

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.116/2004.

Wednesday this the 30th day of March 2005.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.Ravindranatha Kurup,
Ex-circle Inspector of Police,
Union Territory of Lakshadweep, now working
as Chief Manager,
C.S. & Investigation Department,
Bank of India, Kolkatta Zonal Office,
5, B.T.M, Sarani, Kolkatta-700001. Applicant

(By Advocate Shri VR Ramachandran Nair)

vs.

1. Union of India, represented by the Secretary to Government of India, Ministry of Home Affairs, Police Department, New Delhi.
2. The Administrator, Union Territory of Lakshadweep, Kavarathy, Via. Head Post Office, Cochin.
3. The Superintendent of Police, Union Territory of Lakshadweep, Kavarathy Via Head Post Office, Cochin. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC (R-1)
(By Advocate Shri S. Radhakrishnan (R.2&3)

ORDER

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant entered service as Sub Inspector of Police under the Union Territory of Lakshadweep on 2.4.1971. He was sent on deputation to serve the Central Bureau of Investigation (CBI for short) and he was relieved from his parent department on 31.8.1977 to join the CBI on deputation as Inspector of Police. In 1984 he was repatriated to the parent department of Lakshadweep. Thereafter, in 1985 he was again relieved from the Lakshadweep Administration to join the Bank of India, Zonal Office at Nagpur. He made a representation (A2) to the 3rd respondent requesting to grant the pensionary benefits and

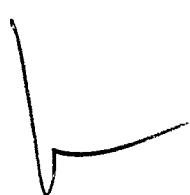
gratuity. The 4th respondent issued A-3 order dated 22.2.1993 sanctioning the pensionary benefits to the applicant. The claim of the applicant is that though the arrears of pro-rata pension for the period from 22.1.1985 to 20.10.93 was sanctioned to the applicant vide order dated 14.5.2002, he has not been given any interest to that amount. Against this, the applicant had earlier filed O.A.508/03 which was disposed of by this Tribunal on 24.6.2003 permitting the applicant to submit a fresh representation and directing the respondents to consider and dispose of the representation in the light of the extant rules on the subject. Accordingly, the respondents have disposed of the said representation vide A-18 order dated 20.9.2003. Aggrieved by Annexure A-18, the applicant has filed this O.A. seeking the following main reliefs:

- I) To call for the records leading up to Annexure A-18 order No.F.No.1/18/76-Estt (POL) dated 20.9.2003 rejecting the claim of the applicant, and quash the same.
- II) To issue a direction to the respondents to pay interest at the rate of 12% per annum for the period from February 1985 till 21.5.2002 on the delayed payment of arrears of pro-rata pension paid to the applicant vide DD No.509236 dated 21.5.2002.

3. The respondents 2 & 3 have filed a reply statement contending that the applicant while working in the Central Bureau of Investigation (CBI for short), was selected for the post of Investigating Officer in Bank of India by order dated 22.11.1984 and was relieved from the parent department, on repatriation from CBI on 21.2.1985 keeping his lien under the Lakshadweep Police Department for a period of two years, which was terminated with effect from 20.1.1987. He was absorbed in the Bank of India with effect from 6.2.1987. The request of the applicant was duly processed in the office of the third respondent and the proposal for pro-rata pension to be paid to the applicant was forwarded to the Accountant General, Kerala by order dated 11.10.1988. For



preparing the proposal for payment of pro-rata pension to the applicant more details were to be obtained from the CBI Office, Kochi. The Accountant General of Kerala by letter dated 24.11.2988 had sought certain clarification and the same was furnished to him only on 26.11.91 after tracing the old records (Annexure R2(b)). Therefore, the delay was caused due to the said reasons beyond the control of the respondents. Considerable time was taken in collecting the required details, which were not readily available in the office of the 3rd respondent. The O.A.1015/97 filed by the applicant before the CAT was disposed of by Annexure A-8 order dated 9.3.1998. While rejecting the claim of the applicant for interest on the delayed payment of commuted value of pension, gratuity and leave encashment on account of limitation, this Tribunal directed that, the applicant be paid interest on the provident fund amount @12% per annum from August 1985 till 7.3.1996. The applicant had not preferred any appeal against A-8 order. To the representation made by the applicant dated 3.1.2000, he was informed by A-12 letter that the period of 15 years prescribed for restoration of pension will count only from the date when the commutation becomes absolute and not from the date of retirement as claimed by the applicant and the commutation factor has been taken corresponding to age on next birthday of the applicant as 47 years during 1993. Hence, the restoration of pension to the applicant will commence with effect from 20.10.2008. The applicant was paid pensionary benefits due to him with effect from July 1993. Arrears due to him for the period from 22.1.1985 to 20.10.1993 was sanctioned by A-13 order dated 14.5.2002 and paid to him by A-14 order dated 24.5.2002. The applicant has made A-15 representation and while it was in process the applicant has filed O.A.508/03 before this Tribunal and the same was disposed of by order dated 24.6.2003 permitting the applicant to file a fresh representation to the 2nd



respondent. Subsequently he made A-17 representation which was also rejected by A-18 order dated 20.9.2003 on the ground of limitation. In the impugned order (A-18) the respondents were made it clear that there is absolutely no rhyme or reason in attributing the delay solely on the respondents. In the impugned order the plea of limitation is high-lighted..

4. Shri R.Prem Chand, learned counsel representing Mr. VR Ramachandran Nair, appeared for the applicant and Shri S. Radhakrishnan learned counsel appeared for R.2&3. The question is whether the applicant is entitled for interest on the delayed payment of pro-rata pension and if so, on which date the benefit could be granted. Learned counsel for the applicant submitted that the delay has been caused due to laches on the part of the respondents in not processing the case of the applicant for getting clarifications and tracing up of old records timely from the CBI wherefrom he was repatriated.

5. I have given due consideration to the arguments advanced by the learned counsel and the material and evidence placed on record. It is brought to my notice that this Tribunal while disposing of O.A.1015/97 by order dated 9.3.98(A8) granted interest only to the amount of GPF. Subsequently, the applicant made a representation (A15) requesting to grant the benefit. When nothing has come up, he finally filed O.A.508/03 which was disposed of by order dated 24.6.2003 with a direction to the applicant to make a comprehensive representation to the 2nd respondent who in turn was also directed to dispose of the same by passing appropriate orders. Pursuant to the direction in O.A.508/03 the applicant has made a representation dated 17.7.03(A-17) and the same was rejected as per A18(1) order stating that, O.A.508/2003 was filed before the Tribunal after



the period of limitation and hence, the representation was also barred by limitation. The main reason for rejecting the representation was that the period of limitation prescribed under section 21 of the AT's Act was over as it is beyond one year and the claim of the applicant cannot be considered since the O.A. itself is barred by limitation. When the O.A. filed by the applicant was considered and disposed of by the Tribunal with a direction to dispose of the representation, it is implied that even if there was some delay in filing the O.A., it has been judicially considered and a direction was given. The respondents cannot question the wisdom of the said decision, since the question of limitation never left open. Thus the reason given in A-18 is not in the true spirit of law and it cannot sustain.

6. The question is whether the claim (main claim) is barred by limitation or not? It is brought to my notice that the applicant was continuously making representations on the issue to the respondents which were not considered and the reason for admitted delay in processing the claim is to be on administrative side. Though repeated representations cannot revive new cause of action, it is also well settled legal position that the administrative delay cannot be taken as a reason for rejection of a claim. In a celebrated decision reported in MR Gupta Vs. UOI (1995 (5) SCALE 29 SC) the Hon'ble Supreme Court has declared that the pension being a right of an employee, not being a gratis or bounty, it is a continuing cause of action and therefore, the delay if any, cannot be taken as a reason for denying the same. Therefore I am of the view that the question of limitation on pensionary matters including payment of interest cannot be said to be barred by limitation. The applicant is entitled to get interest. Then the question comes that, from what date it is to be granted and what would be the rate of interest. On going

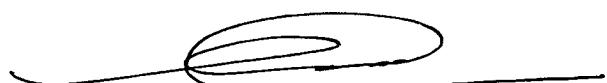


through the proceedings placed on record I find that the pension was processed and finally disbursed the same to the applicant on 24.5.2002. In the representation dated 3.1.2000 and even in O.A.508/03 he had not claimed for arrears till 3.1.2000. Therefore, I am of the view that the applicant will be entitled to the interest only for a period from 3.1.2000 to 24.5.2002. The Hon'ble Supreme Court in Abati Bezba Ruah vs. Dy. Director, Geological Survey of India (2003 AIR CW 1266) held that while calculating the interest the present Bank rate of interest has to be considered as per the mercantile usage and doctrine of equity. The Supreme Court declared that no principles could be deduced nor any rate of interest can be fixed to have a general application. Mercantile usage and doctrine of equity should be applied. Therefore, I am of the view that the present rate of interest i.e. @ 7.5% being given by the Bank can be fixed in this case.

8. In the conspectus of facts and circumstances, I set aside A-18 order to the extent it denies interest and direct the respondents to grant interest @ 7.5% for the period from 3.1.2000 to 24.5.2002 to the applicant on the delayed payment of pro-rata pension within a period of two months from the date of receipt of a copy of this order.

9. O.A. is allowed. In the circumstances, no order as to costs.

Dated the 30th March, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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