

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 241/97

Wednesday, this the 2nd day of July, 1997.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.R.Venugopal, Physical Training Instructor-cum-Deputy Warden(Retired) Central Institute of Fisheries Nautical and Engineering Training, Kochi-682 016. (residing at XXIX/2320, Champakara, Poonithura.P.O. Kochi-682 017)

- Applicant

By Advocate Mr Philip T Varghese

Vs

1. Director, Central Institute of Fisheries, Nautical and Engineering Training, Deenan's Road, Kochi-682 016.
2. Union of India represented by Secretary, Ministry of Agriculture and Co-operation, Krish Bhavan, New Delhi. - Respondents

By Advocate Mr PR Ramachandra Menon, ACGSC

The application having been heard on 2.7.97 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

In this O.A. the applicant who was a Physical Training Instructor-cum-Deputy Warden in the Central Institute of Fisheries, Nautical and Engineering Training, Kochi and since

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retired on superannuation on 31.10.93 has claimed interest on the delayed payment of his retiral benefits and also permission to utilise the Leave Travel Concession which was denied to him while in service. The facts necessary for disposal of this application can be stated in a nutshell as follows: On 8.4.93 a memorandum of charge was issued to the applicant alleging that he had submitted a false declaration that his son Ajith Vyas was wholly depending on him for availing of LTC and that he did not start the trainee's mess in time. The applicant submitted his reply denying the charges. While the disciplinary proceedings initiated by the said memorandum of charge was pending, the applicant applied for LTC on 20.8.93. He was informed by the Senior Administrative Officer on 26.8.93 that no further advance of LTC would be granted to him as a departmental proceedings on an earlier LTC advance was pending against him. The departmental proceedings went on and was not finalised even on the date of his retirement. Since the departmental proceedings was pending even after the retirement of the applicant, he was paid only provisional pension according to rules. The commuted value of the pension was also not disbursed to him. By the order dated 14.11.95 of the first respondent, the applicant was informed that he has been exonerated of the charges levelled against him. Thereafter the DCRG was paid to him on 13.12.95. Commuted value of the

pension was paid to him in second week of January, 1996. The value of the Earned Leave to the credit of the applicant was paid to him on 15.2.94. As the payment of DCRG was delayed, the applicant was paid 12% interest on that from 1.2.94 till the date of payment. The applicant made representations on 15.12.95 A-8 to the first respondent claiming that he is entitled to utilise the LTC which he could not avail of while he was in service on account of the pendency of the disciplinary proceedings against him. Considering this representation, the impugned order dated 27.12.95 A-7 was issued informing the applicant that it was not possible to accede to his request as he had already retired from service. The applicant made another representation A-10 in which he claimed various amounts including interest at the rate of 18% per annum on the delayed payment of DCRG and other retiral dues. In reply to this representation, the impugned order A-14 was issued on 14.11.96 informing him that the competent authority has decided not to give him anything more than 12% which has already given to him by way of interest on the delayed payment. It is aggrieved by these orders that the applicant has filed this application. It has been alleged in the application that as the charge sheet against the applicant was motivated and the departmental proceedings prolonged unduly, the interest of justice demands the respondents to allow him to avail of LTC facility even after retirement.

It has further been alleged that as in the departmental proceedings the applicant has been fully exonerated, he is entitled to get interest at the market rate at least 18% per annum on the delayed payment of DCRG and the other retiral benefits.

2. The respondents contend that the rules do not provide for allowing an officer to avail of LTC beyond his retirement even in case such facility was withheld during his service on account of pendency of departmental proceedings relating to an LTC claim made earlier. Regarding the claim for interest, the respondents contend that there was no culpable delay and interest paid at 12% per annum would meet the ends of justice.

3. As the pleadings in this case are complete, we heard the learned counsel on either side for a final disposal of the case. We have carefully gone through the pleadings and the materials available on record and have heard the learned counsel for the parties.

4. First we will take up the case of the applicant regarding the claim of LTC. The applicant's claim for allowing him to avail of the facility of LTC even after retirement was turned down by order dated 27.12.95. The application has been filed beyond the period of one year

and therefore the claim is barred by limitation. Even on merits the applicant does not have a case. According to the rules regarding the facility of LTC, it cannot be availed of after the superannuation of a government employee. Learned counsel for applicant invited our attention to Rule 18 of the LTC Rules which provide for relaxation of any of the rules by the Ministry or Department or Government in case they are satisfied that strict enforcement of the rule would cause undue hardship to any individual and argued that the respondents should have exercised this discretion and granted him relaxation. The power to relax is vested on the competent authority has to be invoked by the authority concerned. That is not something which can be claimed as of right. Therefore we do not find anything illegal in the order at A-9 which calls for interference.

5. Coming to the claim of the applicant for interest at 18% per annum on the delayed payment of DCRG and other retiral benefits, we are not satisfied that circumstances do warrant payment of interest at market rate. If the disbursement of the gratuity or other retiral benefits had been unduly delayed and the delay can be termed culpable delay, there is justification in awarding of interest at 18% per annum. It has been so held by the Hon'ble Supreme Court in State of Kerala and others V. M Padmanabhan Nair, (1985) 1 SCC 429.

But here, is there culpable delay in this case? The answer is definitely in the negative. Departmental proceedings against the applicant were pending till the charge was dropped by the order at A-1. Till then as per the rules, the gratuity could not have been released to the applicant. Immediately after the exoneration of the applicant, steps have been taken for disbursement of the gratuity and payment also has been made without delay. We are therefore of the considered view that there has been no culpable delay which demands payment of interest at a rate more than 12% per annum. Learned counsel for applicant brought to our notice that in similar circumstance, one Mr KD Vincent, this Tribunal in O.A.223/95 directed payment of interest at 18% per annum on the delayed payment of DCRG. There is a difference between the facts of the case in O.A. 223/95 and the facts of this case on hand. In the case of Vincent, the DCRG was withheld without justifiable reason solely basing on a letter from the CBI. But in this case, withholding of the DCRG was owing to the pendency of a departmental proceedings against the applicant. The cash value of the leave salary was paid to the applicant within four months from the date of his superannuation. Therefore there was no delay in disbursement of the same. Hence on a careful scrutiny of the facts and circumstances emerging from the pleadings and documents on record, we are of the considered view that no

interference that is called for with the impugned order at A-14 also.

6. In the result, the application fails and the same is dismissed, leaving the parties to bear their costs.

Dated, the 2nd July, 1997.

*PV Venkatakrishnan*

PV VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

*AV Haridasan*

AV HARIDASAN  
VICE CHAIRMAN

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