

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 364 of 2005

This the 15th day of June, 2007

HON'BLE SHRI JUSTICE KHEM KARAN, VICE CHAIRMAN

Dinesh Chandra Verma aged about 66 years son of late Sharda Chandra Verma, Resident of C-425, Indira Nagar, Lucknow.

....Applicant

By Advocate: Shri Shreesh Kumar

Versus

1. Union of India through its Secretary, Ministry of Public Grievances & Pension, Department of Personnel & Training, Govt. of India, North Block, New Delhi-1
2. The Central Administrative Tribunal, Principle Bench, New Delhi, 61/35, Copernicus Marg, New Delhi-1, through its Principal Registrar.
3. The Pay and Accounts Officer, The Central Administrative Tribunal, Ministry of Public Grievances & Pension, C-1, Hutmants Dalhousi Road, New Delhi-1

..Respondents

By Advocate:- Sri Sunil Sharma

ORDER

BY HON'BLE JUSTICE KHEM KARAN, V.C.

The applicant has prayed for the following reliefs:-

i) to set aside the order dated 2.9.2005 as contained in Annexure no. A-1 to this original application and direct the respondents to revise and the amount of salary equivalent to 300 days after adjusting the amount of leave encashment for 240 days already made in favour of the applicant forthwith along with interest @ 12% p.a. and penal interest from the date of actual payment to the applicant.

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ii) to direct the respondents to fix the pension of the applicant as per the provisions of part III of the First schedule of the Act of 1954, read with Rule 15-A of the Rules of 1985 and as per the judgment dated 7.11.2002 delivered by the Hon'ble High Court of Delhi in the case of Devendra Kumar Agrawal Vs. Union of India.

iii) to direct the respondents to pay interest @ 12% p.a. along with penal interest on the amount of arrears of pension and the amount of gratuity for the period of delay caused by them in finalization of the same from the date of superannuation of the applicant to the date of its actual payment in favour of the applicant.

iv) any other order which is deemed just and proper in the nature and circumstances of the case be also passed in favour of the applicant in the interest of justice along with the cost of this original application.

2. As the respondents have not chosen to dispute the facts stated in O.A., so I proceed as if the factual position stated by applicant is correct. While serving under the State Govt. (UP) as member of Uttar Pradesh Higher Judicial Service, he came on deputation as Registrar (Principal Bench) of this Tribunal on 3.5.1991, and after serving as such for some time, was appointed as Member (Judicial) of this Tribunal. After taking voluntary retirement from Higher Judicial Service, he joined as Member on 22.6.1994. It appears from averments so made in

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para 4.13 that he was allowed to encash earned leave in his credit for 223 days and was sanctioned pension as per rules. He superannuated on 22.5.2002 as Member (Judicial) and thereupon was again allowed to encash earned leave for 17 days. He joined as Vice Chairman of this Tribunal on 29.8.2002 and in due course, superannuated on attaining the age of 65 years on 22.5.2005.

3. He alleges that while he demitted office of Vice Chairman on 22.5.2005, but the amount of gratuity was credited to his account as late as on 26.4.2006 and like wise pension as Vice Chairman, which should have been paid in the next month, was started after August, 2006 and so he is entitled to interest @ 12% per annum, on this delayed payments. His second grievance is that he has not been allowed to encash earned leave of 60 days, to which he was entitled as per the provisions contained in Rule 20-A of All India Service (Pension) Rules, 1955 read with Rule 15-A of Central Administrative Tribunal (Salary and Allowances and Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985 and Section 4 (1A) of High Court Judges (Conditions of Service) Act, 1954. Shri Verma says his pension as Ex- Vice Chairman of this Tribunal ought to have been fixed under Part III of Schedule to the Act of 1954, in view of Rule 15-A of the Rules of 1985, but the same has not been done. According to him, he is experiencing problems because of three sources of pensions, one as Member of U.P. Higher Judicial

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Service, second as Ex- Member of this Tribunal and third as Ex-Vice Chairman.

4. In spite of sufficient opportunity having been given to the respondents, no reply has been filed. I have heard Sri Shreesh Kumar appearing for the applicant and Sri Sunil Sharma for the respondents.

5. Shri Shreesh Kumar has placed on record copy of letter dated 2.2.2007 (SA-1) issued by the Govt. of India, Ministry of Personnel, P.G. and Pensions and Training, wherein it is stated that department agrees with the view that Hon'ble M.P. Singh, Vice Chairman may be allowed leave encashment of 300 days on the basis of pay drawn by him as Vice Chairman minus leave encashment already received by him from the Central Govt. and from the Central Administrative Tribunal and may be issued a single PPO instead of three PPOs. This letter goes on to that this facility may be extended to other similarly situated persons.

6. The learned counsel has also annexed to his written comments, copy of letter dated 27.9.2006 issued by the Department of Personnel and Training to the Registrar, Central Administrative Tribunal, Principal Bench, New Delhi regarding claim of Sri D.K.Agrawal, Ex-Vice Chairman and copy of Sanction order dated 3.10.2006 issued by Principal Bench on the basis of said letter dated 27.9.2006 of DOP&T. A perusal of the above reveals that Sri D.K.Agrawal, Ex-Vice Chairman has been allowed leave encashment of 240 days on the basis of pay drawn by him as

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Vice Chairman minus leave encashment already received by him from the Govt. of U.P. and from the Central Administrative Tribunal.

So, there appears no reason as to why the same treatment as has been given to Hon'ble Shri M.P.Singh, cannot be given to the applicant, in matters relating to encashment of earned leave as ex- Vice Chairman subject to such leave in his credit on 22.5.2005, minus leave encashment already received by him from the State Govt. and from CAT after superannuation and in regard to facility of single PPO in place of three. In view of the above, there is no need for going in detail on these two points. However, I would like to say this much that any encashment of earned leave by the applicant, during the service of State Govt. on the basis of U.P. Govt. order dated 30.10.1981 (A-2) shall not be taken into account, for purposes of encashment of earned leave, on retirement as Vice Chairman. This I have said, because of the apprehension expressed by Shri Shreesh Kumar which he entertains on the basis of phraseology used in impugned letter dated 2.9.2005. The purpose of encashment of earned leave, on superannuation is quite different from the purpose of leave encashment during service. Moreover, Rule 20-A of the Rules of 1955 also does not link encashment of earned leave on retirement, with encashment, if any of such leave during the service. It is the earned leave that is in account of the servant, on retirement or death, that is encashed and there appears no good sense, to take into

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account the leave already encashed before retirement or death. So, I am of the considered view that the respondents cannot take into account any encashment of earned leave by the applicant during in service of State Govt. , for purposes of allowing cash equivalent to leave salary in respect of earned leave under S 4(1A) of the Act of 1954 read with Rule 15-A of the Rules of 1985 and Rule 20-A of the Rules of 1955.

7. In so far as the pension of ex-Vice Chairman of this Tribunal there appears to be no doubt , that in case of the applicant, it has to be fixed under part III of the Schedule to the Act of 1954 read with rule 15-A of the Rules of 1985. If it has not been done so far, the same shall be done, and difference if any, paid . There appears to be no need for citing any judicial pronouncement in support of the said view. Though , the learned counsel for the applicant has referred to D.K.Agrawal's case decided on 7.11.2002 by Delhi High Court.

8. Adverting to the claim of interest @ 12% per annum, on delayed payment of the amount of gratuity of pension, I think the claim is not unjustified. The amounts which should have been paid soon after superannuation as Vice Chairman, or a little thereafter, were paid several months after . The applicant says he was prompt in submitting necessary papers and the delay was on the part of department concerned. The respondents have not come to say otherwise. The Apex Court has said in State of Kerala and others Vs. P. Padmnabhan Nair (1985) 1SCC 429,

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that prompt payment of all those amount is the duty of Govt. failing which it is liable to pay interest. Hon'ble Court suggested in para 4 that such interest should be @ 12% per annum. So, I conclude that the applicant is entitled to interest @ 12% per annum on delayed payment of gratuity and pension from the date the same were payable to the date to the dates these were actually paid or credited in the account of the applicant.

9. Thus, the communication dated 2.9.2005 (A-4) is quashed with directions to the respondents to ensure ~~as~~ expeditiously as possible, say within a period of 4 months, from the date a certified copy of the order is produced before respondent No.1:

- (a) that in matter relating to encashment of earned leave, on superannuation as Vice Chairman of this Tribunal, the applicant is given the same treatment (subject to availability of such leave in his account, on 22.5.2005) as given to Hon'ble M.P. Singh, vide letter dated 2.2.2007.
- (b) that the applicant is also issued single PPO, in place of present three PPOs, as done to the case of Hon'ble Sri M.P. Singh vide letter dated 2.2.2007 (SA-1).
- (c) that the pension of the applicant is fixed under part III of the Schedule to the Act of 1954, if the same has not already been done under that part in the light of decision dated 7.11.2002 given by Delhi High Court in Devendra Kumar Agrawal Vs. Union of India and the difference if any paid.



(d) that the applicant is paid interest @ 12% per annum , on delayed payment of gratuity , from 23.5.2005 to the date, it was actually paid or credited to his account.

(e) that the applicant is paid interest @ 12% per annum on payment of arrears of pension from the date same became due to the date, it was credited in his account.

10. I do not impose costs in the hope that the respondents will ensure compliance of above directions in letter and spirit , within the time mentioned above.

C. J. M. - ms
Vice Chairman

01.6.2007

HLS/-