

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.180/98

Date of order: 12.9.2000

S.L.Sunariwal, S/o Shri Chittar Mal, R/o Vill. 9 Post Rajgarh,
Distt.Ajmer.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly, Churchgate, Mumbai.
2. Financial Advisor & Chief Accounts Officer, W.Rly, Churchgate, Mumbai.
3. Dy.Chief Accounts Officer (Traffic A/c), W.Rly, Ajmer.

...Respondents.

Mr.W.Wales - Counsel for applicant.

Mr.S.S.Hasan - Counsel for respondents.

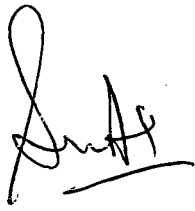
CORAM:

Hon'ble Mr.S.F.Agarwal, Judicial Member

PER HON'BLE MR.S.F.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct respondents No.1 & 2 to pay the interest @ 18% per annum on the retiral benefits from the date of retirement till its payment i.e. for the period from 31.8.95 to 20.11.97.

2. In brief facts of the case as stated by the applicant that he was subjected to departmental enquiry under Railway Servants (Discipline & Appeal) Rules, 1958, for imposition of major penalty and after enquiry the Enquiry Officer submitted his report dated 15.12.94 to the disciplinary authority holding the charges levelled against the applicant as not proved and ultimately vide letter dated 3.8.97, the disciplinary authority has communicated simply 'Govt's displeasure'. It is stated that the applicant retired from railway service on 31.7.95 but his retiral benefits were with-held pending the result of disciplinary authority's decision and it was only on 20.11.97 the applicant was paid



Rs.1,81,468/- as retiral benefits. It is also stated that the delay in releasing the retiral benefits was on account of the decision not taken in time by the disciplinary authority and this delay could be avoided by taking the decision immediately after submission of the enquiry report and there existed no reasonable justification on the part of the respondents to with-hold the retiral benefits of the applicant beyond 31.8.95 therefore the applicant is entitled to interest from 31.8.95 to 20.11.97. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is admitted that the applicant was retired on 31.7.95. It is also admitted that the Enquiry Officer after finalising the enquiry has submitted the report of the disciplinary authority on 15.12.94 but the disciplinary authority has communicated the 'Govt's displeasure' vide letter dated 3.8.97 thereafter the retiral benefits were released to the applicant on 20.11.97. In the reply, the respondents have tried to explain the reasons for delay in taking the decision on the enquiry report submitted to the disciplinary authority for which a summary of events have also been annexed with the reply.

4. Heard the learned counsel for the parties and also perused the whole record.

5. Retiral benefits is not a bounty payable on the sweet will and pleasure of the Govt and that on the other hand, the right to pension is a valuable right vesting in a government servant. The right of the person to receive pension is property under Art.31(1) and by a mere executive order the State had no power to withhold the same. Similarly the said claim is also property under Art.19(1)(f) and it is not saved by sub-article (5) of Art.19. Therefore, denial of right to receive pension affects the fundamental right of the person under Art.19(1)(f) and 31(1) of the Constitution.

6. In M.Fadmanathan Nair Vs. State of Kerala, (1985) 1 SCC 429, it was held by Hon'ble Supreme Court that Pension and Gratuity are no

longer any bounty to be disbursed by the Govt to its employees on their retirement but have become under the decision of this Court valuable rights and property in their hands and any culpable delay in settlement and disbursement there of must be visited with penalty of payment of interest at current market rate till actual payment.

7. In Poonamal Vs. UOI, AIR 1985 SC 1196, it was observed by the Apex Court that pension is not merely a statutory right it is the fulfilment of a constitutional promise.

8. In D.S. Nikara Vs. UOI, AIR 1983 SC 130, the Apex Court had laid down that pension is neither a bounty nor a matter of grace depending upon the sweet-will of the employer nor an ex-gratia payment. It is a payment for the past service rendered.

9. In Salabuddin Mohd. Yunus Vs. State of A.P., AIR 1984 SC 1905, it was held that right to receive pension is a fundamental right which can be curtailed only in the manner provided in the Constitution.

10. Fundamental Rules 58 to 68 deals with the guidelines for preparation of pension paper for disbursement of retiral benefits. These instructions/guidelines if followed, delay can be curtailed to the maximum extent. It is indeed unfortunate that a retired govt. servant is not paid his pensionary benefits/retiral benefits in time. In the instant case, on the basis of facts and circumstances as narrated in the averments of the parties, it becomes abundantly clear that payment was delayed because of culpable negligence on the part of the respondents' department to take decision on the enquiry report which was submitted by the enquiry officer on 15.12.94 but decision on this report could be taken by the disciplinary authority on 3.8.97 and the applicant was merely communicated 'Govt's displeasure'.

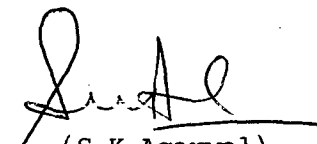
11. In normal course 2 to 3 months can be granted to the department as a grace period for payment of retiral benefits after retirement but in this case because of culpable negligence on the part of the department the payment of retiral benefits was delayed by 2 years or more for which the applicant is entitled to interest.

12. I, therefore, allow the O.A and direct the respondents to pay the

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applicant interest @ 12% per annum on retiral benefits payable to the applicant w.e.f. 1.11.95 to 19.11.97 within three months from the date of receipt of a copy of this order.

13. No order as to costs.


(S.K. Agarwal)

Member (J).