

J A I P U R.

G.A. No. 88/93

Date of decision: 6.5.94

GULAB SINGH HADA

: Applicant.

VERSUS

UNION OF INDIA & OPS

: Respondents.

Mr. P.N. Mathur

: Counsel for the applicant.

Mr. K.N. Shrimal

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mahta, Vice-Chairman

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

Disciplinary proceedings were pending against the applicant. Disciplinary Authority imposed the penalty of compulsory retirement and the orders were issued on 22.6.81 that the applicant shall be retired from 23.6.1981.

2. In the order dated 5.9.91 (Annexure A-2), it has been specifically mentioned that the service record of the applicant has not been received in spite of the decision of the appeal, as such, the pension case could not be finalised or prepared. Vide Annexure A-2, provisional pension was sanctioned w.e.f. 1-8-91 by order dated 5.9.91.

3. On 22.9.93, P.F.O. was issued in favour of the applicant. The applicant filed this petition and submitted that on account of the delayed payment of pension, gratuity and leave encashment, the respondents may be directed to give benefit of interest and he should be paid the interest at the rate of 24% per annum. The second prayer is about not allowing the applicant to cross the Efficiency Bar w.e.f. 1-5-79. It was also submitted that the respondents have delayed the payment of pension and other benefits for 11 years so penal action should be taken against the respondents.

4. On behalf of the respondents, reply has been submitted and it was submitted that the record was forwarded to the Appellate Authority and in spite of the decision by the Appellate Authority, the record was not available to

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the authorities sanctioning the pension or preparing the pension case.

5. Mr. K.N. Shrimal [?] raised a preliminary objection that the payment of interest is not a 'condition of service' and the Tribunal has no jurisdiction to award interest even in case where there is a glaring mistake of the respondents. He has referred to Section 3, clause (q), the definition of "service matters" and submitted that under sub-clause(i) of clause (q), remuneration (including allowances), pension and other retirement benefits are only included in the definition of the "condition of service" and payment of interest is not a part of the retirement benefits.

6. I have heard the rival contentions of both the parties and it is necessary for me to decide this question before entering into the merits of the case. Under Section 3, clause (q), sub-clause (v), it has been provided that 'any other matter whatsoever' may be considered as a service condition or condition of service. This residuary clause is wide enough and includes that if not specifically provided in the foregoing clause (i) to (iv), then 'any other matter whatsoever' connected directly or incidentally with the main service matters will also become a part of the 'service matters' ^{within its} definition. It will not be out of place here to mention that Section 14 of the Act provides that "save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise all the powers exercisable by all courts in relation to -

(b) all service matters concerning and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union shall be considered as a "service matter". In sub-clause (c), again the word "pertaining" has been used and it reads as under:-

"all service matters 'pertaining' to service in connection with the affairs of the Union concerning a person appointed to any service or to post,

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referred to above, can be decided by the Tribunal and the Tribunal will have the jurisdiction under Section 14 of the Act. The word "pertaining" (as used in Section 14 is wide enough to include any matter which is incidental or which is consequential in ^{the nature} ~~nature~~ of the condition of service. Harmonious construction will have to be given to the definition in Section 3 and the jurisdiction in Section 14. The word "pertain" has been defined in the Dictionary of Webster's, Volume 2, as under:-

"to be a natural part", "to be suitable"

It will not be out of place here to mention that the word "pertain" is always connected with any specific object or matter. When it is used in relation to a 'guest', then it may amount that there should be 'politeness' in dealing with a guest. When it is said about 'smartness' or 'discipline' of an Advocate, then it may have ^{other} reference.

Thus, the word "pertain" is always connected with the object, the matter and the substance. The substance of the grant of pension and pensionary benefits is that it must be paid within a period of three months after the retirement, though this concept of 'after three months' is considered to be out-dated and is now expected that the person ^{from} ~~retiring~~ the job, while going from the office should not come to his office for getting pensionary benefits. All benefits should be handed over to him before relinquishing the post. In some departments and particularly in judiciary, this system is prevalent and before leaving the office (On retirement I had an opportunity to receive gratuity and pensionary benefits, PPO etc., only with a note that it shall be payable from 5th of January. So, the word "pertain" as used in Section 14 is wide enough to include any matter connected with the pensionary benefits, gratuity and other benefits. Admittedly, pension is a 'condition of service'. In the Webster's Encyclopedic Edition, a matter of direct interest or importance to one has been considered as a matter 'concerned' of the party.

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The payment of the pension is a matter which is directly affecting the rights of the party - non-payment of pension in time and the consequential benefits of the non-payment of pension in time also falls within the purview of the word "concern". Apart from that the word "concern" also includes anxiety, relation or bearing, the question with which the applicant is directly or indirectly involved or related. The word "concerned" is of quite general import. Clearly it cannot be limited to "concerned" in the sense of financial interest or of being an employee of the business. The word "concerned" may be interpreted to mean "interested in", involved in, mixed up with". In the case of Sachidananda Banerjee, Asstt. Collector of Customs, Calcutta Vs. Sitaram Agarwala, reported in AIR 1966 SC 955, their Lordships held that if any person enters into some kind of transaction or attempts to enter into some kind of transaction with respect to prohibited goods and it is clear that the act is done with some kind of prior arrangement or agreement, it must be held that such a person is concerned. The word "concerned" should not be interpreted only in relation to the employee who has approached the Court. It is to be interpreted while interpreting the definition given in Section 3(q) read with Section 14 dealing with the jurisdiction that it must concern the employer or employee both or any of them. It is the concern of the employer that he should see that the payment of the pension is made within a period of three months in any case after retirement and all pensionary benefits should be given to him. Omission to perform a duty cast on him under the rules; to make the payment of the pension is also a part of the concern and falls within the definition of the word "concern" also. The applicant has been deprived of his right of pension; of his right of getting gratuity, to say, after 11 years collecting the pension, collecting the gratuity and he will not get any

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interest thereon is an act of arbitrariness; is an act which ^{you} ~~comes~~ against the fundamental rules of governance; is an act which encourages the bureaucracy to be corrupt and not sympathetic towards the person who must get the benefits of social justice. For the reasons above, I will like to give a wider import to the meaning of the word "pertaining" as used in Section 14 as well as the word "concern" as used in Section 3(q). We talk of social justice and non-payment of pension for 11 years on the ground that the reference has been sent to the higher authorities and the higher authorities are sleeping over the papers and not forwarding the reference is a fault of the Government. For the reasons above, I am of the view, that without the direction of the court it was obligatory upon the Government to initiate disciplinary proceedings and to impose a penalty upon ^{person who had been sitting} ~~the~~ over the papers of pension for 11 years only on the ground that the papers are lying in the office of the Appellate Authority. It is a negligence of the Appellate Authority also not to decide for 11 years and not to give papers to the concerned officials for preparation of the pension ^{case} /once the person has retired. On this issue, I will pass the order while deciding the case on merits.

7. In the instant case, the applicant retired in 1981 and he filed the appeal against the order of retirement. His provisional pension was sanctioned ^{ed} /in 1991 and the final pension was given on 25.9.92. Thus, it is a clear case where orders were not passed for more than 11 years and the applicant has been deprived of his valuable right of pension, gratuity and retirement benefits for 11 years for no fault of his. In the instant case, the respondents must pay interest and not only the interest but a compound interest as is charged by the nationalised banks. If any one takes a loan from a nationalised bank and after three months, the interest is added and on that interest again,

there is a charge of compound interest, why the Government should not pay interest in the same way as the nationalised banks are charging from loanees. To pay simple interest at the rate of 24% per annum and to direct the payment of interest in the same mode as the nationalised banks are collecting interest or charging interest from the loanees to whom the loans have been sanctioned by the nationalised banks, then injustice can only be removed by taking two-fold actions - (i) direct the respondents to make the payment of compound interest at the rate of 15% per annum and the interest should be counted in the same way as the nationalised banks are charging interest from the loanees. I would like that the interest should be given at the rate of 15% per annum.

8. I also direct the respondents to take disciplinary action against the person who slept over for 11 years and to recover the loss of interest from their salaries and other amounts which may be lying with the Government and the amount of interest which is to be paid to the applicant should not be charged for indefinite period from the Government. At the present, it may be paid out of the Government funds, but it should be reimbursed after recovering it from the defaulting officers. Government servant is accountable to the society and if he omits to perform a duty within a reasonable time he is liable to be punished by the society; by the courts and by the people at large. India is a peaceful country where the people are law abiding because of the way of living. If the bureaucrats cannot perform their duties well in time and in a reasonable way then people will ask them either to give justice or to relinquish the post. Why the people have started taking law in their hands? There should be a research as well to find out the reasons for the commission of the crimes and I am sorry to say that it exists in Bar. They are not performing this part of their duties to do research about the causes of the crimes and to do something for the social justice.

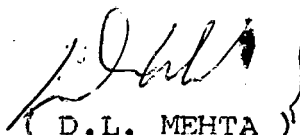
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Bar is not for giving hospitality to the sitting Judges; Bar is for the social justice; Bar is for doing something for the society. I was a Member of the Bar and I wish to be a Member of the Bar and in fact, my attachment with Bar is so much that I wish that the Bar should take initiative in the research work, in social justice. There should be a feeling that we are citizens; duty is first and right is thereafter, and the duty means a duty towards the society; duty towards the nation and duty towards all.

9. With these observations and directions, I decide the application and direct that the respondents shall pay interest to the applicant in the same manner as stated above; shall recover the amount paid from the negligent officers or group of negligent officers and shall also initiate disciplinary proceedings against them and shall inform the court about the action taken within a period of four months.

10. This O.A. stands disposed of for that purpose only.

11. New M.A. may be registered and listed on 24.10.94 and the respondents may submit that the order has been complied with and action suggested has been taken against the defaulting respondents.


(D.L. MEHTA)
Vice-Chairman