

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
(CAMP: NAGPUR)

Original Application No: 600/94

Transfer Application No:

DATE OF DECISION: 10/03/1995

Dr. Madhu Kherdey Petitioner

Applicant in person Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri.R.S.Sundaram 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  the Tribunal ?

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER (A)

J\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
CIRCUIT SITTING AT NAGPUR

O.A. 600/94

Dr. Madhu Kherdey

.. Applicant

vs.

Union of India & Ors.

.. Respondents

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

Appearances

1. Applicant in person.

2. Shri.R.S.Sundaram, counsel  
for the respondents

ORAL JUDGMENT

DATED : 10/03/1995

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

The applicant is a retired officer of Postal Department. He had drawn advance of Rs.10,000 on the eve of retirement in connection with going to his hometown and settled the advance through two separate bills in as much as he travelled separately from the family. The total amount of T.A.Bills is Rs. 12,649 i.e. more than the amount of advance. There was a delay in presentation of bills as below :

(a) For self

<u>Date of completion of journey</u>	<u>Date of presentation of bill</u>	<u>Delay as per Rule 410(i)</u>
9-8-92	12-9-92	19 days

(b) for family

3-12-91	28-3-92	3M - 12 days
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2. On account of this delay, the respondents asked the applicant to pay interest of Rs.916.65. The applicant entered into correspondence regarding reasons for charging interest and the same was not concluded. However, interest amount was deducted from his DCRG vide the statement dated 17.12.1993, at Annexure A-10 to the application. It is the deduction <sup>which</sup> the applicant is challenging and he prays for refund of the amount of interest alongwith interest. The grounds for challenging

the order of the department, firstly that the Department has been shifting the stand regarding the applicable rule and even assuming that there were rules enabling the department to charge interest, the department appears to have acted vindictively in levying interest and recovering it unilaterally without issuing any show-cause notice. The applicant relies on Kashinath Banerjee v. Union of India (1991 17-ATC-88) for the proposition that the department cannot impose a penalty on him after his retirement and penal interest amounts to penalty. The applicant also relies on the well known proposition that apart from the recovery of interest, the mode of recovery is also objectionable and it is now well settled that gratuity cannot be withheld or unauthorised deduction cannot be made from the gratuity, which is a personal property of the government employee.

3. The respondents have opposed the claim of the applicant. According to them, firstly the application is barred by limitation because in effect, the applicant is challenging the order dated 29-12-1992 of Postmaster General, Vadodara when the applicant was first asked to pay the interest. Secondly, the department has got powers to levy interest under Rule 394 of FHB Vol.I decision 2(ii) which provides that in cases where the adjustment bill is not submitted within the prescribed time, the entire amount of advance may be recovered in one lump sum immediately on expiry of such time limit. In such cases interest may be charged at the rate of interest prescribed for advances for purchase of conveyance (other than motor car) plus  $2\frac{1}{2}\%$ . In addition, it is pointed-out that as per Rule 410(1) of FHB Vol.I, this advance is required to be adjusted within 15 days and admittedly, the delay in this case for presentation of claims ~~was~~ more than 15 days, being 19 days in the case of applicant and 3 months, 12 days in the case of family. It is also contended that the applicant has challenged only the recovery of interest as such and not the mode of recovery namely adjustments by way of deduction from JCRG. According to the respondents, the action taken is as per rules which are expected to be known by the applicant who retired as a senior officer of the Department and there is no case for refund of the interest amount and other prayers of the applicant.

4. So far as rules position is concerned, although the applicant contended that the department has shifted the ground and there is no authority of rule, we are not satisfied that this is so. S.R. 147 deals with T.A. to Central Government servants on retirement and does not deal with the settlement of the T.A. claims. We are therefore required to refer to the Financial Rules applicable. No doubt, the delay beyond 15 days is not saved by rules and the Department

does have power to charge interest as per relevant rules. However, in this particular case, it is not clear to us that the department has considered all aspects of the application of rules.

5. So far as the applicant's contention regarding the penalty is concerned, we are unable to accept the same. Penal interest is not a penalty and the department is certainly entitled to charge penal interest as provided for by the Financial Rules. The department however is also expected to maintain a sense of proportion in charging and recovering such penal interest. It is well known that the delays not only in presentation but also the processing of T.A. bills in the government departments is chronic and the power to levy interest is, therefore, required to be exercised in accordance with the spirit of the rules, especially when they say "Heads of Department may waive such recovery of charging interest thereon in cases where non-submission of adjustment bill can be attributed to genuine difficulties" vide O.M dated 30-4-1986.

6. We are, however, inclined to accept the contention of the applicant that the department was not within its right to make unilateral deduction of penal interest from the O.C.R.G., which is a personal property of the government employee. The learned counsel for the respondents would urge that several deductions have been made from DCRG as seen from Annexure A-10. These deductions however are in the nature of authorized ones, like HBA, Car Advance, House Rent recovery, Pay & Allowances excess paid etc.etc. It is only the interest on T.A. Advance which is not a normal recovery and which has been introduced by the department instead of resorting to other modes of recovering the same.

7. We therefore partly allow the application and dispose of the O.A by passing the following order :

ORDER

It is held that the Department is not entitled to recover Rs.916.65 being penal interest on T.A adjustment bill from the DCRG and the Department is directed to refund the amount to the applicant within a period of one month from the date of this order. In the circumstances we do not pass any order regarding interest on penal interest to be refunded. We also give liberty to the department to recover the above penal interest amount on T.A advance from the officer by other legal means available to them. It is, of course, open to the applicant to make a representation to his head of department for waiver of interest explaining his difficulties which resulted in filing the T.A claims

in a belated manner and we have no doubt the head of the Department will exercise his power in a judicious manner. There is no order as to costs.

*MR. Kolhatkar*

(M.R. KOLHATKAR)  
MEMBER (A)

J\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
CAMP AT NAGPUR

CONTEMPT PETITION NO:(N) 26/95 IN O.A. 600/94

THURSDAY the 11th day of JANUARY 1996

CORAM: HON'BLE SHRI B.S.HEGDE MEMBER(J)  
HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Dr. Madhu Kherdey .. Applicant  
(In person) -versus-

1. Smt. T.K.Aryaveer  
Post Master General,  
Vadodara(Guj)Region,  
Vadodara.  
.. Respondents
2. Shri S.C.Mahalik,  
Secretary,  
Dept. of Posts,  
Dak Bhavan,  
New Delhi.  
(By Advocate Shri R.S.Sunderam) .. Respondents

O R D E R

(Per B.S.Hegde, Member(J))

The Tribunal vide its order dt. 10-3-95 directed the respondents not to recover an amount of Rs.916.65 ~~being~~ from DCRG and directed the department to refund the same to the applicant within one month of the date of that order. Applicant states that he has not received the same.

2.. Though the respondents counsel states that they directed the Vadodara Post Master General to make payment to the applicant, applicant states that he has not received the same. In the circumstance, respondents are directed to send the money by M.O. to the applicant within 15 days from today. C.P. is discharged.

*MR Kolhatkar*  
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(M.R.KOLHATKAR)  
Member(A)

*B.S.Hegde*  
(B.S.HEGDE)  
Member(J)