

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. 1495/93.

Dt. of Decision: 24/1/97

M. Kanaka Rao

.. Applicant.

Vs

1. The Telecom District Manager,
Visakhapatnam-530 050..

2. The Chief General Manager,
Telecom, AP, Hyderabad-1.

3. The Director-General, Telecom
(rep. the Union of India),
New Delhi-1.

.. Respondents.

Counsel for the Applicant : Mr. C.Suryanarayana

Counsel for the Respondents : Mr.N.R.Devaraj, Sr.CGS^C.

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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J U D G E M E N T

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN : MEMBER)

Heard Mr.C.Suryanarayana, learned counsel for the applicant and Mr.N.R.Devaraj, learned counsel for the respondents.

2. The past developments in this case is required to ^{be} told to appreciate this case better.

3. The applicant was appointed as "Telecom Office Assistant" under the control of R-1 from 1-5-74 to 12-12-86. While he was working as TOA he applied for the post of Personnel Officer in Andhra Bank and he was selected for the same. When the applicant was called for interview he approached R-1 for issuing a no objection certificate as laid down in the general terms by the Banking Service Recruitment Board for appearing for the selection. No objection certificate was granted to him by letter dated 24-07-86. The applicant was selected as Personnel Officer in Andhra Bank and because of that he submitted his resignation on 26-11-86 with a request to accept the same around 10th December 1986. The applicant's resignation was accepted by R-1 by memo dated 12-12-86 and he was relieved of the post of TOA on the afternoon of 12-12-86. He also granted a service certificate showing ^{that} the applicant ^{had} worked in the Telecom Department as TOA during the period from 1-5-74 to 12-12-86.

4. The applicant submitted a representation on 4-2-88 to the General Manager, Telecom, Hyderabad for granting of terminal benefits under Rules 49 and 50 of CCS (Pension) Rules, 1972 and also as per instructions of DoP dated 21-4-72. He further sent a reminder on 8-4-88 to General Manager, Telecom A.P., Hyderabad who instructed R-1 to examine this case and send the entire case to him for further action. While the case stood so the Andhra Bank confirmed the services of the applicant as Personnel Officer in Junior Management Grade scale-I of the Banks service w.e.f., 15-12-88. The applicant made further representations dated 18-2-89, 5-7-89 and 16/15-9-89 for granting him the terminal benefits for the period

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he worked in the Telecom Department to Member (Finance) Telecom Board. But his request was rejected by letter dated 19-10-89. Hence he filed ~~the~~ OA bearing No.656/90 on the file of this Bench challenging the rejection order and praying for a direction to the ~~govt~~ respondents to grant him all terminal/retirement benefits together thereon at bank rate. That OA was disposed of by judgement dated 10-4-91. That OA was allowed for reasons stated in para-5 of the judgement.

5. The operative portion of the judgement ^{in OA.656/90} reads as below:-

"The rule clearly establishes that the petitioner is entitled to retirement/terminal benefits when he resigned from the office to secure an employment in the Andhra Bank with the permission of his parent Department. So, in view of the rule laid down above, the petitioner is entitled to the terminal benefits as claimed by him. We accordingly direct the respondents to pay the terminal benefits to the petitioner together with interest thereon at Bank rate. Within a period of two months from the date of receipt of this order".

6. Thereafter the applicant was paid the terminal benefits and the interest on terminal benefits from 4-2-88 to 3-6-91 i.e., (3 ~~years 4 months~~) at Bank rate of 5%. The details of calculation has been given in the Annexure to the letter No.QK/16/Vol.II/121 dated 6-2-1992 (Annexure-1). It was also indicated in that letter that the applicant may get the clarification from the Tribunal in regard to the exact date from which the interest and terminal benefits has to be paid to him. As per the Annexure to the letter the gratuity was calculated as Rs.7,750/- and the pension ~~admissible~~ was ~~decided~~ ^{dated} at the rate of Rs.234/- per month and the commutation on that basis. A total of Rs.55,262.00/- was due to him as per that annexure and interest was calculated for the above said amount for the period 5-2-88 to 3-6-91 at the rate of 5% per annum.

7. The applicant filed MA.1309/92 in that OA for a clarification in regard to the exact date from which the interest of terminal benefits is payable to him. He also stated in the MA that he is entitled to the terminal benefits with interest at 13% compounding the same every 3 months and that interest is payable on gratuity w.e.f., 13-12-86, the date of his deemed retirement till the payment of gratuity i.e., 18-6-91 and that he is entitled to pension etc., at Rs.375/- per month till 18-6-91, the date on which the commuted value thereof was paid through cheque. That MA was dismissed as the directions in the judgement are absolutely clear without any ambiguity and hence no clarification is needed.

8. The respondents thereafter approached the Government Pleader, Visakhapatnam seeking his opinion for the interest payable. The Government Pleader has given his opinion in his letter dated 12-4-93. The Government Pleader ~~is~~ opined that the administration is liable to pay the highest rate of interest, the scheduled Banks paid during the period from 10-4-91 or during the period from 10-4-91 onwards. In his opinion the rate represents highest rate payable on deposit in scheduled Banks fixed by the Tribunal. The judgement is operative from its date. Only on the basis of the opinion the interest rate was recalculated and the interest was arrived at Rs. 1,264-20/-. As the applicant had already been paid interest of Rs.9,210-35/- it was sought to recover from him an amount of Rs.7,946-15/-. Hence, he was instructed by the impugned letter No.QMK-16/Vol.III/36, dated 2-9-93 (Annexure A-6) to repay the excess paid interest.

9. This OA is filed praying for setting aside the impugned order No.QMK-16/Vol.III/36, dated 2-9-93 (Annexure A-6) of R-1 by holding it as violative of the judgement dated 10-4-91 in OA.656/90 and for a declaration that the applicant is entitled to the minimum pension of Rs.375/- per month and consequently to the commuted value thereof, besides interest at the Bank rate and for a consequential direction to the respondents to pay him as per the above calculation within a fortnight from the date of receipt of the order with costs.

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10. A reply has been filed in this OA. The respondents submit that the right of the applicant was established only by the judgement in OA.656/90 ^{which} ~~at~~ was delivered on 10-04-91. Hence, ^{that} the applicant is entitled for interest only from ~~the~~ date. Further the respondents also reject the contention for payment of pension at the rate of Rs.375/- p.m. since the calculations have been indicated to the applicant by letter No.QMK-16/Vol.III-121 dated 6-2-92. They also submit that there is no mention in Pension Rules about taking into account the stepped up pension for the purpose of grant of terminal benefits. Though, initially he was paid interest from 4-2-88 to 3-6-91 for the arrears, in view of the dismissal of the MA.1309/92 in OA.656/90 dt. 13-12-92, the opinion of the Government Pleader was sought who opined to pay higher interest between the period from 10-4-91 to 18-6-91 at the prevailing rates. On the basis of that opinion a re-calculation was made for the interest and that interest was arrived ^{as} at Rs.1,264-20/- only. As he was earlier paid more interest by Memo No.QM-16/Vol.III/1 dated 2-7-92 (Annexure A-3) it was sought to recover the excess interest amount of Rs.7,946-15/- paid to him. Hence they prayed ^{that} this OA is liable to be dismissed.

11. From the above contentions two issues are discernible in this OA. They are 1) at what rate the pension should be paid to the applicant from 13-12-86. 2) At what rate the interest has to be paid on the arrears which had arisen due to gratuity and pension and the date from which the interest has to be paid.

12. It is an admitted fact that the applicant was given the no objection certificate to join the Andhra Bank as Personnel Officer ^{by his} by R-1/letter dated 27-4-86. His resignation was also accepted by R-1 vide memo dated 12-12-86 and he was relieved on the afternoon of 12-12-86. It is ^{also} an admitted fact that the applicant made his first representation for grant of terminal benefits under Rule-49 and 50

of CCS (Pension) Rules, 1972, by his representation dt. 4-2-88. Thereafter also he has reminded the respondents for payment of the terminal benefits. Initially, his gratuity for the qualifying service of 12 years ~~and~~ 7 months and 12 days was calculated as Rs.7,750/- and the pension was calculated at the rate of Rs.234/- p.m. for which the commutation of Rs.47,512/- was ordered ^{to} be released to him. An interest of Rs.9,210/- was paid to him on the above arrears for the period from 4-2-88 to 3-6-91. Subsequently, by calculation ^{as per} enclosures at Annexure R-1 to the reply ^{statement} the interest was ^{re-}calculated for the period only from 10-4-91 to 18-6-91 i.e., from the date of the judgement on OA.656/90 ^{to} the date of issue of cheque.

13. The respondents have not explained clearly in their reply, the reasons and the rule position for arriving at the figures of Rs.234/- as pension, ^{Rs.} instead of 325/- as prayed for by the applicant. The only explanation given is that the no mention has been given in the pension rules about taking into account stepped up pension for the purpose of grant of terminal benefits and the applicant has also not represented for a minimum amount of pension of Rs.375/- p.m.

14. OA.656/90 was disposed of by allowing the application for payment of terminal benefits as claimed by him in view of the reasons stated in para-5 of the judgement. In that judgement it is clearly stated that as per appendix 18 of CCS (Pension) Rules the applicant is entitled for the terminal benefits. It is further held that the benefits cannot be taken away by showing some rules stating that he did not sent his application for the post through department etc., In view of the above judgement it has to be observed that the applicant was entitled for terminal benefits ^{to} as ^{should} per rule position. Hence, the respondents ~~are~~ follow the rule position even if the applicant has not prayed for the higher pension of Rs.375/-. Further the rules were in existence at the

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time of his releasing from Telecom Department Bank. The respondents cannot submit that the applicant is entitled for terminal benefits only from the date of judgement viz., 10-4-91 without proper justification. The applicant has rights to get terminal benefits immediately after he was relieved from Telecom Department on the afternoon of 12-12-86. The judgement in OA.656/90 had only established his rights accrued as on 13-12-86. Hence, the applicant is entitled for terminal benefits from that date as per the rule in vogue at that time.

15. In regard to the terminal benefits the applicant relies on the order No.8 of the Rule-26 of the CCS (Pension) Rules. As per this order-8 "Resignation from Government service with a view to secure employment in a Central Public Enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation". He further relies on the Rule 49 (2) (b) of the CCS (Pension) Rules for grant of minimum pension of Rs.375/- from the date of his relief from the Telecom Department. The para (2) (b) of Rule 49 of CCS (Pension) Rules reads as below:-

"in the case of a Government servant retiring in accordance with the provision of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause(a) and in no case the amount of pension shall be less than (rupees three hundred and seventy-five) per mensem;"

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Further the authority for granting of Rs.375/- has been given in the note under that rule. The applicant also relies on the office memorandum No.2/14/87-PIC dated 5-3-87 (Annexure A-2) for getting the minimum pension of Rs.375/-.

16. As per order-8 of Rule-26 there can be no doubt that the applicant is entitled for retirement/terminal benefits ~~as~~ as admissible under the relevant rules applicable to him in his parent organisation and ~~for~~ that right has been upheld by this Tribunal in OA.656/90. In our opinion there is no doubt that the applicant is entitled for the pension of Rs.375/- ^{p.m.} in view of the provision in the CCS (Pension) Rule under Rule 49. The Government of India circular dt. 5-3-87 also is very clear in that the minimum pension of Rs.375/- p.m. will apply in all cases including employed/re-employed pensioners w.e.f., 1-1-86. As the applicant had retired on afternoon of 12-12-86 this circular is very valid which had come into effect earlier to that date. Hence, we have no hesitation in our mind to direct the respondents to pay him the pension at the rate of Rs.375/- p.m. w.e.f., 13-12-86.

17. Just because, the applicant has not asked for the pension of Rs.375/- p.m. earlier it does not prohibit him from asking that pension now in view of the rule position as above. He has ~~the~~ the right to get the pension at the rate of Rs.375/- p.m. from 13-12-86 and that right cannot be denied to him by the respondents.

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18. The applicant first submitted his representation on 4-2-88 for granting him the terminal benefits under Rule 49 and 50 of the CCS (Pension) Rules, 1972. He was confirmed in Andhra Bank on 15-12-88. Hence, it cannot be said that the applicant has not applied for grant of terminal benefits. ^{his} From ~~his~~ initial application ~~was~~ (even at 4-2-88 it is not clear either from the earlier OA or in the present OA) whether he was having lien in the department till he was regular

absorbed in the Andhra Bank. In any case, the applicant first represented for the terminal benefits on 4-2-88. Hence, it has to be held that he deemed to have been absorbed in the Andhra Bank w.e.f., 4-2-88 though he was confirmed in Andhra Bank w.e.f., 15-12-88. In view of the above it appears that the respondents also calculated the interest on the arrears of 5% p.a. w.e.f., 4-2-88 to 4-6-91. The later date of 4-6-91 appears to have been taken as it was decided to pay him the terminal benefits after the issue of the judgement in OA.656/90. Though the cheque was dt. 18-6-91 we feel that the date of 3-6-91 up to which the interest was granted is realistic as afterwards the calculation took some time and also preparation of the cheque. The respondents should have sent necessary papers if any, for filling up by the applicant for payment of the terminal benefits when his first representation dt. 4-2-88 was received. Even if they have not sent ~~the~~ papers it has to be held that the applicant submitted his first request on 4-2-88 and hence from that date onwards he is eligible for payment of terminal benefits.

19. When the MA in the earlier OA was dismissed without offering any clarification in regard to the date from which the interest to be calculated an opinion was sought from the Govt. Pleader. The Government Pleader held that the right of the applicant was established only after the issue of the judgement in OA.656/90 on 4-10-91 and hence the applicant is entitled for interest only from that date. This view does not appear to be in order. When the applicant first represented his case on 4-2-88 it is deemed that the applicant submitted his papers for payment of terminal benefits on that date. If the respondents have not taken any action in his representation to send him the necessary forms for filling up, the fault lies with the respondents and not with the applicant. The right of the ~~the~~ applicant to get the interest accrues from the date of his first representation. Hence, it has to be held that the interest on the arrears of terminal benefits is payable to him from 4-2-88 and that view had been taken by the respondents also

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as seen from their letter No.QM-16/Vol.III/1 dated 2-7-91 (Annexure-A-3). In our opinion the view initially taken by the respondents is in order and hence the applicant is entitled for interest for arrears from 4-2-88. Though the MA in the earlier OA was dismissed without clarification as it was held that the direction in the OA is explicit, the respondents took a ^{different} view in view of the opinion given by the Government Pleader from 10-04-91 to pay interest only upto 3-6-91 the date on which a decision was taken to pay terminal benefits. The above view was taken on the basis of a opinion of the Government Pleader and hence the respondents cannot be faulted for a decision taken on an authentic opinion given by a legal expert. Hence, the applicant cannot insist on payment of interest on the arrears if any still to be paid after 3-6-91. Hence, we reject the claim of the applicant to pay him the interest till the full interest on the arrears is paid to him. Hence, we are of the opinion that the interest on the arrears is payable to him only from 4-2-88 to 3-6-91.

20. The next question arises in regard to the rate of interest to be paid ^{which was kept} initially at 5% p.a. Even after the rejection of the MA in OA.656/90 the rate of interest was decided on the basis of the opinion given by the Government Pleader in his letter dt. 12-4-93. As per this letter the "5% rate of interest represents the highest rate of interest on different classes of deposits (other than Savings Account) ^{the} then interest paid at that rate is ~~quite~~ ^{represents} quite well within order. If the interest ~~represents~~ ^{interest on Savings} Account it ~~is not in order.~~ The above reading is a bit round about. The above view also appears to suggest the highest rate of interest on different classes of deposits. The interest payable for fixed deposit is higher than 5%. The interest ^{at the rate} payable to the current account cannot be taken as such accounts are not normally opened by ^a ~~salaries~~ person. Hence, it has to be held that the rate of interest is to be paid ^{at} higher ~~xxxxxxxxxxxxxxxxxxxx~~

rates applicable to the deposits other than Savings Banks Account or current account. Even in order 2 of the Rule 68 of the CCS (Pension) Rules, 1972 the interest rate is indicated as follows:-

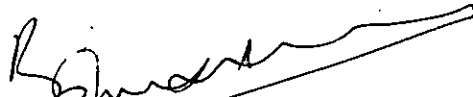
- 1) Beyond to 3 months upto one year 7% p.a.,
- 2) Beyond one year 10% p.a.

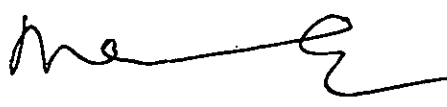
An inference from the above Government decision for payment of interest has to be drawn from this rule also. In view of the above, we are of the opinion that the interest rate ~~is~~ payable is at 10% p.a., in view of the provisions in the CCS (Pension) Rules. The applicant cannot ^{demand} ~~tax~~ compound interest ^{rate} as there is no provision for payment of compound interest in the rules. Hence, the applicant is entitled for ^{simple} interest at the rate of 10% p.a. from 4-2-88 to 3-6-91.

(21). In the result, the following direction is given:-

- 1) The impugned order No.QMK-16/Vol.III/36 dt. 2-9-93 (Annexure A-6) is set aside.
- 2) The applicant is entitled for payment ^{of pension} at the rate of Rs.375/- p.m. and commuted value of pension on that basis from 13-12-86.
- 3) The applicant is entitled for payment of simple interest at the rate of 10% p.a. for the arrears ^{or} the terminal benefits of gratuity and pension from 4-2-88 to 3-6-91 ^{only}.
- 4) The arrears of pension and interest calculated on the above basis has to be paid to him after deducting the amount already paid within a period of 2 months from the date of receipt of a copy of this order.

(22). The OA is ordered accordingly. No costs.


(B.S. JAI RAJAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 24/12/93

19/2/97
Typed By
Compared by

Checked By
Approved by

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

The Hon'ble Shri B. S. Sai Parameswaran
(T)

DATED: 22/1/97

ORDER/JUDGEMENT
R.A./C.P./M.A. NO.

in

O.A. NO. 1495/93

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

