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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 250/94

Transfer Application No:

DATE OF DECISION: 9-12-94

J.R. Khanna

Petitioner

Shri. G.S. Walia

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri. Sureshkumar

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 ?

MR Kolhatkar
(M.R. Kolhatkar)

Member (A)

J*

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 250/94

J.R. Khanna

.. Applicant

Vs.

Union of India & Ors.

.. Respondents

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

APPEARANCES

1. Shri. G.S. Walia, Counsel
for applicant
2. Shri. Sureshkumar, Counsel
for respondents

JUDGMENT

DATED :

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

9-12-94

In this case under section 19 of the
Administrative Tribunals Act, the facts are
as below :

2. The applicant was working in the Central
Excise Department and retired on 31.3.88 but the
pensionary benefits were not released to him because
C.C.No. B/P of 1982 under section 168 of Indian
Penal Code for engaging him^{self} in private trade/business
was pending against him. The applicant states that
the criminal case was false and fabricated which is

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clear from his honourable acquittal by the Additional Chief Metropolitan Magistrate by judgment dated 29-4-1992, which is at Annexure 'A'. The various pensionery and other benefits which were held-up because of the pending criminal case were released to him as below :

Item	Amount Rs.	Date paid
1. Gratuity	50,563	4.11.92
2. Balance gratuity	1,000	21.5.93
3. Differential pension	8,361	31.10.92
4. Differential of leave encashment	1,263	18.11.92
5. Differential of pay (on account of lifting of EB)	5,497	21.1.93
6. Commutation value of pension	8,730	not paid

3. The applicant states that the Department has decided not to file an appeal against the judgment referred to above and thereafter above payments were released. The applicant contends that these various amounts should have been paid to him with effect from 1/4/88 immediately on his superannuation and therefore he is entitled to interest thereon. He has claimed interest at compound rate and on this basis, he has claimed total interest as below :

Rs. 34,570 + Rs. 780 + Rs. 2,858 + Rs. 863 + Rs. 8,435
= Total Rs. 47,506/-

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4. Secondly, the applicant has contended that he has been paid Rs.57,206 as commutation value of pension on the basis of 22.9.93 as date of commutation but the commutation ought to have been effected on 1.4.88. Therefore, difference in commutation value amount^{ing} to Rs.8,730 is also be paid to him with an understanding that excess provisional pension paid to him would be adjusted.

5. Thirdly, the applicant has claimed costs. These costs are under following heads :

- a) legal expenses
- b) copying charges
- c) travelling allowance

According to the applicant, these costs are payable to him as per applicable government rules.

6. Respondents have opposed the claim of the applicant. They have denied that the applicant was implicated in a false criminal charge. The pensionary benefits were withheld because of the criminal case against him and finally it was decided not to go in for appeal and accordingly the pensionary benefits were released to the applicant. All the dues of the applicant including arrears of E.B increment were paid to the applicant within reasonable time. In regard to the pension, there was

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some delay as the applicant had not given correct particulars relating to the bank account. The application for drawal of pension through the bank in the prescribed form was submitted by the applicant only on 11.11.92 and therefore there was a delay. An amount of Rs.1,000 was required to be withheld because L.P.C was received from the concerned division only on 5.5.93 and the balance gratuity of Rs.1,000 was released. So far as the commutation value of pension is concerned, the pension commuted is Rs.521 i.e. 1/3rd and the relevant date adopted was the date on which final vigilance clearance was issued i.e. 26.8.92. Therefore, commutation factor applied is Rs.9.15 for 63 years i.e. age on next birth day of the pensioner at the day of the conclusion of proceedings. Hence, the commutation value of pension was worked-out to Rs.57,206 and the question of payment of higher commutation value as claimed by the applicant does not arise. So far as TA/DA/legal expenses are concerned, it is contended that no such bills have been received from the collectorate or the division.

7. Applicant has denied any delay in sending of the completed application including particulars of the treasury/bank etc. In his rejoinder, he has reiterated his claims.

8. The first question is regarding entitlement of the applicant to interest for alleged delay in payment vis-a-vis date of retirement, namely 31.3.88. In this connection, applicant has invited our attention to Rule 68 of C.C.S Pension Rules , 1973 which deals with interest on delayed payment of gratuity. The rules provide as follows :

"(1) If the payment of gratuity has been authorised later than the date when its payment becomes due, and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time.:
Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers. "

9. In Government India's decisions below this rule, it is provided as below :

"3. In order to mitigate the hardship to the Government servants who, on the conclusion of the judicial or disciplinary proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the 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. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/ disciplinary proceedings against them and against whom proceedings are consequently dropped. "

10. In this case, there were judicial proceedings pending against the applicant and he was exonerated from those proceedings. Therefore the gratuity

was deemed to have fallen due on the day following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. We therefore consider that the applicant is entitled to payment of interest as laid down in the rules, namely 7% beyond three months and upto one year and 10% beyond one year. The interest is to be calculated as simple annual interest.

11. So far as withholding of gratuity is concerned, that withholding was on account of failure of the concerned division to obtain and link-up the LPC of the applicant. Here also, the applicant cannot be faulted for the delay. Therefore, the applicant is entitled to payment of interest at this rate in regard to withheld amount of Rs.1,000 of gratuity also. So far as other amounts are concerned including differential pay on account of lifting of EB, there are no specific rules regarding payment of interest thereon. However, the applicant has invited our attention to the case of Sandhawalia (1994) SCC (L&S) page 530, in which it has been held that Government is liable to pay interest not only on the gratuity in regard to which there are specific rules but also on all other dues of the government servant, in the payment of which there has been delay. We note that all these payments related to the event of retirement when the applicant is at a particular stage of his life when he is to change course and start a new life in the decline of biological age when he may be in need of substantial amounts of money to facilitate this process. Therefore, without subscribing to the broad proposition that interest is payable on all government dues to which government servant is

entitled, we consider it as well settled that government servant is entitled to interest on all dues receivable from the government at the time of retirement. We therefore, direct that interest at 12% should be paid on all other dues which were not paid to the applicant, immediately on retirement. The doctrine of "relation back" would apply to the calculation of interest in respect of these dues namely 1.4.1988, just as it applies to gratuity in terms of CCS (Pension) Rules.

12. The applicant further contends that the trend of judicial pronouncements is to allow commercial or penal interest rates namely 18%. In this connection, he relied on the judgment of R. Kapur Vs. Director of Inspection reported at JT 1994 (L) (6) SC 354. In this case, the amount pertained to D.C.R.G and reliance was placed on M. Padmanabhan Nair's case in which there was culpable delay in settlement and disbursement of dues. In our view, the delay in this instant case cannot be said to be culpable. The Department had taken reasonably prompt action to make payment of retirement dues and it is only by operation of rules or in view of applicable case law that we ordered payment of interest. In view of this, the claim of the applicant for penal or commercial interest @ 18% is rejected. The interest payable would be as laid down in rules, namely 7% and 10% in respect of gratuity and 12% in respect of other dues calculated on simple basis and not compound basis. In this connection, we would also like to mention that the commercial rates of interest are falling in India and we are required to take note of such developments while deciding the rate of interest unless we direct the higher rate specifically as penal interest.

13. Next question is whether the applicant is entitled to higher commutation value of pension by permitting commutation from the date of retirement rather than from the subsequent date when the vigilance clearance was received. The applicant has relied on the case of Vasdev B. Bhatia V. Union of India & Ors., (O.A. 1285/93), in which, this Tribunal vide its judgment dt. 1.6.1994 had also permitted the applicant to have commutation from the date of superannuation. The judgment was passed on interpretation of Rule 68 of Pension Rules. We agree with the ratio of Vasdev B. Bhatia's case and we also direct the respondents to permit the applicant to commute pension from the date of superannuation, subject to the condition that he refunds the excess of provisional pension.

14. The last question is payment of costs to the applicant. For this purpose, the applicant relies on O.M of Ministry of Home Affairs dated 8.2.1959.

Para 2(a) of this is reproduced below :

"2(a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government servant - Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal, instituted against him, by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, Government may, if they are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, reimburse the whole or any reasonable proportion of the expenses incurred by the Government servant for his defence "

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15. It would be seen that the Government instructions envisage reimbursement of costs if government is satisfied from the facts and circumstances of the case that the government servant was subjected to the strain of proceedings without proper justification. In our view, this is not a fit case in which ^{at this stage} we may direct the government to pay the legal costs. We, however note that the applicant has been claiming costs of legal assistance and payment of TA/DA vide his representation dated 20/1/1993 (Exhibit 'K'). A reminder was also sent in September 1993 and ^{another} ~~Z~~ in October 1993. So far as this aspect is concerned, it would be enough if we direct the respondents to take ^a decision on the representation of the applicant within a period of three months.

16. The application therefore is partly allowed as per the discussion above. No orders as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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