

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 64/92

~~Transfer Application No:~~

DATE OF DECISION 7.1.93

Shri Motiram Tejmal Gurbaxani Petitioner

Shri M.A. Maballe, Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri S.R. Atre for Mr. P.M. Pradhan, Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. PRIOLKAR, Member (A)

The Hon'ble Shri V.D. DESHMUKH, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

M.Y. Priolkar
(M.Y. PRIOLKAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.64/92

Shri Motiram Tejumal Gurbaxani .. Applicant.

V/s.

Union of India through
the Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

Chief Commissioner of
Income Tax, Aaykar Bhavan,
M.K. Road, Bombay - 20

Commissioner of Income Tax City I
Aaykar Bhavan, M.K. Road,
Bombay - 20.

... Respondents.

CORAM: Hon'ble Shri M.Y.Priolkar, Member (A)
Hon'ble Shri V.D.Deshmukh, Member (J)

Appearance:

Shri M.A. Mahalle, counsel
for the applicant.

Shri S.R. Atre for Shri P.M.
Pradhan, counsel for the
respondents.

ORAL JUDGEMENT

Dated: 7.1.93

¶ Per Shri M.Y.Priolkar, Member (A) ¶

The applicant in this case retired as Income - Tax Officer on 31.12.83. On 28.12.83 he was served with a charge sheet. An inquiry was held and admittedly the Inquiry Officer had exonerated the applicant of all the charges, However the Disciplinary Authority did not agree with the findings of the Inquiry Officer and ordered a de novo enquiry against which the applicant filed an application under Section 19 of the Administrative Tribunals Act 1985 in OA 8/89. By our order dated 5.4.89, the order of the Disciplinary Authority for starting the de novo enquiry was quashed but the Disciplinary Authority was given the liberty to initiate proceedings under Rule 15(1) of Central Civil Services after giving an opportunity to the applicant for making a representation

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against this proposal. A fresh inquiry was accordingly initiated by the respondents on 31.10.91. The applicant again approached this Tribunal (OA No79/92) against the initiation of the fresh inquiry. By our order dated 21.10.92 we have quashed the order dated 31.10.91 of the Commissioner of Income - Tax as also the charge memo given to the applicant on 28.12.83. We have also directed the respondents not to take any departmental action against the applicant on the basis of the aforesaid charge - memo dated 28.12.83.

2. The prayer of the applicant in this application is for payment of DCRG due to him from the date of retirement i.e. 31.12.83 alongwith interest from the date of retirement till the date of payment.

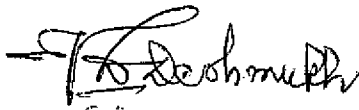
3. The learned counsel for the respondents stated that the applicant will have no right for interest on the amount of gratuity from the date of retirement since the respondents were within their right under Rule 69(1)(c) of Pension Rules to withhold the gratuity payable to the applicant until the completion of the departmental proceedings and issue of a final order therein. The applicant, if at all, may be eligible for interest only from the date of the order of the Tribunal i.e. 21.10.92. He relied upon the judgement of the Supreme Court in the case of Union of India Vs. K.V. Jankiraman (AIR 1991 SC 2010). In this judgement which was in the context of sealed cover procedure, it is held by the Supreme Court that in cases like where the clearance in the departmental proceedings is with benefit of doubt etc., the concerned authority must have the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. The learned counsel for the applicant argued on the analogy of this principle that it is for the respondents

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to take the decision whether to pay or not to pay the interest on the delayed payment of gratuity, taking into account all the facts and circumstances of the case. We do not find much substance in this contention. In fact the Government of India, Department of Personnel in O.M. dated 11.7.79 and 10.1.83 have themselves directed that where the Government servants are fully exonerated on the conclusion of the departmental proceedings, interest on delayed payment of DCRG may be allowed in their cases, taking into account the gratuity as having fallen due on the date following the date of retirement for the purpose of payment of interest. In the present case, it is not in dispute that the applicant was fully exonerated by the Inquiry Officer in the first inquiry and, on subsequent proceedings, the Tribunal has also quashed the proceedings on grounds which cannot be said to be purely technical. In any case since Government itself has directed payment of interest in such cases without any distinction, the applicant should not be denied the benefit of these Government instructions.

4. Regarding the rate of interest, we are of the opinion that this should be in accordance with Govt. of India, Department of Personnel and Training instructions dated 28.7.84 which stipulate that the rate of interest should be 7% per annum for delay beyond three months upto one year and 10 % per annum thereafter. We, accordingly, direct the respondents to release the payment of gratuity within a period of four months from the date of receipt of this order alongwith interest calculated at 7% per annum from 1.4.84 to 31.3.85 and thereafter at 10% per annum till the date of actual date of payment.

5. This application is disposed off finally with these directions. There shall be no order as to costs.


(V.D. DESHMUKH)
MEMBER (J)


(M.Y. PRIOLKAR)
MEMBER (A)