

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.431/2002.

Date of decision :

Shri Indurkar Ramesh	Applicant.
Shri V.K.Pradhan	Advocate for Applicant.
Versus	
Union of India & Ors.	Respondent(s)
Shri R.K.Shetty	Advocate for Respondents.

CORAM :

Hon'ble Smt. Shanta Shastry, Member (A).

- (1) To be referred to the Reporter or not? \*
- (2) Whether it needs to be circulated to \* other Benches of the Tribunal?
- (3) Library. ✓

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(SHANTA SHAstry)  
MEMBER(A).

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.431/2001.

Mumbai, this the 20<sup>th</sup> day of February 2003.

Hon'ble Smt. Shanta Shastry, Member (A).

Indurkar Ramesh,  
C/4, Sandhyarag Co-operative  
Housing Society Ltd.,  
Kalyan West,  
Dist. Thane.  
(By Advocate Shri V.K.Pradhan)

...Applicant.

v.

1. The Union of India  
Through the Secretary,  
Ministry of Defence,  
South Block,  
New Delhi - 110 011.

2. The Engineer-in-Chief,  
E-In-C's Branch, Army HQ,  
DHQ, Kashmir House,  
New Delhi - 110 011.

3. The Chief Engineer,  
Southern Command,  
Pune, HQ - Southern Command,  
Pune - 411 001.

(By Advocate Shri R.K.Shetty)

...Respondents.

: O R D E R :

By Smt. Shanta Shastry, Member (A).

By this OA, the applicant has claimed interest on delayed payment of his retiral dues and also for payment of encashment of Earned Leave of 43 days, with interest at 24% from the date of entitlement till the date of payment and further interest on the delayed payment thereof.

2. The applicant took voluntary retirement when he was working as Superintendent Surveyor of Works at Pune in the Office of Chief Engineer, Southern Command, Pune. His voluntary retirement was effective from 12.9.1998. The applicant has

raised the issue of full qualifying service for pension also.

3. According to the applicant, the maximum age for appearing for any examination was relaxed to 30 years in 1972-73. The applicant had appeared at the examination when he was 30 years old and after completing all the formalities he had entered the service when he was 30 years and six months old. When he took voluntary retirement on 12.9.1998, he got benefit of 5 years of qualifying service as per rules. According to the applicant, he is entitled to full pension on his 28 years of service as there was relaxation of age upto 30 years for appearing in examinations in 1972-73. Unfortunately, he was unable to complete 33 years of service due to the delayed entry into service. He states that Rule 49 of the CCS (Pension) Rules grants benefit of full pension to employees only on completion of 33 years of pensionable service, in his case he falls short of the same. He is, therefore, challenging the validity of the aforesaid Rule in the petition.

4. The applicant submits that he was entitled to his full legal dues. He had given notice for voluntary retirement 3 months notice in advance. After his retirement he was made the various payments as follows :

" Legal Dues on his Retirement	Delay
a) Central Government Employees Insurance Scheme :	
The D.D. was sent to him on 1.12.1998	2 1/2 months
b) Leave Encashment paid in December, 1998.	2 1/2 months
c) General Provident Fund Rs.5,56,896/- was paid on 16.2.1999.	5 months
	...3.

Further balance amount of  
Rs.3,738/- paid on 31.5.2000 8 months

d) TA/DA balance amount of  
Rs.11,201/- paid on 2.6.1991,  
Rs.1200/- paid on 27.9.1999 and  
further sum of Rs. 98/- paid on  
18.1.2000.

e) Gratuity was transmitted to the 1 year and  
applicant's Bank by letter 2 months  
dt.6.11.1999.

5. The contentions of the applicant are two fold. One is the payments of the retiral dues were made belatedly, whereas, all the dues are to be paid immediately on retirement. He had given sufficient notice in advance to the Respondents and they ought to have prepared his papers well in time. He has, therefore, sought interest on these delayed payments. The second contention is regarding the wrong computation of his Earned Leave for purposes of encashment of leave. According to the Pune Office where the applicant worked, the Earned Leave to his credit was 245 days, whereas, he has been paid encashment only for 202 days. The applicant demanded that the Pune Office record should be seen, it should be produced by the Respondents as that is the ~~authenticated~~ one. According to him, the computation of the Earned Leave by the New Delhi office was not correct.

6. In regard to the GPF also, the applicant has disputed the amount paid to him. According to him, he was paid an amount of Rs.5,56,896/-, whereas, he was entitled to an amount of Rs.5,85,286/- after taking into account the interest payable for the amount deposited after March, 1998.

7. The Respondents submit that they have made all the payments within a reasonable period after the voluntary retirement of the

applicant. While in the case of retirement on superannuation, the Rules stipulate that amounts of gratuity etc. can be paid within a period of three months from the date of retirement and Leave Encashment and C.G.E.I.S. etc. to be paid immediately on retirement. There is no such time limit prescribed in the case of payment of retirement dues on voluntary retirement. The respondents have drawn my attention to Rule 48A of CCS (Pension) Rules wherein it is provided that in the case of voluntary retirement since the action has to commence only after the actual date of retirement, a six months period would be reasonable. According to the Respondents therefore, there has been no delay whatsoever. Further, the Respondents submit that the applicant himself submitted his papers for processing of the retiral dues only after his actual retirement.

8. In the case of the C.G.E.I.S., the applicant submitted his application on 22.9.1998, the same was processed and submitted to the Controller of Defence Accounts, Southern Command, Pune on 5.10.1998 and it was passed on 20.1.1998 and the D.D for Rs. 39,600/- was sent to the applicant in December, 1998, hence there was no unnecessary delay in this case.

9. In regard to the Leave Encashment, it was claimed in December, 1998 and was paid by D.D. on 6.2.1999.

10. In regard to the GPF accumulation, the applicant submitted his application on 15th September, 1998 for final settlement of the GPF. Recovery details for the period from February, 1997 to March, 1998 had to be obtained from the Chief Engineer, Navy, Cochin, where the Officer was serving during his above period, those details were received on 6.11.1998 and the documents of final settlement were submitted to JCDA (Funds) JCDA (Funds) Meerut Cantonment on 7.11.1998 and it

was settled on 11.2.1999. The cheque was issued on 16.2.1999 and the Bank draft was sent on 20.2.1999. Subsequently, the applicant had called for working out the details of the amount and the same was furnished to him and in addition to this amount another sum of Rs. 3,738/- was released vide order dt. 31.5.2000. There was, therefore, no abnormal delay in releasing the GP Fund accumulation.

11. In regard to the Pension and Terminal benefits, the applicant submitted his pension documents on 22.9.1998. It took some time to process, the documents, service book and pension documents were sent to CDA (Pension) Allahabad on 4.12.1998. The Pension Gratuity Award was received on 13.10.1999 and transmitted to the applicant's account on 6.11.1999. There was no intentional delay. The processing of the papers was done within a reasonable time.

12. The applicant had drawn an advance of Rs.59,800/- towards TA/DA for permanent transfer from Cochin to Pune on 26.11.1998. The claim was passed on 14.9.1998 disallowing a sum of Rs.13,501/-. Thereafter, subsequently, a sum of Rs.12,499/- was passed, on 2.6.1999, 27.9.1999 and 18.1.2000 respectively. According to the Respondents, the applicant's claim were promptly processed, there was no delay attributable to negligence on the part of the Respondents.

13. Coming to the allowing of the full qualifying service of 33 years, the Respondents submit that the applicant has claimed multiple reliefs in the present O.A. He entered service on 23.12.1974 and retired voluntarily on 12.9.1998, thus rendering a service of 23 years, 8 months and 21 days. He was granted

benefit of 5 years qualifying service added to his case under provisions of Rule 48A of the CCS (Pension) Rules on account of his voluntary retirement from service and accordingly proportionate pension and gratuity had been worked out and paid to the applicant. As per Rule 49 of the CCS (Pension) Rules 33 years service is required to earn full pension and gratuity. The applicant was fully aware of the provisions of the Rules and maximum benefits. His demand for full pensionary benefits as admissible to those who had completed 33 years of service is not based on any Rules or Natural Justice. Although the maximum age for entry into service was increased, the applicant was in no compulsion to wait until the age of 30 years to enter into service. He cannot now be allowed to touch upon this issue and the same needs to be rejected as being totally dehors the Rules.

14. Coming to the computation of Earned Leave, the Respondents submit that the applicant had 238 days of Earned Leave to his credit when he retired on 12.9.1998. At the time of finalisation of the Leave Encashment Certificate by the Central Record Office (Officers) New Delhi, it was noticed that the applicant had availed 71 days excess half pay leave which was converted to 36 days full pay leave and this was deducted from the Earned Leave account of the applicant and therefore, the balance of Earned Leave was arrived at 202 days and accordingly the leave encashment of Rs.1,30,133/- was claimed in December, 1998 and paid to the applicant through Demand Draft. The Earned Leave worked out by the Officer is from June, 1998 only and he did not take into account the excess leave availed prior to that period. His contention that credit of Earned Leave for the

months of July, August and September, 1998 was not correct. The Respondents have drawn my attention to a letter dt. 26.8.1999 from the Dakshin Kaman Mukhyalaya Abhiyanta Shakha, HQ Southern Command, Engineers Branch, Pune, as well as letter dt. 18.2.2002 from the CRO (Officers), Delhi Zone, Delhi Cantt. It has been brought out in these letters that as per calculation by the CRO (O) Delhi Cantt. while verifying the leave account for leave at credit for encashment upto the date of voluntary retirement on 12.9.1998 the E.L. of credit for encashment was 238 days. However, it was observed that the applicant had availed excess HPL for 71 days, which was debited to 36 days of Earned Leave amount and thus E.L. at the credit was arrived at 202 days only. This is as per the letter of the Pune Office and therefore, there is nothing wrong in the Respondents counting his EL as 202 days for purpose of encashment of leave.

15. In regard to the Provident Fund Account, the Respondents submit that the P.F. amount which was available in the account of the applicant as on 31.3.1998 was Rs. 5,19,864/-. The applicant has also not disputed the said amount. Thereafter, he has subscribed further from April, 1998 till August, 1998, whereas the applicant has also taken into account the subscription for the month of September which was not there. The Respondents further submit that they have already calculated the interest for the period from April to August, 1998 on the GPF amount. The interest is generated automatically. Therefore, there is nothing wrong with the calculation of the P.F. Account of the applicant.

16. I have heard the Learned Counsel for the applicant, as

well as, the Respondents. As far as the first issue regarding treating the qualifying service for pension as 33 years instead of 28 years is concerned, it is very clear that there is no Rule which provides for treating full service for qualifying pension when the applicant has put in only 28 years, even though the entry age had been enhanced. I agree with the Respondents that the applicant has no case in this respect. Moreover, the applicant has raised multiple reliefs. If he is challenging Rule 49, then, that will have to be challenged separately by another OA and not in the present OA if he wants to press other reliefs also.

17. I do find that there has been some delay in the payment of the retiral dues. As far as payment of C.G.E.I.S. and the Leave encashment are concerned, I find that they have been paid within 2 1/2 months of his retirement. I do not find any indifference, negligence on the part of the Respondents in pursuing the proposals of C.G.E.I.S. and Leave Encashment on the part of the Respondents. According to me the amounts have been paid within a reasonable period considering that the applicant submitted his application only after he had retired on 12.9.1998. In case of Gratuity, however, I find that it has been delayed by more than one year. Even if it is taken that the applicant had retired voluntarily and therefore, the prescribed period for payment of Gratuity may not apply in the present case, still according to me there has been inordinate delay in paying the Gratuity amount. According to me, therefore, the applicant is entitled for interest on the delayed payment to be paid from 3 months after the date of retirement i.e. 12.9.1998 till the actual date of payment i.e. 6.11.1999. As far as interest on GPF amount is

concerned which was paid 5 months later and the balance amount which was paid 8 months later, As the Respondents <sup>have</sup> pointed out that interest is generated automatically, the applicant cannot be said to be at a loss as the applicant has been paid the amount of GPF after due calculation of interest. The applicant is still disputing this. The applicant, is therefore, directed to sit with the Respondents to go through the statement of computation of his GPF amount and Respondents shall explain the computation to the applicant. I am satisfied that the Respondents have calculated the amounts correctly and there is no need for any payment of interest for the same. In regard to the TA/DA also, it is seen that the applicant had already been granted an advance amount, it was only a question of settling the same. Therefore, no interest is required to be paid on the delayed settlement.

18. In regard to the Leave Encashment, it is seen that the Pune Office had indicated that the applicant had 240 days of Earned Leave to his credit for purpose of encashment. However, thereafter, there is a clarification/explanation given as to why the final settlement is only for 202 days of E.L. The applicant insisted on calling for the record from Pune Office. This was not agreed to, because although the Pune office had communicated 240 days E.L., the Head Office gave the reason for reducing the number of Earned Leave to 202 days to the Pune Office and the Pune Office has accepted the same. Had the Pune office felt that the calculation done by the Head Office was wrong, the Pune Office would have taken up the matter again with the Head Office. That was not done. According to him, there is nothing wrong in the calculation of the E.L. to the credit of the applicant. In