

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 151/2011

Thursday, this the 20th day of October, 2011.

CORAM

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

S.Chandran,
(Retired Technical Gr.II/Elec/Electrical Fitter Gr.II)
South Western Railway, Kabakaputhur,
Mysore Division,
Residing at: Nalakkaethu House,
Kuttemperoor.P.O., Mannar,
Alleppey District: 689 623.Applicant

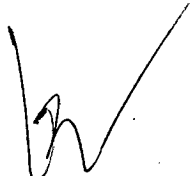
(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager,
South Western Railway,
Headquarters Office, Hubli,
Dharwar District,
Karnataka.
2. The Sr. Divisional Personnel Officer,
South Western Railway, Mysore Division,
Mysore.
3. The Divisional Finance Manager,
South Western Railway, Mysore Division,
Mysore.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 18.10.2011, the Tribunal on
20.11.2011 delivered the following:



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

At the time of final hearing, counsel for the applicant submitted that major part of the grievance being ventilated through this OA has been redressed in that the applicant could receive the terminal benefits but what is to be decided is only the interest part as well as cost.

2. Counsel for the respondent fairly submitted that there is no deliberate delay in settling the terminal dues to the applicant and hence, the respondents be not saddled with cost.

3. In so far as the entitlement to interest is concerned, counsel claimed the same on the basis of the prayer column. The prayer column in this OA reads as under:-

(i) Call for the records leading to the issue of A-1 and quash the same to the extent it fixes the applicant's pension on the basis of the basic pay of Rs.10.930/- as against the actual basic pay of Rs.11,250/- and direct the respondents to refix the applicant's pension and other retirement benefits based on the basic pay of Rs.11,250/- due as on 31.10.2009 and direct further to grant the arrears of pension, retirement gratuity, commuted value of pension, composite transfer grant, leave encashment and arrears of pay and allowances etc forthwith with interest calculated @ 9% per annum from the date from which the arrears fell due, month after month up to the date of full and final settlement of the same;

(ii) Direct the respondents to grant the applicant the benefit of productivity linked bonus for the period of service rendered by the



applicant between 1.4.2009 to 31.10.2009 and direct further to grant interest @ 9% per annum to be calculated with effect from 1.11.2000 up to the date of full and final settlement of the same.

4. It is settled law that when certain payment is due, the same, if withheld beyond the permissible period of retention, person holding the amount is liable to pay interest. The following decisions of the Apex Court are relevant:-

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

"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. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year.

5. The question is as to the rate of interest. In a recent case, In the case of **Clariant International Ltd. v. Securities & Exchange Board of India, (2004) 8 SCC 524**, the Apex Court has held as under:-

The courts of law can take judicial notice of both inflation as also fall in bank rate of interest. The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. Even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable.

6. In **Uma Agrawal (Dr) v. State of U.P., (1999) 3 SCC 438**, 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.**

7. In **Vijay L. Mehrotra v. State of U.P., (2001) 9 SCC 687** the judgment reads as under:-

1. Special leave granted, limited to the question of granting of interest.

2. The appellant retired from service on 31-8-1997. From the response filed by the respondent, it is clear that most of the payments of the retiral benefits to her were made a long after she retired on 31-8-1997. The details of the payments so made are as under:

Sl. No.	Particulars	Amount	paid Date
(i) 11-1997	GPF 90%	Rs 1,80,899.00	27-
(ii) 1998	GPF 10%	Rs 20,751.00	25-4-
(iii) 27-2-1998	GIS	Rs 13,379.00	
(iv) 1998	Encashment of leave	Rs 41,358.00	27-9-
(v) 9-1998	Arrears of pay	Rs 15,495.00	27-
(vi) 1998	Gratuity	Rs 1,09,753.00	5-12-
(vii) 1998	Commuted pension	Rs 20,484.00	5-12-
(viii) 11-1999	Detained amount	Rs 45,000.00	5-

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.**

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e., 31-8-1997 till the date of payments.

5. The appeal is allowed to the above extent.

8. In **Bal Kishore Mody v. Arun Kumar Singh, (2001) 10 SCC 174**,

the Apex Court has stated as under:-

"4. At the time of the hearing of the matter, considering the delay in making payment of retiral benefits, learned counsel appearing on behalf of the respondent State submitted that this Court may pass appropriate orders giving direction to pay interest on the said amount and the State Government would pay the same within one month from the date of the order. He further submitted that appropriate action would be taken against the officer(s) concerned who delayed the payment of retiral benefits. In this view of the matter, we do not propose to take any further action in these contempt proceedings.

5. Hence it is directed that the respondents shall pay interest on the retiral benefits from 15-1-1996 till the date of payment at the rate of 15 per cent per annum.

6. In all the above cases, there appears no distinction between pensionary benefits and other retiral benefits. Any amount which becomes payable on retirement becomes retiral benefits.

9. **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) :

'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.' "

10. ***S.K. Dua v. State of Haryana, (2008) 3 SCC 44, at page 47 :***

"If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof.

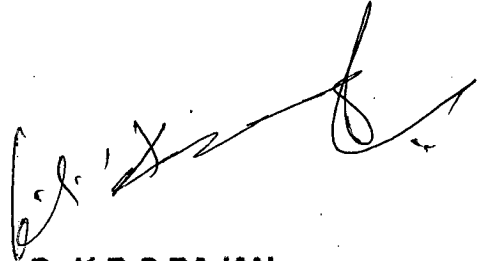
11. If there be deliberate delay in payment, then while the respondents shall pay the interest due to the applicant, the same could be realized from the erring individual as held in the case of Lucknow Development Authority vs M.K. Gupta (1994) 1 SCC 243. In the instant case as the counsel for respondents has stated that there is no deliberate delay, the liability is fastened only upon the respondents.

12. As regards rate of interest, the prevailing bank rate of interest on fixed deposits by the senior citizens ranges from 7.5% to 9.5% (depending upon the period of fixed deposits) The Applicant superannuated on 31-10-2009 and the dues have been paid only recently. Hence, simple interest @ 9% per annum would meet the ends of justice.

13. OA is therefore, **allowed** to the extent and with the direction that the respondents shall pay the applicant interest @ 9% per annum from 01-01-2010 (two months after the date of retirement) till the date of



payment of the terminal dues to the applicant. This order shall be complied with, within a period of two months from the date of communication of this order. No cost.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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