

12

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 53/93

Transfer Application No: --

DATE OF DECISION: 31-8-94

Raghunath Laxman Shegaje Petitioner

Mr.S.P.Saxena Advocate for the Petitioners

- Versus

Union of India & Ors. Respondent

Mr.R.K.Shetty Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member(A)

The Hon'ble Shri --

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of X the Tribunal ?

MR Kolhatkar

(M.R.KOLFATKAR)
Member(A)

M

13

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.53/93

Raghunath Laxman Shegaje .. Applicant

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.S.P.Saxena
Counsel for the
Applicant.
2. Mr.R.K.Shetty
Counsel for the
Respondents.

JUDGMENT:

(Per M.R.Kolhatkar, Member(A))

Date: 31-8-1994

This is an application u/s. 19 of the A.T.Act. The original reliefs sought by the applicant ~~was~~^{were} in respect of recalculation of pension after granting annual increments which were not paid to him owing to certain proceedings; to pay to the applicant all retiral benefits and finally to pay to the applicant interest @ 18% on account of delayed payment.

2. The facts of the case are that the applicant who was working as Supervisor Barrack & Stores, Grade I in the office of Respondent No.3 was suspended on 5-1-1987 in connection with loss of 198 cement bags, but the suspension was revoked on 13-7-87 and he continued to be on duty till his superannuation on 30-6-90. Criminal case

14

No.33/90 which was filed against him in the court of Chief Judicial Magistrate at Pune in 1990 u/s. 406,409 read with section 34 of the IPC was decided on 10-1-92 and the copy of the judgment was received by the departmental authorities on 28-1-92. He was acquitted in the above case. Thereafter he made several representations on 27-1-92, 9-3-92, 13-5-92, 10-8-92 and 10-12-92 but his pensionary dues were not paid to him.

3. The O.A. was filed on 25-1-93. In the reply dated 10-11-93 the respondents stated that the pensionary dues were not paid to the applicant as the question of taking departmental proceedings against the applicant for loss of cement bags was under consideration. It was decided only on 14-5-93 not to proceed in the matter further. His increments due have been released. The gratuity and commutation have also been released on 20-6-93 and the action for the revision of pension and gratuity is in progress. Since the delay in releasing the various pensionary benefits was due to the applicant's involvement in disciplinary proceedings for loss of cement bags, the question of payment of interest, according to respondents, does not arise.

4. By the time of final hearing namely on 5-8-94 all the pensionary dues were paid to the applicant and the revised PPO had also been issued. The applicant's calculation shows that he had drawn an excess pension prior to commutation to the

1/11/94

15

tune of Rs.9468/- and adjusting Rs.856/- drawn less he has over drawn Rs.8612/- and the same may be adjusted against interest which he is claiming on account of delayed payment of pensionary dues.

5. The applicant has relied in support of his case on the judgment of Bombay High Court in Smt. Shewantabai wd/o. Eknath Jambhulkar vs. Deputy Director of Education, Nagpur and Ors., 1993(1) Mah LR 163, in which ^{been} it has held that when there is no satisfactory explanation for delay of seven years in disbursing the retirement benefits, the court ^{can} direct payment of 18% interest on the amount due by way of penal interest. He also relied on the case of State of Kerala and ors. v. M. Padmanabhan Nair which is a Supreme Court case reported in AIR 1985 SC 356 in which the Hon'ble Supreme Court have observed that pension and gratuity are valuable rights and property in the hands of the employee and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. In that case the delay was of two years three months and it was due to negligence of the District Treasury Officer. He also relies on decision of Single Member Bench of this Tribunal in O.A. No. 691/93, B.L. Aggarwal v. U.O.I., 1994(1) SLJ 428 where the delay involved was of 13 months and interest @ 18% was allowed.

6. In our view, while considering payment of interest we must first ^{notice} the relevant CCS Pension Rules and the applicability of the same to the facts of particular case. In this case there is

16

no doubt that the applicant superannuated on 30-6-90 but judicial proceedings were pending against him. Here the relevant rule is Rule 68 of CCS Pension Rules, 1972 which provides that if the payment of gratuity has been authorised later than the date the payment becomes due and it ^{is} clearly established that the payment of gratuity has been delayed due to administrative lapses, interest shall be payable at such rates as may be prescribed. ~~It~~ and in accordance with the instructions issued from time to time. The Government of India instructions relating to admissibility of interest on gratuity after conclusion of judicial/disciplinary proceedings are reproduced at page 146 of the Swamy's Pension Compilation, 1993 edition. According to this, where the disciplinary/judicial proceedings against a government servant are pending on the date of his retirement, no gratuity is paid until conclusion of and issue of the final order thereon. Where the Government servants on the conclusion of the proceedings are fully exonerated ^{the payment of} 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. In this particular case the applicant was fully exonerated and the applicant was acquitted in the criminal proceedings on 10-1-92. Subsequently, the question of initiating departmental proceedings was under examination and it was decided on 14-5-93 not to proceed against him. The respondents state that according to instructions referred to at page 146 the

1/12

(18)

delay if any has to be calculated from three months from the date it was decided not to proceed against him i.e. to say 14-8-93 and according to the statement filed by the respondents, since various payments were released to the applicant well before the date, the question of payment of any interest does not arise.

7. The legal point involved here is whether disciplinary proceedings were pending against the applicant at the time of retirement. It is clear what was pending against the applicant at the retirement ^{were} ~~were~~ judicial proceedings and not disciplinary proceedings. The question of initiating disciplinary proceedings was taken up only after the acquittal of the applicant and the final decision was not to proceed against with it. In our view, therefore, ^{and consequent delay} these are required to be completely ignored. Coming to the judicial proceedings, no doubt they were pending at the time of superannuation but had resulted in acquittal of the applicant on 10-1-92. Therefore, in terms of the Govt. instructions which are effective from 10-1-83 the gratuity becomes payable immediately on superannuation i.e. on 30-6-90 and therefore the interest to be paid is to be calculated in terms of the following time table:

- (i) beyond 3 months and upto one year .. 7% per annum
- (ii) beyond one year .. 10% per annum

M

12

8. There is no doubt, therefore, that so far ^{as} gratuity is concerned, the applicant is entitled to have 7% interest from 1-9-90 upto 31-8-91 and 10% interest thereafter.

9. So far as the delay in payment of other retiral benefits viz. commutation, encashment of leave and pension is concerned the applicant has given a detailed table which is annexed in his rejoinder dated 21-3-94 which also shows the amount of Rs.8612/- to be adjusted from the payment due to him. Although no rules have been pointed out to us in respect of interest on the above payments i.e. payment other than gratuity, we take it as a settled position in view of the Supreme Court judgment in Padmanabhan's case that the pensioner is entitled to payment of interest, the precise rate being at discretion of the court. The applicant has asked for payment of interest @ 18%. In our view, the rate of 18% being market rate has to be allowed as penal rate of interest depending on the circumstances of the case. In our view such circumstances do not obtain in this case and therefore we would allow the interest of ^{on these benefits} 10% from the date of acquittal of the applicant by the court of JMEC.

10. Incidentally, we cannot but observe that the written statement of the respondent as to the precise number of cement bags which were lost is extremely confusing. Two different

figures are mentioned in the written statement. While the written statement of the respondents shows 738 bags ^{or 638 bags} of cement, on a perusal of the judgment of the court it is seen that the case related ^{to} criminal mis appropriation/criminal breach of trust of government property to the tune of 200 cement bags only. Moreover court ^{there was} has observed that no complaint at all from the Military authority about the shortage of any levy cement bags. Therefore the proposal of the applicant in respect of departmental proceedings for recovery of an amount of Rs.44,280/- from the applicant on account of loss of 738 cement bags cannot but be considered to be based on material which is shaky. to say the least.

11. We, therefore, dispose of this O.A. by passing the following order :

O R D E R

O.A. is allowed.

The respondents are directed to make payment of interest to the applicant in respect of delayed payment of gratuity in terms of rule 68 of Pension Rules viz. @7% from 1-9-90 to 31-8-91 and @10% from 1-9-91 till the date of payment.

Interest @ 10% in respect of other

...8/-

25

pensionary benefits from 10-1-92
till the date of payment.

Respondents are at liberty to
adjust Rs.8612/- from the interest
so calculated.

By No order as to costs.

M. R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

M