

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 107 of 2005

wednesday, the the 25th day of April, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

P.K. Zachariah,
S/o. Late P.K. Kurlan,
Forest Working Plan Officer In the
cadre of Deputy Conservator of
Forests, Kollam (retd.), residing at
Plackiel Mysore House, Natakam P.O.,
Kottayam ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr. With Mr. Antony Mukkath)

v e r s u s

1. State of Kerala, represented by its
Chief Secretary, Government Secretariat,
Thiruvananthapuram.
2. Principal Secretary,
Finance (Pension A) Department,
Secretariat, Thiruvananthapuram.
3. Principal Secretary,
Forest and Wild Life Department,
Government Secretariat,
Thiruvananthapuram.
4. Principal Chief Conservator of Forests,
Forest Headquarters,
Vazhuthacaud, Thiruvananthapuram.
5. Accountant General (A&E),
Kerala, Thiruvananthapuram : 695 039
6. Union of India, represented by its
Secretary, Ministry of Environment & Forests,
Parivarayan Bhavan, CGO Complex,
Lodi Road, New Delhi : 110 003 ... Respondents.



(By Advocate Mr. R. Premsankar, GP [R1-5] and Mr. TPM Ibrahim Khan, SCGSC [R-6]

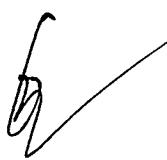
ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The following statement in the reply filed by the respondent No. 1 converges the extent of dispute in the O.A.

"3. It is humbly submitted that immediately on receipt of the order of this Tribunal, this respondent had taken action on a priority basis to comply with the order of this Tribunal i.e. to arrive at a decision on the entitlement of Interest on various terminal benefits by the applicant. Rule 19(A) of the AIS (DCRB) Rules, 1958 governs Interest on delayed payment of gratuity. The said Rule is extracted below:

'19A. Interest on delayed payment of Gratuity or Death-cum-Retirement Gratuity : 19A(1) If the payment of gratuity or death-cum-retirement gratuity has been authorised after three months from the date when its payment became due, and it is clearly established that the delay in payment was attributable to administrative lapses, interest at the rate prescribed by the Central Government from time to time shall be paid on the amount of Gratuity or Death-cum-Retirement Gratuity in respect of the period beyond three months.'

4. The above rules provides for the payment of Interest on the DCRG amount alone subject to certain conditions mentioned therein. The said rules does not provide for payment of Interest on any other terminal benefit. The Government of India after examining the question of grant of interest on the withheld amount of gratuity and commutation of pension during the pending of departmental proceedings against retired All



India Service Officers, has issued guidelines in the matter - vide R-1 letter No. 25014/30/99-AIS(II) dated 7.8.2000. Referring to Rule 19(A) of the AIS (DCRB) Rules, 1958, the Government of India has stipulated that if the payment of Gratuity has been delayed because of administrative lapse by more than three months from the date when its payment became due, interest at the rate prescribed by the Central Government from time to time shall be paid on the amount of Gratuity in respect of the period beyond three months. Thus, the applicant is entitled to interest only on the amount of DCRG for the period beyond three months when it became due. He is not entitled to interest on commuted value of pension or any other terminal benefit.

5. It is submitted that in obedience to the directions of this Tribunal, the State Government has arrived at a decision that the applicant is entitled to interest on the DCRG amount for the period beyond three months when it became due till the date of sanction for disbursement. He is not entitled to interest on any other item in the light of the rules and guidelines."

2. Though the following is the relief sought for, by virtue of subsequent action, all the claims have been met by the respondents and what is remaining is as to the entitlement or otherwise of interest on the delayed payment of arrears of pay and allowances.

"Main reliefs sought for in the O.A. :

(I) To declare that the applicant is entitled to be placed in the

Junior Administrative Grade and Selection Grade with effect from 1.1.1997 and 1.1.2001 respectively consequent on Annexure A10 order of this Tribunal In O.A. no. 779 of 2000 Ignoring Annexures A7 and A8 which have become non est;

(II) To Issue appropriate direction or order directing the respondents to grant Junior Administrative Grade with effect from 1.1.1997 and Selection Grade with effect from 1.1.2001 to the applicant with full monetary benefits flowing therefrom and to review and revise his pension and retiral benefits on that basis;

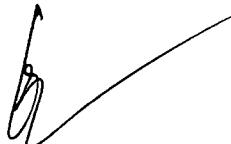
(III) To Issue appropriate direction or order directing the respondents to disburse the arrears of pay and allowances due to him consequent on his placement in the Junior Administrative Grade and Selection Grade within a time frame that may be fixed by this Tribunal with interest from the date the amounts became due till the date of actual payment.

(IV) To Issue appropriate direction or order directing the respondents to finalise the departmental proceedings commenced against the applicant by serving Annexure A-13 memo of charges dated 27.08.2001 expeditiously and at any rate within a time frame that may be fixed by the Tribunal;

(V) To Issue appropriate direction or order directing the respondents to disburse full revised gratuity amount and the revised commuted value of pension amount taking into account his placement in the JAG and Selection Grade and arrears of pension with interest from the date on which the amount became due and the date of actual payment."

3. Senior Counsel for the applicant has submitted that now that the delay in payment of the dues to the applicant attributable to the respondents in toto having been admitted by the respondents, in view of the following decisions, the applicant is entitled to interest on delayed payment of various dues notwithstanding the fact that there is no specific provision in the A.I.S. Rules:-

(a) ***State of Kerala v. M. Padmanabhan Nair, (1985) 1 SCC 429 ,*** wherein the Apex Court has held as under:-



1 . *Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.*

2 . *Usually the delay occurs by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.*

(b) ***Uma Agrawal (Dr) v. State of U.P., (1999) 3 SCC 438*** , wherein the Apex Court has held as under:-

5. *We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. 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 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.

6. *The case before us is a clear example of departmental delay which is not excusable. The petitioner retired on 30-4-1993 and it was only after 12-2-1996 when an interim order was passed in this writ petition that the respondents woke up and started work by sending a special messenger to various places where the petitioner had worked. Such an exercise should have started at least in 1991, two years before retirement. The amounts due to the petitioner were computed and the payments were made only during 1997-98. The petitioner was a cancer patient and was indeed put to great hardship. Even assuming that some letters were sent to the petitioner after her retirement on 30-3-1993 seeking information from her, an allegation which is denied by the petitioner, that cannot be an excuse for the lethargy of the Department inasmuch as the Rules and instructions require these actions to be taken long before retirement. The exercise which was to be completed long before retirement was in fact started long after the petitioners retirement.*

7. *Therefore, this is a fit case for awarding interest to the petitioner. We do not think that for the purpose of the computation of interest, the matter should go back. Instead, on the facts of this case, we quantify the interest payable at Rs. 1 lakh and direct that the same shall be paid to the petitioner within two months from today.*

(c) *Badrinath v. Govt. of T. N., (2000) 8 SCC 395*, at page 436 : wherein the Apex Apex Court has held that the legal effect of dropping the proceedings would be all the consequential benefits.

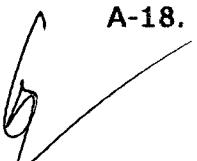
(d) *Narayana Menon vs. State of Kerala, 1978 K.L.T. 29*, para 15 - wherein Hon'ble High Court of Kerala has held as under :

"15. The foregoing discussion with reference to the pronouncement of the Supreme Court and the Gujarat, Allahabad and Mysore High Courts clearly establish that a Government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his. The Government's plea that the petitioner was given only a notional promotion is not sustainable in law. What the petitioner got was not a notional promotion and it is wrong to call this promotion as "notional" in the context of the peculiar facts and circumstances of this case. Notional promotion is one which a Government servant gets under particular exigencies of situation, which he cannot claim as of right.

Here the petitioner is entitled as of right to get his promotion from 1.4.1955 and therefore his claim for arrears of salary and other material benefit cannot be denied to him on the plea that what was given to him was only a notional promotion and the policy of the Government is not to give the arrears of salary in such cases. It is no argument to say that many have been promoted ignoring the petitioner's claim.

I, therefore, hold that the petitioner is entitled to succeed. I quash Ext. P7. In Ext. P6, the details of the amounts due after deducting the actual amounts received are given. The Government will verify the actual amounts payable to the petitioner. The Government will pass orders of payment within 6 months after receipt of this judgement. Parties are directed to bear their respective costs."

4. The matrix of minimal facts necessary to highlight the limited controversy may lay bare the crucial issue we have to decide. OA 779/2000 was filed by the applicant (along with four others) challenging two orders of the respondents whereby the appointment of the applicants to the Indian Forest Services was rescinded. By Annexure A-10 order the OA was allowed and the orders impugned therein were quashed and set aside. As a consequence to the above order, the applicant claimed through this OA his promotion to the Junior Administrative Grade w.e.f. 01-01-1997 and selection grade w.e.f. 01-01-2001. Consequential relief asked for included disbursement of arrears of pay and allowances due to him with interest from the date the amounts became due till the date of actual payment. In fact the applicant stood superannuated way back on 31-08-2001 and two disciplinary proceedings were then pending. One was dropped vide order dated 25-09-2002 while the other vide Annexure A-13 charge memo came to be dropped by order dated 31-10-2006, vide Annexure A-18. Payment of salary and fixation of pension and payment of balance of



other terminal benefits have all been paid to the applicant sometimes in October, 2006, subsequent to the dropping of the penalty proceedings. The respondents, referring to Rule 19A of the A.I.S. (DCRG) Rules, has also accepted to pay interest. Liability to pay interest arises if the delay in making the payment is attributable to the department. However, unlike interest on delayed payment of DCR Gratuity, as there is no specific statutory provision for payment of interest on other dues, the respondents have declined to pay any interest and it is this claim that is now for consideration.

5. Counsel for the applicant submitted that the decisions relied upon by him as stated above would go to show that when there is a delay in making the payments due to the applicant and the delay is attributable solely to the respondents, there is no escape from payment of interest. Further it has been argued that when the proceedings are dropped, the legal effect is that the applicant is entitled to all consequential benefits. As regards non availability of any statutory provisions, the applicant relied upon Rule 58 of the CCS(Pension) Rules, 1972 and contended that the same mandated the government to prepare the pension papers months in advance only with a view to ensuring that there is no delay in processing the pension papers on time. And, as per the AIS (DCRG) Rules, provisions available in such rules could be adopted in respect of matters not specifically dealt with in the AIS Rules.

6. Arguments were heard. The only question is whether the delay in making the payment of arrears of pay or for that matter the pension arrears

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would make the government liable to pay interest.

7. Admittedly, there have been certain departmental proceedings pending against the applicant at the time of retirement. This had necessitated the government to pay only provisional pension to the applicant. For working out the extent of provisional pension admissible to the applicant, the period of qualifying service etc., was to be worked out. The period of eight months provided for in the pension Rules is meant only to have the records verified to arrive at the qualifying service and in the case of the applicant, the same had been worked out well on time, as could be evidenced from Annexure A-14 order dated 23-10-2001. Thus, there is absolutely no delay in processing the pension papers. The applicant had also been paid the provisional pension. Though the proceedings were initiated in 2001, the same could be ultimately dropped only in 2006. Contention of the senior counsel for the applicant is that even the very appointment of the Inquiry Officer and the Presenting Officer was made only after filing of the OA and thus, there has been unexplained delay in proceeding further with the departmental proceedings and this delay is thoroughly attributable to the respondents consequent to which, there has been the delay in finalization of proceedings. This delay telescopically delayed promotion to the Junior Administrative Grade, the Selection Grade and the same resulted in delayed payment of arrears of pay and allowances and thus, for such delayed payment, the respondents are liable to pay interest. The question is whether this contention could be accepted.

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8. In the decisions cited and heavily relied upon by the senior counsel for the applicant, the delay was unwarranted. Unlike the same, in the instant case, there being certain disciplinary proceedings pending against the applicant, it cannot be stated that the delay in payment is unwarranted. The counsel contended that after initiation of the proceedings, the respondents had been hibernating for four years till the OA had been filed, whereafter only the respondents could appoint Presenting Officer and Inquiry Officer and ultimately, the proceedings ended only in dropping of the charges. The case of the applicant is that the delay in appointment of the Presenting Officer and Inquiry Officer after four years of issue of charge sheet is unexplained. Even the applicant had come up before the Tribunal with a prayer for early conclusion of the proceedings only in 2005 and not earlier, though, under Sec 20 of the A.T. Act, 1985, after six months of the statutory representation, if no reply is received, the applicant could approach the Tribunal. Here, the explanation to charge sheet having been given in 2001, the applicant chose not to approach the forum after six months but only in 2005, for an early conclusion of disciplinary proceedings. His claim for promotion, arrears of pay and allowances and interest was independent of the above said relief sought and on the basis of consequence of the earlier order in OA No. 779/2000. Thus, the applicant himself did not correlate delay in payment of dues to the Inquiry proceedings at the time he had preferred the OA. Though there has been delay in appointing the Presenting Officer and the Inquiry Officer, it is trite law that no amount could have been released to the applicant during the pendency of the proceedings. It could be paid only after the conclusion of the proceedings and



there has been as such no delay in payment of the dues to the applicant, as the applicant himself has admitted that arrears have been paid.

9. In the case of Badrinath (supra), where as a consequence of dropping of the proceedings, certain reliefs have been granted by the Apex Court, there is no order as to payment of interest. The judgment in the said case reads as under:-

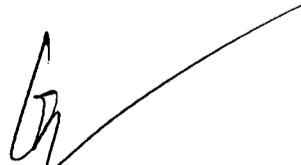
"The appellants case is, in our view, no less inferior to the cases of the other officers who were conferred the similar benefit of super-time scale by the State of Tamil Nadu, details of which have been profusely given in the writ petition. For the aforesaid reasons, we quash the punishment of censure, the assessment made by the Joint Screening Committee, the Orders passed by the State and Central Government refusing to grant him super-time scale and in rejecting the appeal of the appellant and we further direct as follows:

In the special and peculiar circumstances of the case, we direct the respondents to grant the appellant the benefit of the super-time scale from the date on which the appellants junior Shri P. Kandaswamy was granted super-time scale. The respondents are accordingly directed to pass an Order in this behalf within eight weeks of the receipt of this order and to give him all consequential benefits, attendant thereto. The said benefits shall also be reflected in his pension and other retiral benefits. They shall be worked out and paid to him within the time aforementioned.

91. The civil appeal is allowed and disposed of in terms of the above directions. We also award costs of Rs. 10,000 in each of the two writ petitions to be paid by the State of Tamil Nadu."

Consequential benefit does not include interest unless specified as such.

(See U.P. v. Gulab Shankar Srivastava, (2005) 9 SCC 682) and 24 ATC.

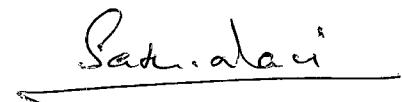


10. Thus, when the proceedings were pending and there is a legal embargo in releasing the terminal benefits or for that matter promotion and difference in pay and allowances arising out of such promotion, the respondents cannot be faulted with in declining to pay interest in respect of other terminal benefits etc., save DCR Gratuity, for which specific provision exists. The applicant has thus, not made out any case for payment of interest on such other payments. Other grievances having been redressed by the respondents, the OA is dismissed. No costs.

(Dated, the 25th April, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CVT.