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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

QXAXXXNO

T.A. No. 64/88

198

DATE OF DECISION 16.4.1990

Mr. H.K.Chaudhari Petitioner

Mr. E.K.Thomas Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr.S.R.Atre for Mr.P.M.Pradhan Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. M.Y.Priolkar, Member (A)

The Hon'ble Mr. T.S.Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

TA.NO. 64/88

Mr. H.K.Chaudhari

... Applicant

vs.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.Y.Priolkar  
Hon'ble Member (J) Shri T.S.Oberoi

Appearances :

Mr. E.K.Thomas  
Advocate  
for the Applicant

Mr. S.R.Atre  
for Mr. P.M.Pradhan  
Advocate  
for the Respondents

JUDGMENT

Dated: 16.4.1990

(PER: M.Y.Priolkar, Member (A)

The applicant in this case, while working as Superintendent of Central Excise, was retired compulsorily from Government service on 31.12.1976. He was reinstated subsequently on 16.10.1978. The intervening period between the date of premature retirement and the date of reinstatement was ordered to be treated as leave of the kind due and admissible. He retired on attaining the age of superannuation on 31.3.1979 from the post of Superintendent of Central Excise, Kalyan Division, under the Collectorate of Central Excise, Pune.

2. The grievance of the applicant is that apart from considerable delay in settlement of certain retirement benefits, some deductions have been made therefrom which are not in accordance with the rules. The applicant also alleges that some of his other claims, while in service, like leave salary, house rent allowance, travelling allowance etc. have been denied or incorrectly calculated or arbitrary cuts made. As his

representations to the departmental authorities did not elicit any response, the applicant filed the present suit (R.C.S.No. 159/1985) in the Court of the Civil Judge, Senior Division, Jalgaon, on 8.4.1985 which has since been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 and renumbered as Transferred Application No. 64/1988. The prayer is that the suit claim of Rs.10,475=65 be decreed against the defendants along with costs and interest at 12% per annum.

3. A preliminary objection was raised during the hearing on behalf of the respondents, that this application was not maintainable being barred by the law of limitation, since it should have been filed within three years from the date of the applicant's retirement on 31.3.1979 but has actually been filed after a delay of about three years on 8.4.1985. Admittedly, however, the applicant had been submitting representations and appeals to his superiors, but without any reply. In any case, as observed by the Supreme Court in the case of Madras Port Trust v. Hymanshu International ((1979) 1 SLR 757), the Government and public authorities should not adopt the practice of relying upon technical pleas for the purpose of defeating legitimate claims of citizens. We propose, therefore, to consider this application on merits.

4. The applicant's claims are for a total amount of Rs.10,375=65 consisting of the following :-

	Rs.
(i) Wrong deduction from salary paid on 21.9.1979 for Pension Equivalent of Gratuity	2,488=50
(ii) Interest charged in excess as retained Death-cum-Retirement Gratuity	554=75
(iii) House Rent Allowance from 1.9.1975 to the date of retirement	4,116=00

(iv)	Leave Salary for commuted leave for 5 days	256=45
(v)	Travelling allowance to home town after retirement	2,405=10
(vi)	Arbitrary cuts from Travelling Allowance bills for March and April 1978 (Rs.337=35) and October 1978 (Rs.217=50)	554=85
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Total Rs. 10,375=65		
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5. We have gone through the details of each of these claims, with the assistance of the learned Counsels for both sides.

6. Regarding the first claim of wrong deduction, this deduction was made by the respondents in September 1979 based on instructions dated 30.3.1978 of the Ministry of Finance, Department of Expenditure, that Death-cum-Retirement Gratuity (D.C.R.G.) and Pension paid to Government servants on their premature retirement should be recovered if they are subsequently reinstated in service. The applicant's claim that the deduction is wrong, is based on the clarification given in the Department of Personnel's letter dated 18.8.1980 that the term Pension in the Ministry of Finance orders dated 30.3.1978 does not include pension equivalent of gratuity. In terms of this clarification, no such deduction should have been made and the applicant is entitled to refund of this deduction made from his salary of Rs. 2,488=50 towards pension equivalent of gratuity.

7. The Ministry of Finance instructions dated 30.3.1978, referred to above, also provide that the amount of DCRG received may be allowed to be retained by the Government servant concerned on payment of simple interest as prescribed for General Provident Fund (G.P.F.) for the corresponding period. The rate of interest per annum on G.P.F. during the financial years 1977-78 to 1979-80

was 8% for the first Rs.25,000. The applicant's contention that the rate of interest should have been 6% is based on Ministry of Finance letter dated 24.12.1976 that the amount of gratuity in such cases may be recovered in not more than 12 monthly instalments together with interest at 6% per annum. Since in the present case, the DCRG paid on premature retirement was not recovered from the applicant in instalments but was allowed to be retained by him on re-instatement and adjusted against the final DCRG payable on final retirement, the rate of interest applicable will be 8% and not 6% as claimed by the applicant. The applicant's claim of Rs.554=75 for interest charged in excess on retained DCRG has, therefore, to be rejected.

8. The applicant has claimed House Rent Allowance (HRA) from 1.9.1975 to 31.3.1979 on the ground that he had his rented premises in addition to his own house where his family was staying. The respondents have rejected this claim since the applicant, after his compulsory retirement on 31.12.1976, had been paid travelling allowance (T.A.) for setting down at his home town, and, further, from 16.10.1978 to 31.3.1979, which was the applicant's duty period at Panvel after reinstatement, no HRA was admissible for that town. It is, however, seen from the Department of Expenditure O.M. dated 25.2.1977 that with effect from 1.2.1977, the concession of drawing house rent allowance without reference to the actual rent paid/rental value of own house etc. has been made available to all employees drawing pay above Rs.750/- in the revised pay scale. The applicant is, therefore, entitled from 1.2.1977 to HRA at  $7\frac{1}{2}\%$  till 15.10.1978. The amount of T.A. paid to him, on his compulsory retirement, for permanent settlement at home town, may, however, be recovered by adjusting it against these HRA arrears.

9. For the claim of leave salary for five days which had been treated as leave without pay, it was conceded by the respondents that the applicant was entitled to Rs.128=50 as he had sufficient half-pay leave to his credit and the leave without pay will have to be converted as leave on half-pay.

10. Since we have already held earlier that the amount of T.A. paid to the applicant on his premature retirement should be recovered by way of adjustment against his H.R.A. arrears, the respondents have also conceded the applicant's entitlement to T.A. from Panvel to Nhavi, i.e. to his home town after his final retirement. This should be worked out and paid in accordance with the rules.

11. Regarding the applicant's last claim for the differential amounts of T.A., the cuts made in the T.A. bills were for restricting the claim in one case to second class railway fare from Bhusaval to Bombay instead of the actual expenditure by use of private vehicle as claimed and, in the other case, restricting the claim to S.T. fare from Nhavi to Panvel and two DAs instead of 6 DAs. After going through the facts, we do not think that the curtailment ordered by the Controlling Officer in the T.A. bill can be considered as unreasonable or arbitrary. This claim is thus rejected.

12. With the directions as above, this application is disposed of with no order as to costs. On the net amount worked out as payable to the applicant, simple interest at the rate of 8% per annum from 1.7.1979 may also be added till date of payment. The payment may be made within a period of three months from the date of receipt of a copy of this order.

  
(T.S. OBEROI)  
MEMBER (J)

  
(M.Y. PRIOLKAR)  
MEMBER (A)