10-1999. Respondent No. 2 maintained only sphinx silence which forced the Port Trust to again send 3 reminders one in April and another in October, 2000, vide Annexures A-5 (b) and (c) respectively. The second respondent in their own leisure as late as 12th July, 2001 informed the first respondent, vide Annexure A-6 communication for issue of necessary cheque in favour of the F.A & C.A.O. Cochin Port Trust. Request was made therein "to accord PRIORITY". Now perhaps it was the turn of the first respondent to maintain silence in the same style as the second respondent hitherto maintained and the Cochin Port Trust was forced to perform the duty of 'morning alarm' periodically. Annexure A-6 DO to PCDA(P) dated 31st October, 2002, and Annexure A-7 DO dated 27-02-2003 addressed to the 2nd respondent, with copy to the office of the first respondent refer. In response to the latter communication, by a comprehensive communication, office of the 2nd Respondent requested PCDA(P) i.e. the first respondent, vide Annexure A-8 letter dated 6th August, 2003 to do the needful. It is stated that on the same lines, the Cochin Port Trust also addressed a communication to the first respondent on 18-12-2003. But there had been absolutely no response from the first respondent. Result, the applicant was to superannuate from the Port Trust on 31-03-2004 and since the liability of the Ministry of Defence in respect of remittance of pro-rata pension and terminal benefits had not been discharged

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on time, the past service of the applicant rendered in that organization had not been taken into account by the Port Trust Authorities, while working out the terminal benefits to the applicant for the services rendered in Port Trust. This has resulted, as per the applicant in a truncation of his monthly pension from Rs 7,081 to Rs 6,705, a perpetual loss of Rs 376/- p.m. The applicant was as late as in June, 2004 vide Annexure A-9, issued with a PPO to the extent of Rs 6,895/- as gratuity and pension @ Rs 196/- p.m. for the period from July, 1983 to 31-12-1985, @ Rs 428 p.m. For the period from 01-01-1986 to 31-12-1995 and @ Rs 1,334/- from 01-01-1996 to life. The applicant was, however, paid a sum of Rs 2,71,518/- on 20-08-2004 towards arrears of pension from 1983 onwards and in addition is being paid a monthly pension of Rs 1,334/-.

5. The applicant by Annexure A-10 communication requested for interest on delayed payment and also DP for the period from 29-07-1983 to 31(sic 30)-6-2004 vide Annexure A-10. As there was no joy, the applicant moved the Tribunal in OA No. 221/05 and the Tribunal on the submission by the respondents that several representations submitted by the applicant were pending, directed the respondents to dispose of the same and thus disposed the O.A. Order dated 15-07-2005 at Annexure A-11 refers.

6. The 3rd respondent in its reply vide Annexure A1 order dated 7-11-2005 rejected the claim outrightly accusing the applicant that the entire delay was caused by the applicant.

7. The applicant has, thus come up again, challenging the decision by the third respondent and prayed for the following relief(s):-

(I) Call for the records leading to Annexure A/1 and quash the

same as illegal and arbitrary;

(II) Direct the first respondent to grant interest at 18% for the delay of 12 years and 7 months in granting the pro-rata pensionary benefits to the applicant.

(III) Direct the respondents to pay enhanced rate of leave salary on the basis of the revised rate of pay and allowances as it was paid after a period of 12 years and 7 months.

(IV) Declare that the applicant is entitled to be paid interest for the unduly delayed payment of pro-rata pensionary benefits.

8. Respondent No. 3 filed the reply on behalf of respondents No. 1 to 3 and after tracing out the entire background of the case in para 5 of the reply stated, "The applicant ought to have applied for termination of his leave from the Ministry of Defence through proper channel at the appropriate time. Again at para 6 it has been stated "The delay in issue of the above letter after termination of therein occurred due to non adherence of the procedure by the applicant in applying to NMPT, Mangalore & CPT, Cochin and also late submission of the resignation from the post of JCB, Ministry of Defence, where his leave was kept. .. The respondents are not responsible to the delay caused by the act of the applicant himself." At certain other places also in the counter, the respondents have thrown the entire blame upon the applicant and contended that the applicant had not come up with clean hands before the Tribunal. As regards non payment of DP, it has been contended that as per the provisions of Rule 55 (a) (ii) of the CCS(Pension) Rules, DP, while a pensioner is re-employed in Central Government or State Government etc., is not admissible. The applicant has filed his rejoinder reiterating the contentions raised in the OA.

9. Counsel for the applicant has taken the Tribunal through the



correspondence and argued that the entire delay is on the part of the respondents. Accordingly, the counsel submitted that the applicant is entitled to interest on delayed payment of pension.

10. Counsel for the respondents reiterated the contents of para 5 to 11 of the reply.

11. Arguments were heard and documents perused. At the very outset, the argument of the respondents that the applicant was to be blamed for the delay in the entire matter has to be summarily rejected, for, once the applicant has exercised his option to count the past services for pension purposes in the new organization, his job is over and thereafter, it is the job between the second respondent and the Port Trust Authorities. In so far as the claim to the DP for the period from 1983 to 2004, the same too has to be rejected summarily, since, as per the extant rules, when a person is reemployed, and when he is paid dearness allowance, dearness relief is not available with the pension. The question for consideration is restricted whether there was any due from the government and if so from which date and whether there had been any delay in making the payment to the applicant. If it is established that an amount legally due to the applicant was not paid to him, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court, as held in the case of Justice S.S. Sandhawalia, referred to at the very beginning of this order.

12. At the time of switching over to the Port Trust, the applicant had two options, (a) to opt for pension and gratuity for the services rendered in the Ministry of Defence and (b) to have the past services counted along with the

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service in the new organization. Had he chosen the first option, his entitlement to pension etc., as has now been paid by the first respondent would have become due at that time itself. The applicant had chosen only the latter. There was enough time for the Respondents No. 1 to 3 to process the case for the same and initially, as early as in 1997 necessary orders have been passed, vide Annexure A-3 and Annexure A-4. The Port Trust has done its part of the job promptly by furnishing pre-receipted contingent bill in 1999 itself and it was expected of the second respondent to ensure that the amount payable by it was sent to the Port Trust. This was not done even till 2003 and thereafter. This resulted in the applicant's past services not being counted along with services in the Port Trust. Consequence thereof is that the applicant became entitled to the payment of pension for the services rendered in the Ministry of Defence for the period from 14-12-1970 to 28-07-1983. But, though the amount of pension became due from 1983, since the applicant did not opt for pension and was interested only in the counting of past service, his entitlement for pension etc., actually became due only from the date his past services could not be taken into account on account of non remittance of the pro rata pension and Gratuity. For, had the authorities acted even as of March, 2004 in remitting the amount, the Cochin Port Trust would have entertained the same and counted the past services of the applicant for the purpose of payment of pension. In that event, there was no due from the Government but the applicant would have got a hike in pension, as per his calculations (assuming the same was calculated correctly) and the difference in pension would be recurring Rs 376/- (may be even more if increase in DP on periodical basis is taken into consideration). Though this may be a loss to the applicant, what is to be seen is whether there is net loss to the applicant. Perhaps the answer is 'NO'. For, the applicant might lose Rs 376/- but he is enjoying the monthly pension of Rs 1,334/- per month from 01-01-



1996 plus corresponding increase in the DP. To that extent the respondents are right in holding that there is no loss to the applicant. Rather it was a blessing in disguise to the applicant that his total pension from two sources is more than what he would have drawn if the past services were counted.

13. Notwithstanding the above, two aspects are now to be viewed. One is it is established that pension for the period of service that the applicant had rendered in the Ministry of Defence is legally due and the same is with retrospective effect from 1983. However, this entitlement became due only after 31-03-2004 for till then there was a scope of the pro rata pension etc., being remitted to the Cochin Port Trust. Thus, the amount due to the applicant which had been paid to him on 20th August, 2004 ought to have been disbursed to the applicant within a reasonable period, say one month or six weeks from 01-04-2004. This had not been done. There has been a delay of four months plus in this regard. Thus, the applicant is entitled to interest on the delayed payment for a period of at least 3 months. Secondly, what is the extent of loss to the exchequer caused due to the above delay in remittance of pro rata pension by Ministry of Defence to Cochin Port Trust? Had the amount worked out initially vide Annexure A-4(2) i.e. Rs 40,123/- towards lumpsum computation of pension plus Rs 6,895/- being retirement gratuity totalling to Rs 47,018/- been remitted even by early 2004, there would not have been a perpetual liability of payment of pension to the applicant as is being done now. The extent of burden to the exchequer which should have been avoided, is already a sum of Rs 2.71 lakhs minus Rs 47,018/- which with perennial further liability by way of monthly pension @ Rs 1,334/- has been caused purely on account of delay in remitting the amount of Rs 47,018/- to the Cochin Port Trust. In addition, as the applicant is entitled to some interest on delayed



payment of pension etc., officers responsible for this situation should therefore be proceeded against, at the office of the first respondent for failure to take due action on receipt of Annexure A-8 DO from CAO to PCDA(P). Of course, this amount would have been certainly due had the applicant sought pension for the services rendered under Respondents No. 2 and 3. While this payment could, to a certain extent, be justified, there is no justification in not releasing the pension due to the applicant on time. For this purpose, it is the erring officers in Respondent No. 1 who are responsible for such delay in payment of the terminal dues to the applicant causing unnecessary burden upon the exchequer. It is appropriate to be reminded of the golden words of the Hon'ble Apex Court through Hon'ble Justice R.C. Lahoti, as His Lordship then was in the case of Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan, (2003) 1 SCC 197, wherein, it has been observed:

3. An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved nine.

14. The delay cannot be inadvertent in this case, unless so proved. If the delay is due to the negligence or lack of devotion to duty on the part of the concerned officers, held the Apex Court in the case of Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243,

"11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good in discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and

agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries".

15. The above law applies to the instant case in all its four square. There it was compensation and here it is perpetual liability and interest payable to the applicant for delayed payment. For, interest is also in a way a compensation only as observed by the Apex Court in the case of **Ghaziabad Development Authority v. Balbir Singh**, (2004) 5 SCC 65 wherein the Apex Court has held as under:-

"A Division Bench of the High Court of Punjab speaking through Tek Chand, J. in CIT v. Dr Sham Lal Narula, thus articulated the concept of interest: (AIR p. 414, para 8) :

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'8 . The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. Interest in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, interest is understood to mean the amount which one has contracted to pay for use of borrowed money. ... In whatever category interest in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable.' "

16. In view of the above discussion, the OA is disposed of with the following directions:-

(a) It is declared that though the applicant was paid pension from 1983, since he did not opt for such pension initially but chose to have the period of past service counted in the Port Trust, his entitlement to pension practically crystallized only w.e.f. 01-04-2004. As such, allowing a cushion of 6 weeks for effecting payment, the applicant is entitled to interest on delayed payment of Rs 2,71,518 only for a period of three months @ 9% per annum, which shall be paid by respondent No. 1 to the applicant within a period of six weeks from the date of communication of this order.

(b) Respondents No. 1 shall investigate the matter with a view to ascertaining at what level the delay in processing the case of the applicant for remittance of pensionary benefits had taken place from 6th August 2003 onwards and on fixing the responsibility upon the erring officer and if proved, the amount paid to the applicant as interest be recovered from the erring individual, in addition to any other penalty the Disciplinary Authority may choose.

17. No costs.

(Dated, the 18th June, 2007)



DR. K B S RAJAN
JUDICIAL MEMBER

CVR.