

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 222/93

Transfer Application No:

DATE OF DECISION: 20.7.1994

E.K.Phatak.

Petitioner

Shri S.Natarajan.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri A.I.Bhatkar.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

The Hon'ble Shri

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


(M.S. DESHPANDE)
VICE-CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.222/93.

S.K.Phatak.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman.

Appearances:-

Applicant by Shri S.Natarajan.

Respondents by Shri A.I.Bhatkar.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 20.7.1994.

By this application the applicant seeks recovery of Rs.18,047/- which has been deducted as interest on the amount of gratuity which had been released to him on 27.4.1988.

2. The facts lie in a narrow compass. The applicant was compulsorily retired on 24.4.1986 under Rule 48 of the Pension Rules. An amount of Rs.51,563/- was released to him on 27.4.1988 as Gratuity. The applicant moved this Tribunal by questioning the order of pre-mature retirement, but during the pendency of that application the department set aside the order of pre-mature retirement and directed payment of full backwages and all benefits by the order dt. 17.11.1988. The applicant resumed his duties on 9.12.1988. He retired on superannuation on 28.2.1991 and on that day the balance of the amount of gratuity came to be paid to him. The respondents, however, charged interest on the amount of gratuity on which the applicant had not refunded consequent upon his joining duties on 9.12.1988; for the period from 27.4.1988 to 28.2.1991 amounting to Rs.18,047/-. The entire amount of arrears of pay and allowances for the period during which the applicant was not in service came to be paid to him on 25.2.1992. The applicant's contention is that it was not open to

the Respondents to charge interest on the payment of the amount of gratuity which was released to him on 27.4.1988 and he claims refund of interest if so deducted. The Respondents contend that it was the applicant's obligation to refund the amount of gratuity Rs.51,563/- when he resumed duty on 9.12.1988 and since that amount had not been repaid interest became chargeable at the same rate of interest which was paid on the P.F. The table given in para 5 of the written statement shows that Rs.1,25,976/- was the amount due towards pay and allowances for the period during which the applicant was not in employment. The amount of pension paid to him from 24.4.1986 to 28.2.1989 was Rs.55,168/-. According to the certificate which the applicant belatedly furnished after a few reminders ~~and~~ he had earned during the period from 1.11.1986 to 30.9.1988 Rs.48,854/- and Employment Tax was Rs.620/-. By including the amount of D.C.R.G. Rs.18,047/- the amount due from the applicant was shown as Rs.1,19,689/- and Rs.6,287/- was paid to the applicant.

3. One of the grounds raised by the applicant in this OA at para 10(c) is that the arrears of pay and allowances admissible to him as a result of reinstatement was not paid to him in time and the said gratuity could have been adjusted from the amount of pay and allowances and since no interest was paid on the belated payment of pay and allowances, the respondents would not be entitled to ask for interest. Reference was made to Rule 8(1) of Swamy's Pension Compilation an extract of which has been given at Ex.I. It is apparent that earlier the orders provided for refund of GPF amount in suitable instalments, but after the matter was discussed with the National Council JCM a decision was taken and Clause (i) thereof was that the amount of DCRG may be

allowed to be retained by the Government servant concerned on payment of simple interest as prescribed for the GPF for the corresponding period. The amount so retained will be adjusted against the final death-cum-retirement gratuity becoming due on final retirement and the balance, if any, will be paid to him.

4. The submission on behalf of the applicant was that an option should have been given to the applicant as contemplated by Rule 8 of Appendix 10 which permitted refund of GPF amounts in suitable instalments and since this option was not given to him interest could not have been charged as stated in Clause (i) above. It is difficult to see in the present circumstances ~~whether~~ ^{how} the applicant can say that he has not availed of the option of repaying the amount of gratuity when it became due on final retirement, because the applicant had not offered to pay the amount of Rs.51,563/- which he received on 27.4.88 until the adjustment came to be made on 25.2.1992 from the arrears of his pay and allowances. Normally, it would have been his liability to pay interest as contemplated by the above instructions.

5. The question in the present case is little different and takes a different complexion. The applicant had been prematurely retired on 25.4.1986 and only after the department ~~set aside~~ its own order that he joined the duties on 9.12.1988. The pay and allowances which had become due for this period had not been paid to him until 25.2.1994 i.e. for nearly a year after his superannuation. The justification offered by the Respondents is that the applicant had not submitted employment/non-employment certificate as demanded by the department under F.R. 54(8) during the period of his absence and the applicant had taken the stand that submi-

ssion of such a certificate was not necessary. Assuming that such a certificate was necessary before the payment of the balance could be made to the applicant and the department was obliged to send two reminders on 23.11.1989 and 29.8.1990 to the applicant and by its replies at. 20.10.1989 and 26.2.1990 he refused to submit the certificates under the notion that it was not necessary, still as it turned out the respondents could have deducted only Rs.45,854/- on that count from the pay and allowances. The amount of gratuity was Rs.51,563/- out of the total amount of Rs.1,25,976/- towards which it came to be adjusted. The respondents would not have been entitled to charge interest from 27.4.1988 when the part of gratuity was released only after he was allowed to join duty on 9.12.1988 which roughly comes to about 7½ months. The certificate was submitted by the applicant on 18.10.1991, but even after this was done the applicant's dues were not paid upto 25.2.1992. This was not a case where the applicant alone had avoided to make payment to the department, but the department also was guilty of laches in not settling the applicant's dues with expedition and had no justification for charging interest from 27.4.1988 to 9.12.1988 during which the applicant was not allowed to join duties. Even assuming that the applicant had exercised his option in terms of Rule 8 of Appendix 10 of retaining the amount subject to payment of simple interest, in the circumstances there will be no justification for the department to insist upon the payment of interest when the applicant was deprived of employment between 25.4.1986 and 9.12.1988 and had to suffer humiliation. I therefore hold that the applicant is entitled to the refund of the amount of Rs.18,047/- which has been deducted as interest on the amount of gratuity which was released on 27.4.1988.

4. I therefore direct the respondents to refund to the applicant Rs.18,047/- within two months from the date of communication of this order. There will be no order as to costs.

[Signature]
(M. S. DESHPANDE)
VICE-CHAIRMAN

B.