

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBA-I BENCH

ORIGINAL APPLICATION NO.: 739 OF 1996.

Date of Decision : 26-02-97

Shri R. C. Rao, Petitioner.

Shri G. S. Walia, Advocate for the Petitioner.

VERSUS

Union Of India & Another, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

CORAM :

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

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other x
Benches of the Tribunal ?

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 739 OF 1996.

Dated this pronounced, the 20th day of February, 1997.

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

R. C. Rao,
C/o, Shri G.S. Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort,
Mumbai - 400 001.

... Applicant

(By Advocate Shri G.S. Walia)

VERSUS

1. Union Of India through
Chief General Manager,
M.T.N.L.,
Prabhadevi Telephone House,
Mumbai - 400 028.

2. The Chief General Manager,
TELECOM,
Maharashtra Circle,
Mumbai - 400 009.

... Respondents.

(By Advocate Shri V.S. Masurkar).

: ORDER :

! PER.: SHRI M. R. KOLHATKAR, MEMBER (A) !

The applicant retired from the services of the M.T.N.L. on 31.03.1995 on attaining the age of superannuation. At the time of retirement, he was working as Sub-Divisional Engineer in the pay scale of Rs. 2200-3400. His pensionary benefits were withheld on the ground that a disciplinary enquiry was pending against him. The applicant filed an O.A. No. 852 of 1992 claiming certain reliefs.

Thereafter, he filed a miscellaneous petition no. 352/95 on 07.08.1995 which was disposed of by the Hon'ble Tribunal and the same

reads as below :-

" Heard Shri G.S. Walia, Counsel for the applicant and Shri V.S. Masurkar, Counsel for the respondents on interim relief. It is clear that though the interim relief was refused on 21.10.1994, by another interim order passed on 21.07.1995 the respondents were directed to complete the inquiry expeditiously if the applicant co-operates. The order passed by the Enquiry Officer on 19.12.1994 shows that he recorded the findings that the applicant was guilty, but he also stated therein that the applicant had cooperated with the inquiry. The matter is before the Disciplinary Authority now and the grievance is that the Disciplinary Authority has not passed any order on the report of the Enquiry Officer though about 7 months have passed now and the applicant retired on 31.3.1995. The only direction we need make in view of these circumstances is that the Disciplinary Authority should pass the appropriate order on the disciplinary proceedings within two months from the date of communication of this order. Suitable directions may also be issued by the Disciplinary Authority in the matter of pension and other retiral benefits within the same period. M.P. No. 325/95 is disposed of."

Consequent to the above order, the respondents passed an order dated 16.10.1995 dropping the charges against the applicant. The operative portion of the order reads as below :-

" The undersigned has considered the report submitted by the Inquiring Authority and after taking into account the facts and circumstances of the case, making an objective assessment of the records available and keeping in view the retirement of the charged officer on superannuation has decided to take a lenient view and accordingly order that the charges against Shri R.C. Rao, the then SDE, MTNL, Bombay, since retired be dropped. However, I convey my displeasure to Shri R.C. Rao, the then SDE (since retired) for the above lapses."

The applicant states that the respondents implemented the order of the Tribunal only on 06.02.1996 and he was paid D.C.R.G. and other Pensionary benefits totalling Rs. 2,22,426/- on 27.02.1996. However, the applicant received the GPF Contribution amount on 10.05.1995. The relief claimed by the applicant is to pay interest on all the pensionary benefits including the Provident Fund from the date of retirement.

2. The applicant relies on Rule 68 of the C.C.S. Pension Rules on the subject of 'Interest on delayed payment of gratuity' and the Government of India's decision on the Admissibility of interest on gratuity allowed after conclusion of judicial/departmental proceedings. In para 2 and 3 of the Government of India's decision, it is stated as below :

"2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority.

3. 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 retirement gratuity 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."

7 The contention of the applicant is that the applicant retired on 31.03.1995 and although the Tribunal passed its order in M.P. No. 325/95 on 07.08.1995, ^{and although} the orders ^{still} dropping the charges was passed only on 16.10.1995, ^{Government of India decision} in terms of the above ^{Government of India decision} which related to gratuity, he is entitled to interest right from the date of retirement i.e. from 01.04.1995, because the charges against him were dropped and he was exonerated.

3. The respondents have opposed the O.A. According to the respondents, the applicant was not exonerated. Infact, the operative portion of the order would show that he was found guilty and the displeasure of the competent authority was conveyed to the applicant. Nodoubt, it is stated that the charges are dropped but the reason for doing so is also mentioned, namely; keeping in view the retirement of the charged officer on superannuation. Thus, a lenient view was taken, so that the applicant is not ^{deprived} of the retirement benefits. Therefore, the question of any payment of interest does not arise, especially, because in terms of the Tribunal's order dated 07.08.1995, the decision of the competent authority was taken within two months and taking account of the formalities involved in making payment and especially, because the Maharashtra Telecom Circle was involved, all action was

taken promptly. In this connection, the learned counsel for the respondents refers to the order dated 22.11.1995 at exhibit R-II to the written statement sanctioning the retirement benefits to the applicant. He contends that the formalities involved took sometime and the sanction for payment was issued on 06.02.1996 but the applicant actually received the amount on 27.02.1996. So far as the delay in payment of Provident Fund balance is concerned, the respondents rely on the circular no. 20(3)/P&PW/92-E dated 05.08.1994, according to which, the subscriber is entitled to interest under Rule 11 on the final balance after he quits service and submits application for final payment and the date of commencement of interest will be one month after the date of quitting service or submission of application, whichever is later. Since the applicant superannuated on 31.03.1995, the interest if payable, is only after 30.04.1995. Since the payment was actually made on 10.05.1995, the delay is very marginal and therefore, he is not entitled for interest on the provident fund.

4. So far as interest on Provident Fund is concerned, the contention of the applicant is that, he is entitled to interest from 01.04.1995. The respondents do not dispute that the interest in terms of Government instructions would be due from 01.05.1995 but they would like the delay to be condoned because it is a very marginal delay. I am not inclined to accept the contention of the applicant that he is entitled to interest on provident Fund balance from the date of retirement. There are separate rules governing the Provident Fund and following the principle that a special law over-rides the general law, the provision relating to provident Fund Rule would

have to be followed in the matter of payment of interest on Provident Fund balance. I, therefore, hold that the applicant is entitled to interest on Provident Fund balance for the period from 01.05.1995 upto the date of payment.

5. So far as the remaining retiral benefits including the D.C.R.G. are concerned, it will be seen that the applicant claims interest from 01.04.1995 upto the date of actual payment. The respondents have opposed the same on the ground that the relevant instructions do not apply to the facts of this case and that the respondents were fairly prompt in settling the cases, considering the nature of departmental proceedings involved. First of all, let me consider whether the rule relating to D.C.R.G. instructions relied upon by the applicant would apply. These instructions, no doubt, envisage that the gratuity would be deemed to have fallen due on the date of issue of orders. They further state that the government servants, who are fully exonerated, may also be allowed interest on the delayed payment of gratuity on the date following the date of retirement. The question is, whether the applicant was fully exonerated. It appears that the applicant was not fully exonerated. The applicant was held blame-worthy and the displeasure of the competent authority was conveyed to him. It may be that the word - "dropping of charge" was used, but that does not take away from the material fact that the applicant was found blame-worthy and he was not exonerated. Another point to be taken into account is

that the order was passed expeditiously by the department mainly in the context of the order of the Tribunal in miscellaneous petition. This order in the operative portion stated that the Disciplinary Authority should pass an appropriate order on the disciplinary proceedings within two months from the date of communication of this order and suitable directions may also be issued by the Disciplinary Authority in the matter of pension and other retiral benefits within the same period. The disposal of the case on 16.10.1995 was in compliance with the Tribunal's direction. It is very difficult to see therefore, how the applicant can be granted interest for the period from 01.04.1995 to 16.10.1995. In other words, the order dated 16.10.1995 cannot be deemed to relate back to the date of retirement namely; 01.04.1995. The next question is, as to from what date the applicant would be entitled to claim interest. Here I am required to consider the importance of the Tribunal's direction. The Tribunal had not only directed that the Disciplinary Authority should pass appropriate order within two months but the Tribunal had also directed that within the same period the pension and other retiral benefits should be paid to the applicant. In other words, although the formal orders sanctioning the pensionary benefits might have been issued only on 22.11.1995 and the payment order might have been issued on 06.02.1996, the delay beyond 16.10.1995 is to be considered as culpable delay in terms of the Tribunal's judgement, for which interest @ 12% should be paid. I am therefore of the view that, so far as interest on D.C.R.G. and pensionary benefits, other than Provident Fund is concerned, the applicant is entitled to the same from 16.10.1995 till the date of actual payment. Similarly, interest @ 12% may also be paid on Provident Fund balance for the period from 01.05.1995 upto 10.05.1995. Action

in this regard should be completed within three months from the date of communication of the order.

6. The O.A. is disposed of with the above directions. There would be no order as to costs.

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

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