

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 213/06

FRIDAY THIS THE 13th 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**

K.K.Narayanan
Sub Divisional Engineer (Retd)
Marottickal House
Thekkenada P.O.
Vaikom

..Applicant

By Advocate M/s. P. Santhosh Kumar & Luiz Godwin D'Couth

Vs.

- 1 The Chief General Manager
Telecommunications (BSNL)
Kerala Circle
Thiruvananthapuram.
- 2 The General Manager
Telecom District
Bharath Sanchar Nigam Ltd.
Kottayam.
- 3 The Chairman
Telecom Commission
New Delhi.
- 4 The Department of Telecommunications
represented by its Secretary
Department of Telecommunication Service
New Delhi.
- 5 Union of India represented by
the Secretary, Ministry of Communications
New Delhi.

Respondents

By Mr. N. Nagaresh, *Advocate*.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The prayer in this O. A is to declare that the applicant is entitled for interest for the delayed payment of arrears of pay and allowance which became due to him on account of revised pay fixation.

2 The brief facts are that the applicant an ex-serviceman, was employed in the Kerala Telecom Circle in the year 1971 and on successful completion of training for one year was appointed as Junior Engineer (Telecom) on 1.8.1973. The pay scale of JE (Engineering Supervisor) to which post he was appointed in 1973 was only Rs. 180-380 and the same was revised based on the IIIrd CPC as Rs. 425-700 with retrospective effect from 1.1.1973. The post in which the applicant was working in the Army was having the pay scale of Rs. 545-20-665 as on 1.8.1973. The basic grievance of the applicant was that even though the service put in by him in the Army has been reckoned in computing his pension when he retired on superannuation on 30.11.2001, his pay was not properly fixed granting him increment for the service rendered in the Army. This anomaly has resulted in the reduction in the pay and pension of the applicant. Hence he made a representation to the respondents to fix his basic pay as Rs. 530 in the pay scale of Rs. 425-700 on his reemployment on 1.8.1973. As it was not properly considered, the applicant filed O.A. 844/2003 before the Ernakulam Bench of the

CAT which was disposed of by order dated 4.11.2003 directing the respondents to consider the representations of the applicant. Consequently, the respondents issued order dated 20.10.2004 fixing his pay at the stage of Rs. 530/- in Annexure A-2 and also disbursed arrears of pay and allowances due to higher fixation of pay w.e.f. 1.8.1973 to the applicant on 13.9.2005. Though the applicant received an amount of Rs. 1,69, 613/- as arrears for the period from 1.8.1973 to 30.11.2001, no interest for the arrears had been paid to him. Against this the applicant filed representations Annexure A-3 and A-4. Since there was no response from the respondents he has approached this Tribunal with this O.A.

3 Per contra, the respondents have averred that on superannuation of the applicant, on the basis of information provided by the applicant himself his retiral benefits were fixed taking into account his military service also. After two years of retirement the applicant has approached the Court by filing O.A. 843/2000 and by that time he was absorbed in BSNL. Hence, the O.A. was disposed of on consent from either side to consider Annexure A-4 representation therein. His representation was considered and pay refixed with retrospective effect. The respondents contended that the O.A. is not maintainable as the applicant is absorbed in BSNL w.e.f. 1.10.2000 and he is no more an employee of Department of Telecom and also the payment of interest is not a service matter but only a civil dispute.

4 The applicant filed a rejoinder stating that he joined the Department of Telecom as Junior Engineer on 1.8.1973 and he had been representing for revision of pay from 1973 onwards and also enclosed a copy of his representation dated 31.10.1973 (Annexure A-6). Since BSNL came into effect only in 2000 and he had 29 years of service under the Telecom department which is admitted by the respondents also, this Tribunal has got jurisdiction to decide the issue.

5 Additional reply statement has been filed by the respondents denying the receipt of such representation as claimed by the applicant. Since the applicant had not received any arrears when he filed O.A. 844/2003, he could have very well raised the issue of payment of interest in the above O.A. itself.

6 The applicant contested the above claim of the respondents and filed additional rejoinder enclosing Annexure A-6 (a) to (h) series of representations starting from 31.10.1973 to 12.9.2000 which had been submitted by him on this subject. He contested the averment of the respondents that they had not received the representations as the representations were acknowledged by the respondents. Therefore they cannot now contend that the applicant has not agitated his case at the appropriate time.

7 We have heard Shri Godwin for the applicant and Shri Nagaresh appearing for the respondents. The learned counsel for the applicant argued that it was the statutory duty of the respondents to fix the pay of the applicant at the time of his initial appointment taking into account his military service and the higher pay drawn by him in the Army. The fact that the applicant approached this Tribunal only in the year 2003 cannot be held against the applicant for denying him higher pay fixation right from the date of his joining the department. He relied on the judgment of the Hon'ble Supreme Court in State of Kerala and Others Vs. M. Padmanabhan Nair (AIR 1985 SC 356) wherein the Court held as under.

"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."

8 On the other hand, the learned counsel for the respondents relied on two judgments of coordinate Benches of the Tribunal in M.C. Jain Vs. Union of India and another (1998) 6 ATC 88) CAT, New Delhi Bench and Jaya Krushna Behera Vs. Union of India and Others (1990 12 ATC 192) CAT Cuttack Bench which categorically declined prayers of the petitioners for payment of interest of delayed payment of arrears.

9 We have gone through the records and perused the judgments relied on by both sides.

10 - The short question here is whether payment of interest is admissible in a case of delayed payment of Government dues such as arrears of pay and allowances. There is no doubt that Courts have allowed payment of interest on delayed payment of retiral benefits. The law has been laid down that pension and gratuity are no longer any bounty to be distributed by the Government to its employees but are valuable rights and property in their hands and any culpable delay in the settlement and disbursement thereof must be visited with penalty of payment of interest till the actual payment is made. The judgment referred to by the learned counsel for the applicant in AIR 1985 SC 356 was passed based on the same dictum as the applicant therein had approached the Court on the ground that delay in payment of pension was caused due to non-production of LPC for which neither any justification or explanation was given, and since his retiral benefits were delayed the Government was liable for payment of interest and the Court has upheld the prayer. The case on hand is on a different footing as here the delay had occurred on payment of arrears of pay and allowances as a result of the inaction of the authorities in fixing his pay in accordance with the rules at the initial stage of appointment of the applicant. The respondents have cited decisions of the coordinate Benches of the CAT holding that interest is not payable in such cases. On analysis of these judgments we find that they are distinguishable. In the case of 1988 6 ATC 88 the petitioner was an employee of UP Government on deputation to the Central

Government and had opted for pay of the parent department plus Deputation pay. The pay scale of the parent department had been subsequently revised and he had been granted personal pay. The Central Government was in doubt about the admissibility of the allowances on the personal pay granted to the applicant. The Tribunal therefore after examining the records found that the respondents have genuine doubts regarding the admissibility of the various allowances enjoyed by the applicant while on deputation and they were in correspondence with the parent department i.e. the State Government for certain clarifications and therefore the delay was found to be genuine. Hence, though the petition was allowed, the interest claim was rejected. In the second case 1990 12 ATC 192 the applicant was a JTO who was promoted to the rank of Accounts Officer but the promotion was subsequently cancelled as departmental proceedings were initiated against him. This order of cancellation was quashed and the applicant claimed that he is entitled to arrears of financial benefits as a result of such cancellation. The Tribunal allowed the claim for arrears of salary but held that the prayer for payment of interest was not valid as non payment of backwages was due to wrong interpretation of rules by the Government and it was not due to any latches/mala fide intention on the part of the departmental authorities. On consideration of these judgments we are persuaded to take the view that these judgments do not impose any legal bar on payment of interest on arrears of pay and allowances as is made out by the respondents.

They only underline the ratio that the Court/Tribunal has to delve deep into the reasons for the delay. Whether the request of the employee for payment of interest is genuine or not will depend on the facts and circumstances in which the delay in payment has occurred.

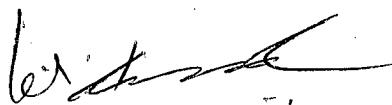
11 In the two cases discussed above, the Tribunal did not find any latches or malafide intentions on the part of the respondents therein. The facts and circumstances of this case are on a different footing. There was neither the interpretation of the rules nor any doubt about the eligibility of the applicant for higher fixation of pay on account of his service in the Army. The respondents have also given him the benefit of the military service at the time of calculating his pension taking into account his past service for fixation of pay at the time of initial appointment. There were already standing orders to this effect of the Government of India to which the applicant had drawn attention of the respondents in his representation dated 26.1.74 itself. In fact the Annexure A-6 series of representation filed by the applicant in his additional rejoinder reveal a sad story of how the applicant had been agitating his case right from 31.10.73 (A-6(a) which is the first representation after his joining service on 1.8.1973. The last representation was before his retirement on 12.9.2000 (A-6(h) and in his representations dated 15.11.99, 15.12.99 and 12.9.2000 (A-6(h) he also cited the case of Shri P.V. Varghese who was actually junior to the applicant and had been granted the benefit of the Government of India rules and that he

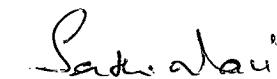
was also similarly placed. The relevant instructions were also quoted by the applicant in his representation dated 15.11.1999 ((A-6 (f)). The authorities have turned a deaf ear to the grievance of the applicant and they cannot now take shelter by stating that the applicant had never approached them at the appropriate time. It is the case of the applicant that there is delay of more than 20 years. The applicant could get even the arrears of his pay only after approaching the Tribunal and getting a direction of the Tribunal to the respondents to consider his representation. The respondents in Annexure A-2 order while disposing off his representation have explained elaborately the action taken by them in taking up the matter with the military authorities pursuant to the order of the Tribunal in O.A. 844/2003 and also submitted that because of the lapse of detention period of records, the military authorities could not furnish the necessary particulars. It would have been well worth it, if this effort had been made by the respondents at the appropriate time in 1973 when the applicant was appointed and the records were also readily available. This order also shows that the respondents were quite aware of the case of Shri P.V. Varghese and it was the bounden duty of the respondents to consider the case of the applicant at least when the case of Shri P.V. Varghese was taken up as the applicant had brought to their notice the anomaly in extending the benefit to his junior Shri Varghese in all his representations. In this view of the matter, we are constrained to hold that the respondents have been guilty of sheer neglect in not extending the

benefit granted by the Government of India to the applicant and thereby infringing his legitimate rights which had resulted in a recurring loss of emoluments for a period of more than twenty years. As a Government employee he could have utilised this amount in a worthwhile manner or as stated by him if deposited in the Provident Fund, would have earned interest. It was a duty cast upon the respondents to fix his pay on his initial appointment in accordance with the Rules and failure to do so would itself cast a penal liability on them and the latches in this regard have got further aggravated by the inaction and indifference to the repeated representations of the applicant as evidenced by the records.

12. In view of these facts and reasons stated above, we declare that the applicant is legitimately entitled for interest on the arrears paid to him for the period from 1.8.1973 to 30.11.2001 and shall be computed at the rate of 8%. We also direct that this amount shall be paid to the applicant within a period of two months from the date of receipt of this order. No costs.

Dated 13.4.2007


DR. K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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