

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 677/94
T.A. No. __

198

DATE OF DECISION

16-2-96

K.A.RAHMAN

Petitioner

Mr.C.M.Jha

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

Mr.M.S.Ramamurthy

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr.

1. ~~Whether Reporters of local papers may be allowed to see the Judgement?~~
2. To be referred to the Reporter or not?
3. ~~Whether the Lordships wish to see the fair copy of the Judgement?~~
4. Whether it needs to be circulated to other Benches of the Tribunal?

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NO:677/94

pronounced this, the 16th day of Feb. 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

K.A.RAHMAN
B-19, Abhilasha Apartments
Mathuradas Road,
Kandivli(W)
Bombay - 400 067.
(By Advocate Shri G.M.Jha)

.. Applicant

-versus-

1. Union of India
through
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Secretary,
Railway Board,
Rail Bhavan,
New Delhi.
(By counsel Shri M.S.Ramamurthy)

.. Respondents

O R D E R
(Per M.R.Kolhatkar, Member(A))

This is an application u/s.19 of the A.T.

Act for interest at 18% on all payments made to the applicant pursuant to the judgment of the Tribunal in T.A. 37/88 delivered on 28-4-1989. That judgment related to illegal reversion of the applicant and the operative portion of the judgment is as below:

- (i) The respondents shall interpolate the name of the applicant in the panel published in their letter No.1024/5/2 dt. 1-8-1972.
- (ii) The respondents shall give all such promotion and make all such payments as the applicant would have been entitled to had he been so empanelled in the 1972 panel.
- (iii) The requisite action shall be finalised

and all the payments involved shall be made within a period of four months from the date of receipt of a copy of this order."

The respondent department had sought a review of the decision which R.A.No.3/90 was dismissed on 24-7-1991. The applicant approached the Tribunal in C.P. being C.P.No. 2/90 decided on 12-10-1993 which was disposed of by the following order :

"The present Contempt Application is, therefore disposed of keeping it open to the applicant to approach the respondents for payment of additional amount, if according to him, anything more is still required to be paid to him over and above the amount of two cheques pursuant to the judgment of the Tribunal. It will also be open to the applicant to file a fresh application, if so thought fit by him, for claiming interest on the ground of unreasonable delay or on the ground of non-compliance with any rules as to the period within which the payment of retirement benefits should be made to him pursuant to the judgment of the Tribunal."

The applicant has, therefore, sought payment of interest on an amount of Rs.76,846.91 @ 18% compounded quarterly as below:

1) Revised fixation arranged from June,81 to 30-9-1988	Rs.20,357.00
2) Difference of DCRG & Commutation	Rs.25,187.00
3) Difference of encashment due to revision of pay	Rs. 5,968.00
4) Revised fixation of pension from 1-10-1988 to 30-9-1993	Rs.25,334.91

Total: Rs.76,846.91

2. Respondents have opposed the O.A. According to them after the R.A. was decided on 24-7-91, respondents had approached the Tribunal at Ahmedabad for extension of time limit for making payment. According to the decision of the Tribunal in M.A. St.511/1991 in R.A. No.3/1990 decided on 17-3-92, extension was given upto 20-4-1992. The order in this regard is as below:

".....Learned advocate Mr.Gogia submits that four months extension from 20th December 1991 be given to the original respondents as prayed for in this M.A. M.A. is allowed. The time is extended upto 20th April,1992. No further time will be given. M.A. is disposed of."

According to the respondents, therefore, no interest can, in any case be claimed for a period earlier than 20-4-92 upto which date the learned Tribunal had given an extension of time after hearing the counsel for the applicant. It is further argued that it was open to the respondent department to explore all remedies and accordingly an SLP was filed against the judgment and that SLP was dismissed by the Supreme Court on 30-4-93. Immediately, thereafter, the Board's approval was conveyed for enlargement of the size of the panel of AEN which is at page 29 of the O.A. and thereafter calculations were made and by order dt. 20-7-93 the cheques were sent for the amount of Rs.25,187/- dt. 19-7-93 and an amount of Rs.26,325/- dt. 20-7-93 This totals upto Rs.51,512/- It appears that further

cheque for an amount of Rs.25,334.91 on account of revised fixation of pension was also received by the applicant as per the particulars furnished by the applicant in his rejoinder reproduced in para-1 above.

3. The question before me is as to whether interest can be granted to the applicant although there were no orders to that effect in the judgment on the O.A. and only the liberty was given to the applicant to file an O.A. ^{in orders on CA} on 12-10-93. Further question to be decided is if interest is at all permitted from what date it should be granted. The applicant relies on the case of Bhutnathpal vs. U.O.I. & Ors. (1990)13 ATC 339, decided by Calcutta Bench of the C.A.T. on 5-10-89 in which it was held that on account of inordinate delay on the part of the respondent, the applicant is fully entitled to get interest he has claimed. The interest was granted ^{in that case} @ 12%. It may be noted that although a separate O.A. was filed for interest, the Tribunal found that in the initial application viz. O.A.468/1986 the applicant had claimed interest. The applicant also relies on the case of D.P.Sinha v. U.O.I. & Ors., (1991)16 ATC 70, C.A.T. Patna decided on 27-9-1990. The applicant in that O.A. ^{Nair} had relied on the case of State of Kerala v. M.Padmanabhan (1985)1 SCC 429, in which the Supreme Court laid down that any culpable delay in settlement and disbursement of pension and gratuity must be visited with the penalty of payment of interest at the current market rate. The Tribunal held that there was delay but not culpable delay and allowed interest @ 12% instead of 18%. There

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again the question of res-judicata in the matter of payment of interest had not arisen.

4. ~~Y~~ ^A We have referred to the principle of re-judicata because the counsel for respondents relied on the O.A. 801/94, Dr.(Mrs.)Aruna Madan vs. U.O.I. & Ors. decided by Single Member Bench of this Tribunal on 22-11-1994. It was argued before the Tribunal that the cause of action for claiming interest arose when the amount was paid pursuant to the direction of the Tribunal. The Tribunal held that applicant's claim was not based either on the Interest Act, Contract Act or any other statutes under which interest can be claimed. Counsel for the applicant in that case relied on Hazari Lal vs. Union of India & Ors., All India Service Law Journal 1984(2)624. That was a judgment of the Rajasthan High Court which had relied on Supreme Court judgment in the case of Maimoona Khatun and another v/s State of U.P. and another, AIR 1980 SC 1773. The case was distinguished on the ground that there, ~~the~~ question that was considered was of limitation for making a claim for payment of arrears of salary after a decision was rendered reinstating the applicant. It was observed that such a position does not arise in the present case, and further held that the principles of ~~res-judicata~~ would operate.

5. In my view, the case of Dr.(Mrs.)Aruna Madan is distinguishable because in that case while extending the time limit for making payment, the Tribunal had not made any further observations. In the instant case there are three circumstances which need to be noted. First of all, the delay is substantial viz. although the original

order was passed on 28-4-89, the payment was not made upto July '93 i.e. for over four years. Secondly the Tribunal while extending the time in M.A. St.511/91 in R.A. No.3/90 had stipulated that no further time will be given. Thirdly the Tribunal while disposing of C.A. 2/90 in T.A. 37/88 on 12-10-93 had given liberty to the applicant to file an O.A. on the ground of unreasonable delay or on the ground of non compliance of any rules as to the period within which the payment of retirement benefits should be made. With reference to the claim of the applicant for interest, we may refer to the observations of the Hon'ble Supreme Court in the case of Ferro Alloys Corpn. Ltd., vs. A.P. State Electricity Board and another, AIR 1993 SC 2005. In this case the Supreme Court has discussed the entitlement to the interest in the context of Electricity Act. In para 112, the Apex Court has distinguished various heads under which interest may be payable viz. statutory, common law and equity. The statutory right to claim interest is governed by Interest Act, 1978. The common law to claim interest is broadly comprised in contractual situations. The interest, if any, to be allowed by this Tribunal in the instant case can only be on equitable grounds. The same are defined with reference to Halsbury's law of ^{England} ~~Equity~~ Vol.32 in Para 109 of Supreme Court judgment as below :

"Equitable right to interest: In equity interest may be recovered in certain cases where a particular relationship exists between the creditor and the debtor, such a mortgagor and mortgagee, obligor and obligee on a bond, personal representative and beneficiary, principal and surety, vendor and purchaser, principal and agent,

solicitor and client, trustee and beneficiary, or where the debtor is in a fiduciary position to the creditor. Interest is also allowed on pecuniary legacies not paid within a certain time, on the dissolution of a partnership, on the arrears of an annuity where there has been misconduct or improper delay in payment, on the case of money obtained or retained by fraud. It may also be allowed where the defendant ought to have done something which would have entitled the plaintiff to interest at common law, or has wrongfully prevented the plaintiff from doing something which would have so entitled him."

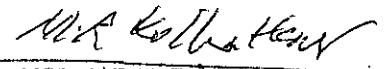
6. In my view, the relationship between the applicant and the respondents in this case is such as to entitle him to the payment of interest in equity.

7. If so, the next question to be decided is as to from what date the interest should be paid by the respondents. The applicant has claimed interest from the date of judgment viz. 28-4-1989 @ 18% compounded at quarterly rest of which detailed calculations have been furnished in annexure to Rejoinder. In my view, there has been inordinate delay and there was no excuse for the ~~for~~ the respondents not to have made payment to the applicant of the various dues by 20-4-92 upto which time extension of time was granted by the Tribunal. It is true that an SLP was filed and the same was dismissed only on 30-4-1993. However, the dismissal of SLP would relate back to the orders in O.A., RA and MAs. As a result of these orders, the delay upto 30-4-92 can be said to have been judicially condoned but any further delay would make respondents liable for payment of interest.

At the same time, the delay cannot be said to be culpable

because from the respondents' point of view the SLP was still pending. I am, therefore, of the view that the applicant is entitled to receive interest on delayed payment from 20-4-1992 upto the date of payment @ 12%, which was the rate of interest allowed in the cases relied upon by the applicant viz. Bhutnath Pal and D.P.Sinha.

8. The O.A. is therefore allowed in these terms with no order as to costs. Payment is to be made within three months of the communication of the order.


(M.R. KOLHATKAR)
Member(A)

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