

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 339/98

Date of Decision: 3.8.1999.

A.G.Warise

Applicant.

Mr.M.S.Ramamurthy

Advocate for
Applicant.

Versus

E.S.I.C. & Anr.

Respondent(s)

Mr.V.D.Vadhavkar for

Mr.M.I.Sethna.

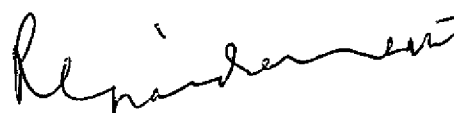
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. B.N.Bahadur, Member(A).

- (1) To be referred to the Reporter or not? *wo*
- (2) Whether it needs to be circulated to *wo*
other Benches of the Tribunal?



(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.339/98

Tuesday, this the 3rd day of August, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A),

A.G.Warise,
B.M.Wadia Chawl,
Room No.16,
Parsee Dhobighat,
Tardeo Road,
Mumbai - 400 034.
(By Advocate Mr.M.S.Ramamurthy)

...Applicant.

Vs.

1. Employees' State Insurance Corporation,
through its Director General,
Panch-Deep Bhavan,
Kotla Road,
New Delhi - 110 002.

2. The Regional Director,
Employees' State Insurance
Corporation, ESIC Bhavan,
N.M.Joshi Marg, Lower Parel,
Mumbai - 400 013.

...Respondents.

(By Advocate Mr.V.D.Vadhavkar for
Mr.M.I.Sethna)

: O R D E R : (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The Respondents have filed their reply. Since the point involved is a short point, we are disposing of this OA at the admission stage after hearing both sides.

2. The applicant has filed this OA for number of reliefs. One relief prayed for is that the Disciplinary Enquiry proceedings be declared to have been abandoned or dropped due to

...2.

delay in completing the same. Then the applicant prays for retirement benefits with 21% interest from 23.4.1996, the date of Enquiry Report and a direction to the respondents to pay all retirement benefits without further delay.

It appears that the applicant retired on superannuation on 31.7.1995. On the same day a charge sheet was issued against the applicant and the Disciplinary Enquiry continued even after retirement as provided in Rule 9 of the Pension Rules. The Enquiry was completed by the Enquiry Officer and he submitted a report dt. 23.4.1996. A copy of the Enquiry Report was sent to the applicant, who submitted a reply by 14.6.1996. No final orders were passed. The applicant filed this OA on 3.4.1998 and one of the reliefs is for a direction to respondents to expedite the disposal of the disciplinary enquiry proceedings. Now during the pendency of the OA, the Respondents have passed a final order which is dt.9.6.1998. Under this final order the applicant has been found guilty for certain irregularities and a penalty of withholding 5% Pension for 5 years was imposed on the applicant. It appears that the applicant has since filed an appeal against the order of penalty and hence we are not concerned about the same in this case.

Now, the only prayer that is pressed before us is that there is inordinate delay in passing the final orders after the submission of Enquiry Report dt. 23.4.1996, the applicant is therefore pressing for payment of interest of 21% from 23.4.1996 till the date of payment.

3. The respondents have filed a reply. Among other grounds stating that all the payments have since been paid to the

applicant. They have also stated that there was delay in passing the final order due to administrative exigency and administrative work.

4. In the light of the arguments addressed before us, the short point for consideration is whether the applicant is entitled for interest and if so for what period and at what rate.

5. The learned counsel for the applicant submitted that there was delay in payment of retirement benefits to the applicant though he retired w.e.f. 31.7.1995. It was argued that normally retirement benefits should be paid on the date of retirement or at least within two months thereafter and if there is delay, the government is liable to pay interest. In our view, that principle will apply only in the case of normal retirement. But, here the applicant has retired from service after the charge sheet was issued against him and he was facing a departmental enquiry, in such a case the rules prohibits payment of gratuity and other retiral benefits as provided in the Pension Rules. Rule 69(1)(c) of the Pension Rules clearly provide that no gratuity shall be paid to a government servant until the conclusion of the departmental or judicial proceedings or final orders thereon. Therefore, when the applicant is not entitled to retirement benefits till final order is passed in the Disciplinary Enquiry, The argument that applicant is entitled to interest on delayed payment of gratuity or other benefits cannot be accepted at this stage.

It is true that after the submission of the Enquiry Report there is some delay in passing the order which came to be issued on 9.6.1998. Though, we are not happy with the

explanation given by the respondents about the delay, the sum and substance of the explanation is that due to administrative work and exigency, there was delay in passing of the final order.

In view of the position in law and taking into consideration, the facts and circumstances of the case, we are not inclined to grant any interest to the applicant till the passing of the final order dt. 9.6.1998.

6. After 9.6.1998, we may grant some reasonable time to the respondents to make payments and therefore, we allow some grace time till 31st July, 1998 for making the payments. Therefore, the respondents will be liable to pay interest at least from 1.8.1998 till the date of payment.

It is now brought to our notice and it is an admitted fact that payments have been made to the applicant on different dates. In the additional reply filed by the Respondents dt. 10.6.1999, we find that Gratuity, Commuted value of pension was paid on 15.12.1998, Arrears of Pension was paid on 1.2.1999 and difference in increments etc. was paid on 11.3.1999. These are the details given in para 4 of the Affidavit of Mr.S.Biswas, Dy. Director of E.S.I.C. In the facts and circumstances of the case, we are allowing interest on these amounts from 1.8.1998 till the dates of respective payments as mentioned in para 4 except Item No.1. In the facts and circumstances of the case, we are allowing interest at the rate of 12% p.a.

7. In the result, the application is allowed partly as follows.

The respondents are directed to pay interest at 12% p.a. from 1.8.1998 till the dates of payment as mentioned in items 2 to 5 in para 4 of the Affidavit of Mr.S.Biswas dt. 10.6.1999. The respondents should comply with this order within a period of

two months from the date of receipt of copy of this order. In the circumstances of the case, there will be no order as to costs.

B.N. Bahadur

(B.N. BAHADUR)

MEMBER(A)

R.G. Vaidyanatha

(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.