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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI-400001

O.A. No. 45 of 1991

Dated : 27th JUNE 1997

CORAM : Hon. Shri Justice K.M. Agarwal, Chairman
Hon. Shri B.S. Hegde, Member (J)
Hon. Shri M.R. Kolhatkar, Member (A)

Bhalchandra Chintaman Gadgil
residing at 17 Maniknagar
Housing Society, Gangapur Road,
Nashik 422005

(By Adv. Shri G.K. Masand) ..Applicant

v/s.

1. Union of India through the
Secretary Ministry of Personnel
Public Grievances & Pensions
New Delhi 110001
2. Chairman,
Central Administrative Tribunal
Principal Bench, Faridkot House
Copernicus Marg, New Delhi
3. Registrar
Central Administrative Tribunal
New Bombay Bench
New Bombay

(By Adv. Mr. V D Vadhavkar
for Mr. M.I. Sethna, Senior
standing Counsel for Central
Government)

..Respondents

ORDER

(Per: K.M. Agarwal, Chairman)

(Faced with conflicting views of
Calcutta and Jabalpur Benches of this Tribunal,
the Division Bench has referred the case to the
Full Bench for deciding the question, which appears
to be as follows:-

"Whether this Tribunal has jurisdiction
to entertain this application by a
retired Vice Chairman of the
Tribunal ?"

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2. At the request of and with the consent of the learned Counsel for the parties, we propose to consider and decide the additional questions of law as follows so as to avoid further delay in final disposal of the petition. The questions are as follows:-

- i) if this Tribunal has jurisdiction, whether the applicant is entitled to claim interest on delayed payments of cash equivalent of leave salary for Earned Leave.
- ii) if yes, at what rate and from what date?

3. Briefly stated, the applicant was appointed Vice Chairman of the Central Administrative Tribunal with effect from 4.11.1985 and he retired on 2.11.1988. He was held to be entitled to cash equivalent of leave salary for Earned Leave for a period of 125 days. Accordingly, the entitlement was calculated @ Rs.38,640/- A sum of Rs. 23,478/- was paid on 28.12.88 whereas the balance of Rs.15,162/- was paid on 16.8.1990. A claim for interest @ 18% per annum has been made for the period after two months from the date of retirement and to the date of actual payment of the balance amount of Rs.15,162/-. The claim has been denied by the respondents. The jurisdiction of this Tribunal to entertain the dispute

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was also questioned. In PRATIBHA BONNERJEA (Mrs.) Vs. UNION OF INDIA AND OTHERS, (1994) 27 ATC 632 the Calcutta Bench of the Tribunal held that this Tribunal has jurisdiction. In another case SYED SHAUKAT ALI AND OTHERS Vs. UNION OF INDIA AND OTHERS, (1994) 27 ATC 619, decided by Jabalpur Bench of the Tribunal it was held that the Tribunal has no jurisdiction. Accordingly the reference has been made by the Division Bench to the Full Bench for resolving the dispute.

4. We heard the learned Counsel for the parties. The case of PRATIBHA BONNERJEA (Mrs.) (supra) has gone to the Supreme Court, but the Supreme Court did not decide the question of jurisdiction in Civil Appeal No. 6020 of 1994, UNION OF INDIA & ORS. Vs. PRATIBHA BONNERJEA & ANOR, decided on 21.11.1995. Under the circumstances we are required to decide the question referred by the Division Bench.

5. The learned Counsel for the respondents relied on the decision of the Supreme Court in Civil Appeal No. 6020/94 (supra) and to a few lines at paragraph 42 of the judgment of the Supreme Court in L. CHANDRA KUMAR Vs. THE U.O.I. & ORS. 1997(1) SC SLJ 412 and submitted that the Members and Vice Chairmen of the Tribunal being persons of the status of High Court Judge cannot be deemed to be employees of the Central Government and therefore this Tribunal has no jurisdiction to entertain any

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dispute raised by such persons. We find no substance in the contention. The Judges of the High Court and Supreme Court are constitutional functionaries and therefore they are not considered to be Government servants. Their appointments and service conditions are related by the provisions made in the Constitution of India. As against this the provisions pertaining to appointment, terms and conditions of appointment and the mode of resignation and removal are provided in the Sections 6 to 9 of the Administrative Tribunals Act, 1985, (in short, the Act). The mode of removal of Chairman, Vice Chairmen, or other Members of the Tribunal has altogether differently provided in S.9 of the Act. They cannot therefore claim to be constitutional functionaries. Their mode of appointments, mode of removal and conditions of service are such as may be equated to its any other Government employees of the Centre. Under the circumstances, we are of the view that this Tribunal has jurisdiction to entertain and decide disputes raised by any Chairman, Vice Chairmen, or Members of the Tribunal in regard to service matters.

6. Rule 39 (2)(a) of the Central Civil Services (Leave Rules), 1972 makes following provision in reference to leave/cash payment in lieu

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of Earned Leave :-

"39(2)(a) Where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall suo motu issue an order granting cash equivalent of leave salary for earned leave, if any, at the credit of the Government servant on the date of his retirement, subject to a maximum of 240 days." (Emphasis supplied).

7. We are of the view that if the amount of cash equivalent of earned leave was payable on the date of retirement of an employee but it was not paid on that date or atleast within a reasonable time of one month from the date of retirement, such employees would be entitled to claim interest on the amount of delayed payment. In the present case, the applicant retired on 2.11.1988 and therefore on the date of retirement, or atleast within a period of one month from that date the entire amount of Rs.38,640/- ought to have been paid to him on the date of retirement i.e., 2.11.1988 or within a month thereafter i.e., on or before 2.12.1988. As it was not

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paid, we are of the view that the applicant is entitled to payment of interest for any period subsequent to 2.12.1988. In the present case the amount of Rs. 23,478/- was paid on 28.12.88, but no claim for interest has been made on this amount for the delay. In so far as the balance amount of Rs.15,162// is concerned, the interest has been claimed from two months after the date of retirement i.e., from 2.1.1989. We are, therefore, of the view that the applicant can get interest on the amount of Rs.15,162/- from 2.1.1989 to 16.8.1990, the date on which the payment was made.

8. The next question that arises is about the rate of interest. Though the applicant has claimed the interest @ 18% per annum, however, we are of the view that it should not be just and proper to award interest in excess of 12% per annum. S. 32 of the Code of Civil Procedure does not permit interest in excess of 6% per annum, in the ordinary cases. Keeping in view the prevailing situation, we think interest exceeding 6% but not exceeding 12% per annum may be awarded in this case.

9. Accordingly, we are of the view that the applicant is entitled to interest @ 12% per annum on the amount of Rs.15,162 from 2.1.1989 to 16.8.1990.

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10 In the light of our discussions aforesaid, our answer to the questions are as follows:

- i) This Tribunal has jurisdiction to entertain this application filed by a retired Vice Chairman of the Tribunal.
- ii) Since the Tribunal has jurisdiction the applicant is entitled to claim interest on delayed payments of cash equivalent of leave salary for Earned Leave.
- iii) The applicant is entitled for interest @ 12% per annum, from 2.1.1989 to 16.8.1990.

11. In the light of our answers to the aforesaid questions, this O.A. is finally disposed of by directing the Respondents to pay interest to the applicant on the amount of Rs. 15,162 from 2.1.1989 to 16.8.1990. No costs.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member(A)

B.S.Hedde

(B.S.Hedde)
Member(J)

K.M.Agarwal

(K.M.Agarwal)
Chairman

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