

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 100/96

Date of Decision: 24-09-97

Dinkar Vishnu Narurkar, IFS

.. Applicant

Ms. Neelima Gohad

.. Advocate for
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri V.S. Masurkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri M.R. Kolhatkar, Member(A)

The Hon'ble

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R. Kolhatkar
(M.R. KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 100/96

Provoked this the 24th day of April 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Dinkar Vishnu Narurkar, IFS
B/6, Digambar Chhaya,
Plot No.11, Happy Colony
Kothrud,
Pune 411 029.

By advocate Ms. Neelima Gehad

.. Applicant

-versus-

1. Union of India
through
Secretary,
Ministry of Environment
Forests, C.G.O. Complex,
Lodi Road,
New Delhi - 110 003.
2. The State of Maharashtra
through
The Secretary(Forests)
Revenue and Forests Department,
Mantralaya,
Mumbai - 400 032.
3. The Principal Chief Conservator of
Forests,
Maharashtra State,
Jaika Building, Civil Lines,
Nagpur - 440 001.
4. The Accountant General(A&E)-II
Maharashtra,
Nagpur - 440 001.
5. The Accounts Officer
I.F.S.(Accounts Cell),
Revenue & Forest Department,
Mantralaya,
Mumbai - 400 032.

By Counsel Shri V.S.Masurkar

.. Respondents

- : O R D E R : -

(Per M.R.Kolhatkar, Member(A))

The applicant is an officer of Indian
Forest Service who retired as Director of Social
Forestry, Maharashtra state on 30-6-1989. According
to the applicant respondent No.2, Secretary(Forests)
had held a meeting on 10-9-1987 and thereafter issued
m instructions to the Conservator of Forests to fill up

the new/additional posts by recruitment/promotion by 30-9-1987. According to the applicant in terms of the above decisions Conservator of Forests deputed non gazetted staff to the Social Forestry Department and their posting orders were also issued by the Joint Directors. The Principal Chief Conservator of Forests processed proposals for promotion/transfer of Assistant Conservators of Forests to the Social Forestry Department and the applicant issued orders for their posting on their being deputed. Subsequently there was a reconsideration of the matter and it was ordered that before filling up the new posts, approval of the Cabinet was to be obtained. In this connection respondents by their letter 12-5-89 called for an explanation from him and the applicant gave his submissions on 15-5-1989. Thereafter applicant superannuated on 30-6-89. Provisional pension was sanctioned in favour of the applicant vide respondents' letter dt. 21-10-1989, Ex.A-2. However, the applicant received the provisional pension for the months of July, 1989 to June 1990 i.e. for 12 months on 27-7-1990, after a delay of over one year, the total amount received being Rs.38,520/-

2. The first prayer of the applicant is that there has been delay in payment of provisional pension and he should be paid interest on the delayed payment. The applicant contends that respondent No.2 vide letter dt. 14-3-90(Ex.A-3) called his explanation as to why the applicant should not be saddled with the responsibility for irregular appointment of the staff.

Applicant gave a detailed reply on 25-4-90. Nothing was thereafter heard by the applicant on the issue. The applicant understands that ex-post facto sanction for appointment of the staff was accorded on 12-4-1990. Subsequently respondent No.2 by his letter dt. 16-10-1993, Ex.A-5 conveyed that a proposal was under consideration to hold departmental proceedings against the applicant but since applicant has retired from service it is not now possible to hold departmental enquiry against him and therefore the proposal of holding departmental proceedings against the applicant has been dropped and the Principal Chief Conservator of Forests was asked to take necessary action to release balance retirement benefits by way of DCRG etc. in favour of the applicant. According to the applicant, consequent on this order he received an amount of Rs.1,34,307/- towards commuted value of pension in February, 1995 i.e. after a delay of over 5 years and 7 months and he earlier received an amount of Rs.1,00,000 towards DCRG on 2-7-1994 i.e. after a delay of 5 years.

3. The second prayer of the applicant, therefore, is that he may be paid interest on the delayed payment of commutation value of pension and DCRG.

4. The OA was admitted on 8-2-1996 and the notice was issued to respondents on 26-2-96 but till 16-10-1996 no reply was received and the matter came up before the Tribunal on 14-11-96 for orders and fresh notices were required to be issued to the respondents.

The respondents filed their reply only on 12-2-97 and have opposed the prayers of the applicant.

The applicant filed a rejoinder on 7-3-1997 and the matter was heard on 16-4-1997.

5. In their written statement the respondents have contended that the applicant was holding a senior position of the head of the department. According to the respondents in the Govt. circular dt. 11-6-87 it was clearly stated that the appointment of additional staff in connection with massive afforestation programme was to be made only after committee has taken a decision thereon. The applicant went ahead and held a meeting of Joint Directors of Social Forestry and others concerned and ordered that required number of vacancies should be assessed and Conservator of Forest be requested to make available required number of personnel as a result of which 176 non-gazetted staff and 5 gazetted officers were appointed without budgetary provisions. Thereafter, the Govt. ordered that the vacancies should not be filled without sanction of the Government as a result of which the applicant repatriated the staff and personnel who stood reverted obtained stay orders which involved the Govt. in litigation and Ex-post-facto sanction. The Govt. contemplated starting of departmental enquiry but ^{as} the time limit prescribed for the same was over, Govt. dropped the idea and thereafter the pensionary benefits were directed to be released by order dt. 16-10-1993 already referred to to. According to respondents, therefore, if there is a delay the same is required to be counted from 16-10-1993 and since the Gratuity and commutation value has been paid within a

reasonable period from 16-10-1993 the question of payment of interest does not arise.

6. Regarding commutation value, in particular, the applicant had alleged in his application that in the absence of commutation he was getting only Rs.1070/- per month being 1/3rd amount of pension which would have been reduced if commutation had taken place earlier but as against this the applicant was losing an amount of Rs.2,343/- by way of simple interest even @ 12% p.a. for almost five years. Thus the applicant was put to a loss of Rs.1,273/- p.m. With reference to this claim the respondents have contended that the applicant has received commutation value of pension amounting to Rs.1,34,307/- in February,1995, that the same has been worked out on the basis of his running age of (i.e. immediately after retirement) 59 and not on basis of his running age of 64 (i.e. date of calculation) and he was in receipt of full pension and therefore it is strange on the part of the applicant to claim interest on the total amount of commutation value for the delayed period.

7. The applicant in addition to interest has also claimed damages. In this connection counsel for applicant has relied on Supreme Court judgment in the case of S.R.Bhanrale vs. U.G.I. reported at 1997(1)SLJ 14. In that case the claim relating to 1984 was finally settled in 1996 in the court and the appellant had claimed almost Rs.18 lakhs from the department of which Rs.16 lakhs was towards interest and the balance was towards compensation/costs etc. and the Supreme Court directed payment Rs.2 lakhs in lumpsum towards interest, compensation, litigation expenses etc.

8. As against this the counsel for the respondents relies on Supreme Court judgment in Dr. H. Mukherjee vs. S. K. Bhargava, 1996(2)SCSLJ 53. In this judgment the Supreme Court held that suit for damages for deliberately harassing the plaintiff by passing several vindictive and malafide orders and proceedings and also fabricating official records does not come within the province of Section 14 of the A.T. Act and only ^aCivil Court has jurisdiction to entertain such ^asuit. So far as the claim for interest is concerned the counsel for respondent relies on Union of India v. Ujagar Lal, Supreme Court judgment, reported at 1997(1)SCSLJ 114. In this judgment the Supreme Court ~~after~~ relying on Raj Pal Wahi & Ors. vs. U.O.I. & Ors. decided on 27-11-1989, held that when the delay in making payment of DCRG was not due to administrative lapse but on account of circular which prohibits payment of DCRG till the retired employee surrenders possession of quarter, he cannot claim interest on delay in making payment of DCRG.

9. In my view the judgments relied on by the counsel for the ~~parties~~ are not applicable to the facts of the case. In S.R. Bhanrale's case the Hon'ble Supreme Court allowed a lumpsum amount in favour of the applicant by way of compensation, cost and interest. In the case of Ujagar Lal the matter related to non vacation of quarters about which there ~~are~~ specific instructions and therefore the Hon'ble Supreme Court held that interest would not be permissible till the quarters were ~~vacated~~ vacated. Here the simple question is regarding delay in payment of pensionary benefits due to the applicant in which there has been a delay. The contention of the Govt. that delay if any ~~should~~ be counted from the date of

the decision to release of pensionary benefits was communicated viz. 16-10-1993 cannot be accepted. It is clear from the pleadings that even before the employee had retired his explanation was sought on 12-5-89 and he promptly gave the explanation on 15-5-89. His explanation was again called after retirement on 14-3-90 and the applicant gave his reply on 24-3-90. It is very difficult to accept that the period from 12-5-89 when the first explanation was sought and 16-10-1993 when the decision was finally taken not to proceed against the applicant is administratively justified for which the applicant is not entitled to payment of interest. It is also difficult to accept the contentions of the respondents that merely because the DCRG has been calculated on the basis of running age of 59 and because till the applicant was sanctioned commutation value of pension he was getting full pension therefore he is not entitled to get interest. It is now well settled by series of authority that pension is a property of Govt. employee which is assessed and sanctioned as per rules and any delay ~~of~~ ⁱⁿ ~~hors~~ the rules in payment thereof would attract payment of interest and in certain circumstances even penal interest. No rules have been pointed out before me as to why Govt. should take more than 4 years to decide on the issue of taking action against the applicant. Govt. cannot certainly plead ignorance of rules. Assuming that the matter was under consideration of the Govt. it is reasonable to assume that Govt. should have taken a decision in the matter within a reasonable time. In para 4.10 of his application applicant has stated that post-facto sanction for appointment of the staff was accorded on 12-4-1990 i.e. within 10 months

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of the retirement of the applicant, and this has not been denied by the respondents.

10. I am therefore of the view that Govt. ought to have taken a decision regarding release of pensionary benefits of the applicant by June '90 at the latest. The actual decision, however, was taken in October '93. I am therefore inclined to allow the O.A. and to grant interest to the applicant as below :

- (a) Respondents are directed to make payment of 18% interest on the arrears of pension of Rs.38,520/- which the applicant received on 27-7-90 from 1-7-89 to 27-7-90;
- (b) Respondents are directed to pay interest @ 12% on the delay in payment of DCRG of Rs.1,00,000 from 1-7-90 upto 2-7-94 when the payment was actually made;
- (c) The commutation of pension should not have been held up which has no connection with the departmental enquiry and the commutation ought to have been effected within 3 months of the retirement of the applicant. Therefore the applicant ~~should~~ be paid interest @ 12% for the period from 1-10-1989 till February '95 when the commuted value of pension was received by the applicant;
- (d) The 1/3rd value of the pension which the applicant continued to receive during this period should be adjusted against the payment of interest vide (c) supra and balance should be paid.

11. O.A. is disposed of in these terms.
Action should be taken to comply with the order
within three months from the date of receipt of
copy of this order. There will be no order as to
costs.

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M.R.Kolhatkar

(M.R.KOLHATKAR)
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 46/1997

IN

ORIGINAL APPLICATION NO. 100/1996.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Dinkar Vishnu Narurkar.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

ORDER ON REVIEW PETITION BY CIRCULATION

{Per Shri M.R.Kolhatkar, Member(A)} Dt./0.6.97.

In this Review Petition filed by the original applicant he has sought review of operative portion of the Judgment so far as it relates to grant of interest on D.C.R.G. from 1.7.1990, the same reads as below :

"Respondents are directed to pay interest @ 12% on the delay in payment of DCRG of Rs.1,00,000/- from 1.7.1990 upto 2.7.1994 when the payment was actually made."

According to the applicant the reference to the date 1.7.1990 appears to be a typographical error in place of 30.6.1989 which is the date on which the applicant superannuated and from which date he ought to have ^{been} paid interest.

2. I have considered the Review Petition. I notice that the date of 1.7.1990 was included advisedly. In para 9 of the Judgment I have observed that assuming that the matter was under consideration of the Government, it is reasonable to assume that the Government should have taken a decision in the matter within a reasonable time especially when post-facto sanction for appointment of the staff was accorded on 12.4.1990 and since they

did not take a decision by that date, therefore the applicant was held entitled to interest on delay in payment of D.C.R.G. from 1.7.1990. There is, therefore, no typographical error as assumed by the applicant in the operative portion of the Judgment.

3. The Review Petition ~~has~~ therefore, no merit and is therefore dismissed. It is dismissed by circulation as provided under the Rules.

M.R.K. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A).

B.

dd. 10/6/97
~~Order/Judgement despatched~~
to Applicant/Respondent (s)
~~on~~ *19/6/97*

24/6/97

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

C.P. NO.: 87/97 IN O.A. NO.: 100/96.

Dated this Monday, the 30th day of November, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Dinkar Vishnu Narurkar,
B/6, Digambar Chhaya,
Plot No. 11, Happy Colony,
Poona - 29. ... Applicant.

V/s.

Union Of India & 4 Others. ... Respondents.

TRIBUNAL'S ORDER :

Heard Shri S. P. Saxena for the applicant
and Shri V. S. Masurkar for the respondents.

2. This is a contempt petition filed by the
applicant alleging that the respondents have not fully
complied with the order of the Tribunal dated 24.04.1997
in O.A. No. 100/96. The respondents have filed reply
to the Contempt Petition saying that they have fully
complied with the order of the Tribunal.

3. In the order of the Tribunal, four directions
were given to the respondents. It is now admitted, as
far as reliefs (b) and (c) in para 10 of the order is
concerned, they are complied by the respondents. Now
the dispute between the parties is only regarding the


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reliefs granted by the Tribunal in clauses (a) and (d) of para 10.

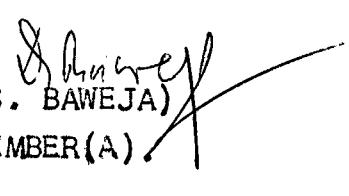
4. As far as relief granted by the Tribunal in clause (a) of para 10 is concerned, the question is whether interest is to be calculated on the payment of pension every month earned due to the applicant or on the arrears of pension as such. It is common knowledge that pension is earned every month, therefore, the applicant has earned pension every month from 01.07.1989 to 27.07.1990. Therefore, the respondents' calculation of interest month-wise on the basis of pension earned by the applicant every month, appears to be fully justified and in compliance with the order of the Tribunal in para 10(a) of the order.

5. As far as relief granted in para 10(b) is concerned, the applicant's grievance is that, for his repayment of 1/3rd value of pension which he received, the respondents should not calculate interest. But the Learned Counsel for the respondents submitted that when the respondents are paying interest to the applicant on the commuted value of pension as ordered in relief 10(c), then the respondents are entitled to calculate interest on the amount the applicant is refunding to the respondents.

In our view, this question cannot be decided on the contempt side. The respondents by some calculation, have stated that they are adjusting the amount due by the applicant on account of 1/3rd value of the pension which he had received and which he is liable to refund under para 10(d) of the order. If they have calculated

interest erroneously, as argued by the Learned Counsel for the applicant, it is a matter which cannot be decided on the contempt side. Prima-facie para 10(c) and (d) will have to be read together. If the applicant is entitled to interest on the entire commuted value of pension, then logically, he will also have to pay interest for the amount already drawn by him and which he is liable to refund. Anyhow, we do not want to express any ^{final} opinion on the rival contentions ^{at} ~~in this case~~ ^{stage}. Even if it is accepted for argument sake that respondents have not paid fully the amount or the interest is not calculated correctly, it is not a case of willful disobedience of the order of the Tribunal so as to call for action under the contempt jurisdiction. Hence, without expressing any opinion in the matter, we only say that no action is called for under the contempt jurisdiction. If the applicant is aggrieved by the action taken by the respondents, in calculating interest on the 1/3rd value of pension, which he is bound to repay to the respondents, then the applicant's remedy is elsewhere and certainly, not by way of invoking the jurisdiction under the law of contempt.

6. In the result, the contempt petition is rejected at the stage of admission, subject to above observations. This order will not come in the way of the applicant taking action according to law to claim any amount that may be due to him towards commuted value of pension or about the interest withheld by the respondents. No order as to costs.


(D.S. BAWEJA)

MEMBER(A)


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.