

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 355/1999

DATE OF DECISION: 3/01/2001

Shri Vishwanath Shivram Shimpi
Applicant.

Shri S.P.Kulkarni
Advocate for
Applicant.

Versus

Union of India & 2 Ors.
Respondents.

Shri V.S.Masurkar
Advocate for
Respondents.

CORAM:
Hon'ble Smt. Shanta Shastry Member(A)

1. To be referred to the Reporter or not? / No
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. 44

Shanta S.
(SHANTA SHAstry)
MEMBER(A)

abb

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:355/1999
DATED THE 3 DAY OF JAN.2001**

CORAM: HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Shri Vishwanath Shivram Shimpi,
Retired as : Postal Assistant,
Nandurbar Post Office,
Residing at:Depora-Newas,
At P.O.Nandurbar (M.S.),
Taluka - Nandurbar 425 412.
Dist:Dhule

... Applicant

By Advocate Shri S.P.Kulkarni

V/s.

Union of India,

Through:

1. Senior Superintendent of Post Offices,
Dhule Postal Division,
At P.O.Dhule - 424 001.

2. Postmaster General,
Aurangabad Region,
At P.O.Aurangabad - 431 002.

3. Chief Postmaster General,
Maharashtra Circle, Old G.P.O.,
Building, 2nd Floor, Fort,
Near C.S.T Central Railway,
At P.O.Mumbai - 400 001.

... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The applicant has approached the Tribunal being aggrieved by the order dated 21/9/98 of the Senior Superintendent of Post Offices, Dhule informing the applicant that his request made vide letter dated 22/11/97 for refund of interest on DCRG and other retiral benefits after his reinstatement in service was considered in the Pension Adalat and the same cannot be agreed to as the interest has been recovered as per rules and there is no mention about refunding of interest in the order of the Honourable CAT.

2. The applicant has mainly prayed (1) to call for records of the case, (2) to hold and declare the impugned order dated 21/9/98 as arbitrary and illegal, as well as violative of Pension Rules and equitable consideration, (3) to direct respondents to refund the amount of Rs.7735 + 13009 recovered from him with 12% interest thereon till the date of payment within 3 months, (4) to hold the penal interest recovered on amount paid earlier was illegal and arbitrary and (5) to pay interest on delayed payments or pensionary benefits as per rules.

3. The brief facts are that ~~the~~ disciplinary proceedings were initiated against the applicant by issuing a charge sheet to the applicant on 19/12/1986. After due process of enquiry the penalty of compulsory retirement was imposed on him vide order dated 17/12/1987. His appeal dated 2/2/1988 against the penalty was considered by the Appellate Authority and a de novo enquiry was directed vide order dated 21/3/1989 from the stage of statement of Defence. The applicant requested on 13/4/1989 for reinstatement in service. It was rejected on 25/7/1989. He represented on 10/3/89 and 5/10/89. Thereafter a corrigendum was issued to the appellate order on 28/5/90 setting aside the order of penalty of compulsory retirement and to continue the de novo enquiry after reinstating the applicant in service. Accordingly by order dated 15/10/90 the applicant was reinstated in service with immediate effect. It was stated that the order regarding regularisation of the period from 17/12/87 to 15/10/90 would be issued later. Later on the aforesaid period was ordered to be treated as suspension period vide order dated 10/4/91. The applicant represented against it. In the meantime he was finally retired compulsorily w.e.f. 11/3/92 as a result of the de novo enquiry. He appealed against it.

4. He also filed OA-707/92 to treat the period from 22/12/87 to 15/10/90 as duty period. The Tribunal ordered in his favour to treat it as duty period vide order dated 14/6/96. Also it was ordered to pay difference in pay and allowances within a period of two months.

5. Prior to this the respondents ordered recovery of the amounts of gratuity, leave encashment CGEIS with interest as follows vide their letters dated 29/12/92 (Ex.A-47 of OA).

Savings fund previously paid on 4/5/88 Rs. 1,402.00

Interest on Rs.1,402/- with quarterly compound interest @ 12% Rs. 826.25

Subscription from 1/88 to 9/90 Rs. 750.00

Interest on subscription with quarterly compound interest @ 12% Rs. 112.05

Rs.3,091.00

Amount of leave encashment already paid for 192 days Rs. 11,835.00

Interest on amount of 11,835 for the period 1/88 to 3/92 at the rate of interest on Scooter advance + penal interest @ 2 1/2% Rs. 5,385.00

Rs.17,220.00

DCRG paid on compulsory retirement on 22/12/87 Rs.24,600.00

Interest on DCRG at at 12% from 1/1/88 to

10/3/92

Rs.12,496.00

Income Tax due for 1991-92

Rs. 2,278.00

Rs.39,374.00

The same were recovered by adjusting against the pay and allowances to be paid towards the duty period.

6. The applicant's contention is that the recovery of compound interest and penal interest is illegal. The respondents did not pay any interest on the difference in pay and allowances for the period to be treated as duty. There was delay in payment of balance of retiral dues. It is not his fault that he had to refund the retiral dues already paid to him. When he was retired compulsorily from 22/12/87 and until he was actually reinstated in service from 16/10/90 he was on compulsory retirement and therefore he had every right to hold on to the benefits he had received. The refund of the retiral benefits becomes due only from the date of reinstatement and it should be at normal rate of interest and not compound interest. The respondents did not show any rule in support of compound interest.

7. Further the respondents have also not paid any interest on the pay and allowances paid to him for the period from 22/12/87 to 15/10/90 treated as duty period in 1996 i.e. after six years of reinstatement.

8. The respondents maintain that they have complied with the orders of the Tribunal in OA-707/92 passed on 14/6/96. The Tribunal did not order refund of any interest paid by the applicant. No compound interest was charged. The prayers

amounts to res judicata. The interest has been recovered according to rules.

9. I have heard both the parties and have given careful consideration to the pleadings.

10. It is apparent that interest on the refund of retiral dues paid earlier in 1988 has been recovered from the applicant as per sanction orders dated 29/12/1992. It is also evident that compound interest and penal interest were levied. It is to be seen that the applicant was on compulsory retirement from 22/12/87 until reinstated from 16/10/90. Since the penalty order was in force during the aforesaid period, he was entitled to retain the retiral dues till his reinstatement. The refund becomes due only from the date of reinstatement. Hence charging any interest on the refund for the period 22/12/87 to 15/10/90 is uncalled for. There was jusitification to retain the amounts of gratuity, CGEIS, and leave encashment already paid till 15/10/90. I am supported by an order dated 7/1/1991 passed by the Jabalpur Bench of this Tribunal in OA Nop.63 of 1990 in Chandrakumar Bharadwaj V/s. Union of India. It was held in this case that no interest can be charged where an amount has been withheld with proper justification. The compulsory retirement of the applicant having been held improper it cannot be held that the amount of DCRG paid to the applicant on his compulsory retirement was wrongfully withheld or detained by the applicant who had been wrongfully compulsorily retired earlier and reinstated in service. Interest on the amount can only be charged when it is recoverable as damages on principles of equity. The present case is covered by the order mentioned above. Hence the applicant is not liable to pay interest on the refunded amounts for the period

22/12/87 to 15/10/90 atleast. The respondents have taken the plea that the order of Tribunal in OA-707/92 did not contain any direction on refunding the interest to the applicant. I have perused the OA-707/92 and the decision on the same dated 14/6/98. I find that the OA-707/92 was confined to only one prayer viz. treating the period from 22/12/1987 to 15/10/1990 as duty period. There was no prayer regarding restraining the respondents from recovering interest on refund of the retiral dues paid earlier to the applicant. It does not amount to res judicata. Also the applicant stated that when he filed the OA-707/92 the orders of the refunding of the retiral dues paid earlier with interest had not been issued. They were issued only on 29/12/92. Naturally he could not have raised the issue in the OA-707/92. In my view the interest on the retiral dues paid earlier in 1988 shall be payable only from the date of reinstatement in service till the actual date of refund. It is to be noted that though the applicant's period from 22/12/87 to 15/10/90 was treated as duty period vide order dated 14/6/91, no interest was granted on the pay and allowances to be paid for the duty period. They were paid only in 1996. The same logic would apply to the refunding of the retiral benefits for the said period. The respondents are therefore directed to refund the interest recovered for the period from 22/12/87 to 15/10/90. The No interest is ordered to be paid on the interest to be refunded. This will be complied with within a period of two months from the date of receipt of a copy of this order.

11. The OA is allowed partly. No costs.

Shanta S
(SHANTA SHASTRY)
MEMBER(A)