

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION NO. 306 of 1986

Shri R.C. Bondhatey,
Anand Nagar,
Sitabuldi,
Nagpur.

.. Applicant

V/s.

1. Director of Accounts,
Postal,
Nagpur.
2. Union of India through
the Post Master General,
Maharashtra Circle,
Bombay-400 001

.. Respondents

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil
Hon'ble Member(A), Shri P.Srinivasan

Appearance:

1. Mr.V.S.Yawalkar,
Advocate
for the applicant
2. Mr. P.M.Pradhan,
Counsel
for the respondents.

JUDGMENT: -

Date: 30th March 1988

(PER: Shri B.C.Gadgil, Vice-Chairman)

This is a very short matter concerning the claim for interest on account of delayed payment of gratuity.

2. The applicant was working as a Lower Division Clerk in the office of the Director of Accounts, Postal, Nagpur. He retired on 1.7.1979. The gratuity amount of Rs. 7,425/- was due to the applicant. It was not immediately paid on retirement. The payment was actually made on 10.7.1985. The reason for the delay in payment is that a case under section 420 and 34 of Indian Penal Code and Section 5(i)(d) of the Prevention of Corruption Act was filed against the applicant in the Court of the

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Special Judge, Nagpur on 16.8.1976 numbered as Case No. 7 of 1976. This case was pending not only at the time of retirement but even for subsequent period. The said case was withdrawn on 12.9.1984 and thereafter the gratuity amount was paid as mentioned above. The applicant contends that he is entitled to claim interest for this delayed payment.

3. Respondents resisted the application by filing a reply. In substance, they contended that under rule 69(1)(c) of the Pension Rules, gratuity was not to be paid to the applicant until conclusion of the judicial proceedings. The judicial proceedings came to an end on 12.9.1984 when the Special case was withdrawn. Thereafter an order for payment of gratuity was passed and the amount was actually paid. The respondents therefore contend that in view of the pendency of the judicial proceedings, the gratuity was not paid to the applicant. It is for this reason that the respondents say that the applicant cannot claim interest.

4. We have heard Mr. V.S. Yavalkar, Advocate for the applicant and Mr. P.M. Pradhan, Counsel for the respondents. It is true that under rule 69(1)(c) gratuity is not to be paid to a Government Servant until the conclusion of judicial proceedings. However, the applicant relies upon certain Government orders which are re-produced on page 116 of Swamy's Pension Compiation Tenth Edition. Rule 68 states that the interest would be payable after three months from the due date, provided it is proved that the delay in payment was attributable to administrative lapse.

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The relevant portion a Government order passed in this connection is re-produced below:-

"..... In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of DCRG may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped....."

It is thus clear that on full exoneration in judicial proceedings the employee would be entitled to claim interest from the day next to retirement. It was urged by Mr. Yavalkar that withdrawal of the case by the prosecution amounts to full exoneration. As against this, Mr. Pradhan submitted that withdrawal of the case would result in the discharge of the accused if withdrawal is before the framing of the charge. He relied upon the provision of Section 321 of the Criminal Procedure which deals with withdrawal of cases. That section states that the accused shall be discharged upon withdrawal of the case if the withdrawal is before the charge was framed. There

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is a distinction between withdrawn and acquittal. This is clear from Section 300 of the Criminal Procedure which states that a person once convicted cannot be tried again for the same offence. The explanation to that section, however, provides that the discharge of the accused is not acquittal for the purpose of that section. Shri Pradhan, therefore, urged that the accused stood only discharged and not acquitted after withdrawal of the case and that there was nothing to prevent another charge-sheet being filed against the applicant. In this background it would not be possible for the applicant to contend that he was fully exonerated in the said penal trial.

5. Shri Pradhan is right when he contends that a discharge of the accused would not stand in the way of another case being filed against the accused. However, this aspect is not relevant here inasmuch as in the present case we are not concerned as to whether the accused was acquitted or discharged. What is required to be decided is whether he was fully exonerated as contemplated by the Government order quoted above. Prosecution was withdrawn against many persons and Mr. Pradhan produced before us a copy of an applications made in Special case No.4 of 1976 as a specimen to show what averments were made while withdrawing prosecution. A certain Mr. Deshpande who was the proprietor of a Medical Store died in 1974. It was he who issued cash memos for the alleged purchase of medicines and the applicant claimed medical reimbursement on that basis.

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One Dr. Jaswantsingh Bedi could prove the hand writing of Shri Deshpande and he also was dead. The application for withdrawal after making these averments states that prosecution evidence as it stood on the date of the application would not warrant conviction. The application also contains some other averments after which a prayer is made that the prosecution may be allowed to withdraw. The learned Special Judge, granted permission. Thus, the position as it stood at the time of withdrawal was that there was no evidence worth the name that could be laid by the prosecution to prove the guilt of the applicant. In the absence of such evidence the applicant would have to be acquitted. However, instead of acquittal the case was withdrawn and the applicant was discharged. One of the grounds for withdrawal was that there was no evidence that could be ^{led} ~~laid~~ by the prosecution. In our opinion in the peculiar facts and circumstances of this case, applicant was in effect, fully exonerated in the criminal case because the prosecution itself stated in the withdrawal application that the evidence would not warrant a conviction. It is true that there is no finding by the Special Judge that the applicant had not committed any crime but Mr. Yawalkar contends that the applicant was denied the opportunity to prove innocence as the prosecution instead of proceeding with the trial had withdrawn the case. He contended that the applicant should not be placed in a disadvantageous position once the prosecution itself has admitted that there was no evidence worth the name against the applicant.

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6. In view of the above position the applicant is entitled to claim interest from the date next to his retirement i.e. from 1.7.1979 till 10.7.1985. The Government has prescribed the rate of interest. For the first three months no interest would be payable but 7% interest would be payable beyond three months and upto one year and an increased rate of 10% per annum is payable for a period beyond one year, and an order for payment of interest is required to be passed in this manner. We, therefore, pass the following orders:

O R D E R

- i) The application succeeds.
- ii) The respondents are directed to pay interest on the gratuity payable at the rates mentioned above to the applicant within two months from today.

Parties to bear their own costs.


(P. Srinivasan)
Member (A)


(B.C. Gadgil)
Vice-Chairman