

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.N.104/06

Wednesday this the 15th day of November 2006

C O R A M :

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

N.Wilson,
S/o.Nallamuthu,
Assistant Development Commissioner (Retd.)
Cochin Special Economic Zone,
Ministry of Commerce and Industry,
Kakkanad, Kochi – 37.
Residing at H.No.TMJ-VII-706,
Neitheli Nagar, Mavelipuram,
Kakkanad, Kochi – 30.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the Secretary to the Government of India, Ministry of Commerce and Industry, New Delhi.
2. The Development Commissioner, Cochin Special Economic Zone, Ministry of Commerce and Industry, Kakkanad, Kochi – 37.
3. Sri.M.S.N.Warrier, Accounts Officer, Cochin Special Economic Zone, Ministry of Commerce and Industry, Kakkanad, Kochi – 37.
4. Sri.Viswanathan, Assistant Development Commissioner, (Administration), Cochin Special Economic Zone, Ministry of Commerce and Industry, Kakkanad, Kochi – 37.

...Respondents

(By Advocate Mr.S.Abhilash,ACGSC)

This application having been heard on 15th November 2006 the Tribunal on the same day delivered the following :-

.2.

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicant while working as an Assistant Development Commissioner in scale Rs.6500-10,500/- retired from service voluntarily on 31.5.2005. He is aggrieved by the long delay on the part of the respondents in settling his retirement benefits. The facts of the case are :-

2. The applicant was substantively holding the post of Personal Assistant in the office of the Commander, Coast Guard District Head Quarters, Vishakapatnam. While so he was selected and appointed as an Assistant Development Commissioner (on deputation basis) in the Cochin Special Economic Zone. Due to certain family problems he had to take voluntary retirement and the respondents had accepted his request for voluntary retirement vide order at Annexure A-1 dated 30.5.2005. The applicant had signed his pension papers in June, 2005 and since then had been approaching the respondents by making personal requests for payment of his retirement dues. He had submitted representations at Annexure A-2, Annexure A-3, Annexure A-4 and Annexure A-6 at different points of time. After such repeated representations the retirement gratuity was paid to him but none of the other payments have been effected compelling him to file this O.A.

3. The respondents have filed a detailed reply statement, according to which, the pension papers of the applicant were forwarded to RPAO, Chennai on 15.6.2005. The leave encashment bill was also forwarded to RPAO on 6.7.2005. The application for GPF was submitted by the applicant only on 24.10.2005 and the same was forwarded to his parent

.3.

office on 25.10.2005 and the Pension Payment Order for pension and commutation of pension was sent by the RPAO on 20.1.2006 to the CPAO, New Delhi and that the application for CGEGIS was submitted by the applicant only on 3.1.2006. The reasons adduced by the respondents are that the delay in processing the payment of the above items took place because the correctness of the pay fixation of the applicant as on 1.1.1996 as per the revised pay fixation on the basis of the 5th Central Pay Commission was not available and the contents of such pay fixation was not noted in the service book. Since the papers have to be referred to the parent department for filling up these gaps, the bills could not be processed in time and hence there has been some delay. According to the respondents the following payments had been made to the applicant as per records.

1. DD No.251778 dated 1.3.2006 for Rs.48,990/- on account of leave encashment was received from RPAO, Chennai on 2.3.2006 and the same was handed over to the applicant on the same day.
2. DD for an amount of Rs.1,28,948/- towards DCRG was handed over to the applicant on 16.1.2006.
3. The applicant has submitted the GPF application for final payment only on 24.10.2005 and the same was forwarded to his parent office on 25.10.2005.
4. RPAO, Chennai has issued Pension Payment Order and Authority for Commutation of Pension relating to the applicant.
4. When the matter came up today, counsel for the applicant submitted that all the payments as mentioned above have been made and the only prayer that remains to be settled is the payment of interest at the rate of 9% per annum from 1.12.2005 up to the date of full and final payment of the benefits. Counsel also brought to my notice the instructions at Annexure A-8 dealing with the guidelines for determining delay in payment

.4.

of gratuity in cases other than superannuation and payment of interest therefor. Para 2 (ii) thereof deals with 'retirement other than on superannuation', according to which, "where the payment of gratuity in such cases is delayed beyond six months from the date of retirement, interest should be paid for the period of delay beyond six months from the date of retirement." Regarding the delay in payment of pension and interest on the commuted value of pension, though the rules do not specifically provide for payment of interest on delayed payment there have been various legal pronouncements in this regard. The following cases have been cited by the counsel for the applicant (1) Dr.Uma Agarwal Vs. State of U.P. & Anr in 1999 SCC (L&S) 742 (2) R.D.Rao Vs. Chairman and M.D., Punjab National Bank & Ors in JT 2000 (10) 368 and (3) O.A.679/06 (K Dharmarajan Vs. Union of India dated 22.6.2006 decided by Hon'ble C.A.T., Ernakulam Bench).

5. As regards the delayed payment of leave encashment, the respondents have submitted that the DoPT in their Note dated 2.8.1999 have clarified that there is no provision under CCS (Leave) Rules for payment of interest. In the matter of CGEGIS also, no interest is payable on account of delayed payment vide GOI decision (5)(g) below Rule 68 of CCS (Pension) Rules 1972.

6. Applicant's voluntary retirement was approved on 31.5.2005 and the applicant had submitted his pension papers in June, 2005. By the respondents order at Annexure A-1 itself it is clear that the applicant could not apply for commutation of pension before the expiry of the notice period of three months. While conceding that the respondents could not have

8

taken anticipatory action for settling the pension of the applicant as it was not a case of retirement on superannuation, still there is no satisfactory explanation for not having finalised the pension papers of the applicant even within a period of six months reckoned from June, 2005. The only explanation that the respondents are submitting is that the service book of the applicant was not in a complete shape and therefore the matter was taken up with the parent department and they also seek to put the blame on the applicant. The service book is kept in the custody of the respondents and the applicant cannot be blamed for not ensuring that the entries in the service book are correctly recorded. Since the applicant had spent five years on deputation in the respondents' office there was ample time for the respondents to ensure that his service book was updated. It is also noticed that these defects in the service book were pointed out by the PAO at a later stage whereas these should have been obvious to the respondents themselves while processing the pension papers. Though the respondents have now stated that his pension amounts were released/sanctioned by letter dated 16.1.2006 it is obvious that even when the applicant approached this Tribunal on 21.2.2006 he had not received the amounts. The position of law in this regard has already been exhaustively dealt with in our judgment in O.A.679/05 which relied on the ratio of the Hon'ble Apex Court order in the case of Dr.Uma Agrawal Vs. State of U.P & Anr reported in 1999 SCC (L&S) 742 which reads as under :-

"This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this

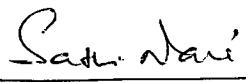
.6.

order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case."

7. Regarding gratuity, rule position brought to our notice during the hearing is very clear. Note (ii) under Rule 68 of the CCS (Pension) Rules provides that interest shall be paid for the period of delay beyond six months. The contentions of the respondents that there has been no delay warranting payment of interest are unsustainable. As regards, delayed payment of leave encashment and CGEGIS, I agree that there is no provision under the rules for payment of interest.

8. In the light of the above rule position and the settled law, I consider that the applicant is eligible for payment of interest for the delay which has occurred from 1.12.2005 to the final date of payment in respect of gratuity, pension and commuted value of pension which shall be paid at the rate of 9%. Accordingly, I order so. The payment shall be made to the applicant within a period of three months from the date of receipt of a copy of this order. The O.A is allowed. No order as to costs.

(Dated the 15th day of November 2006)



SATHI NAIR
VICE CHAIRMAN