

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 601/2001.
T.A. No.

~~100x~~

DATE OF DECISION _____

Dr.(Smt.) Bimla Jain

Petitioner

Prahlad Singh

Advocate for the Petitioner (s)

Versus

Union of India & Others

Respondent

Ms. Shalini Sheoran Proxy counsel for
Mr. Bhanwar Bagri

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(G. L. GUPTA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH: JAIPUR

Date of Decision : 28.03.03

O.A. No. 601/2001.

Dr.(Smt.) Bimla Jain W/o Shri Rajendra Jain, aged about 65 years, Resident of A-6, Mahavir Nagar, Tonk Road, Jaipur.

... APPLICANT.

V E R S U S

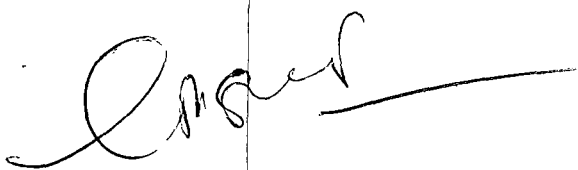
1. The Union of India through the Secretary to the Government, Ministry of Health & Family Welfare, (Department of Health), Nirman Bhawan, New Delhi.
2. The Director General, Health Services, Ministry of Health and Family Welfare, Government of India, New Delhi.
3. The Pay & Accounts Officer, Ministry of Health and Family Welfare, Lady Harding Medical College and Hospital, Opp. Shivaji Stadium, New Delhi.
4. Shri Ved Kumar, the then Pay & Accounts Officer, Ministry of Health & Family Welfare, Office of the Director, Central Government Health Services, Government of India, New Delhi.

... RESPONDENTS.

Mr. Prahlad Singh, counsel for the applicant.
Ms. Shalini Sheoran Proxy counsel for
Mr. Bhanwar Bagri counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.



ORDER

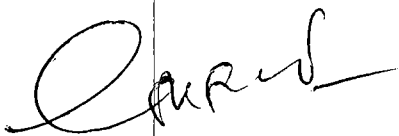
Per Mr. Justice G.L.Gupta:

Through this application, the applicant claims interest on delayed payment of retiral benefits.

2. The undisputed facts are these. The applicant was a member of Central Health Services. She retired on attaining the age of superannuation on 31.1.95. The payments of the retiral benefits were made to the applicant on the following dates:

Particulars of the	Date of Payment
<u>retiral benefit.</u>	
Monthly pension from 1.2.95 to 5.11.96	31.12.96
Commuted value of pension.	31.1.2001.
Residual monthly Pension	Being paid from 31.12.96 deducting commuted value of pension which was released 6 years after.
GPF.	4.10.95
Gratuity	Rs.50,000/- paid in March 2001 and balance in October 2001.
Leave encashment	Rs.41,276/- paid on 15.4.99 and balance on 18.10.2001.
CGEIS	15.3.98

3. The case for the applicant is that the payment of retiral benefits ought to have been made to her on the date following the date of retirement i.e. 01.02.1995, but the respondents without any valid reasons retained the retiral benefits causing pecuniary loss to the applicant. It is stated that the applicant's successor in office sent a letter to her on 09.03.1995 i.e. after her retirement, indicating that 80% amount of the telephone bills was to be recovered from her and a sum Rs.2,57,549/- was



outstanding against her. The applicant made representation against the said recovery. She again made representation but the retiral benefits were not released to her. She then made a complaint to the Department of Public Grievances.

4. In the counter, the respondents's have come out with the pleas that the applicant herself was the custodian of the telephone and there was no extension to that telephone and as such the payment of the calls was to be made by her. It is averred that the applicant submitted an affidavit to the effect that half of the amount of retiral benefits may be paid to her. It is further stated that the applicant who herself was the head of office, ought to have got the pension papers prepared during her service time. It is averred that due to non cooperation of the applicant some delay had occasioned in the final settlement of claim of the applicant.

5. The applicant has filed rejoinder reiterating the facts stated in the OA.

6. Heard the learned counsel for the parties and perused the documents.

7. Mr. Prahlad Singh, learned counsel for the applicant, contended that it was due to the fault of the respondent, that the payment of retiral benefits was not made on the next day of the retirement, and payments were not made despite repeated representations and notice. His contention was that the amount was not paid on the ground, not^{to} available to the respondents which fact is evident by the ultimate decision taken by the authorities on 2.07.2001 vide Annexure R-4. He prayed that the interest should be allowed on all the items.

8. On the other hand the learned counsel for the respondents contended that there was huge expenditure on the telephone bills during the

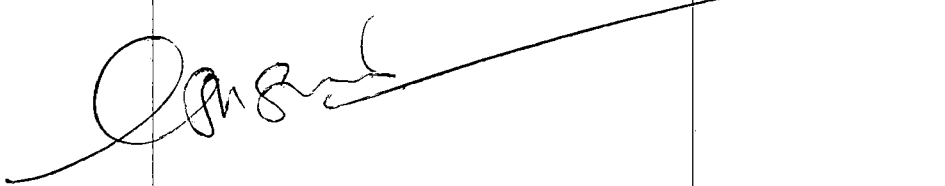


tenure of the applicant and the matter was pending with the competent authority and therefore retiral benefits could not be paid to the applicant. She submitted that no interest should be allowed keeping in view the facts and circumstances of the case. She contended that the application has not been filed in time, and before filing this OA, the applicant had not exhausted the remedies available to her.

9. I have given the matter my thoughtful consideration. As already stated, it is not in dispute that delay was caused in the ^{payment} of retiral benefits and the various payments were made on the dates stated above. It is further not in dispute that no disciplinary action was pending against the applicant for the alleged misuse of official telephone or for non-payment of the telephone charges. It is seen that there was extraordinary amount of the telephone bills during the period, the applicant remained as Additional Director. As per the averments made in the reply, ordinarily the bi monthly telephone bills did not exceed Rs.10,000/-, whereas during the tenure of the applicant, the bi monthly charges on telephone bills went upto Rs.1,00,000/-.

10. Be that as it may, it has been finally decided by the competent authority that no amount on account of telephone charges was recoverable from the applicant. This decision has been taken by the competent authority on 2.7.2001. Thereafter the retiral benefits were paid to her.

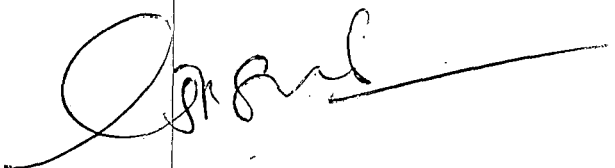
11. The last payment of retiral benefits was made to the applicant on 18.10.2001. The respondents were making payments in instalments on various dates. Therefore, it cannot be said that the cause of action for the interest on the retiral benefits did not arise to the applicant till 18.10.2001 when the last payment was made. This application having been filed in December, 2001 cannot be said to be barred by time.



12. As to the contention of the learned counsel for the respondents that the application should be dismissed on the ground of non exhausting of statutory remedy, it may be stated that it was the duty of the respondents to pay interest when the delay was caused in making the payment of retiral benefits and the applicant had made various representations and even sent legal notices. Moreover, there is no provision in the rules providing for remedy claimed in this OA. Therefore, the respondents cannot succeed in defeating the claim of the interest on the ground of non exhausting the alternative remedy.

13. The question for consideration is whether the applicant should not be allowed interest for the delayed payment of retiral benefits on the ground that huge amount of telephone bills were raised during the tenure of the applicant. There is nothing on record to hold that the applicant had mis-used the official telephone. If the telephone charges were excessive, an inquiry ought to have been conducted soon after the bills were received from the Telephone Department, in any case, at least before the date of retirement of the applicant. If the respondents did not care to take a final decision in time, the applicant cannot be allowed to suffer. If she had been paid the retiral benefits in time, she would have earned interest thereon. She was deprived the benefit of earning interest for the fault of the respondents.

14. On the basis of the affidavit Annex. R.3 dated 13.7.95 interest cannot be denied to the applicant. What she had stated in the affidavit was that in case the Government released 50% of the DCRG and Leave encashment, she would undertake to reimburse the private calls if she is held responsible for them. It appears that even after the filing of this affidavit no action was taken by the respondents to make payment of



the pension, arrears of pension, Gratuity, leave encashment commuted value of pension and CGEIS. It cannot be said that the applicant had agreed to make payment of the telephone bills. In any case, as soon as the affidavit was filed by the applicant at least 50% of the amount ought to have been released to the applicant. The respondents have caused much delay in making payments even after the affidavit filed by the applicant. Therefore the applicant is entitled to interest.

15. So far as the interest on Gratuity is concerned, there is specific provision under Rule 68 of the CCS (Pension) Rules, 1972, wherein it is stated that if the payment of Gratuity is delayed, interest should be allowed to the retiree. In O.M dated 25.8.94, issued under Rule 68, of the CCS(Pension) Rules, 1972, it was provided that if the amount of DCRG is not paid within three months after the retirement of the Government employee, interest is payable to the retired employee.

16. Courts have allowed interest on the delayed payment of leave encashment also. So also with regard to commuted value of pension, if it is not paid in time, the retiree has to be paid interest. There was also no justification for the respondents in not paying the CGEIS amount which became payable on 1.2.95. Similarly, the applicant was entitled to receive pension from 1.2.95, payable on 1.3.95 and onwards. She was paid the amount of pension only from 31.12.96 on which date the arrears of pension for the period from 1.2.95 to 5.11.96 were paid. It is a fit case in which the applicant is allowed interest on delayed payment of pension, Gratuity. CGEIS, and commuted value of pension.

17. It is not borne out from the record that the GPF amount, Rs.3,38,825/- which was paid on 04.10.95 did not include the interest calculated till the date of payment. Therefore, it is not proper to grant interest on the amount of GPF.



18. Keeping in view the present rate of bank interest, there cannot be any justification for payment of interest at the rate of 18% per annum, which has been claimed by the applicant. Interest at the rate of 10% per annum only is justified.

19. Consequently, the OA is allowed as follows :-

i) The respondents shall pay interest at the rate of 10% per annum to the applicant on the amount of pension from the date one month after it became payable till the date of payment on 31.12.1996.

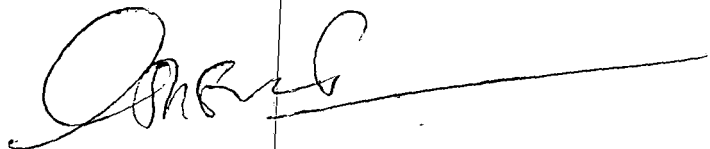
ii) The respondents shall pay interest to the applicant at the rate of 10% per annum on the commuted value of pension from 1.1.97 to till 31.01.2001. The applicant cannot be allowed interest on the commuted value of pension for the earlier period because she was paid full pension from 01.03.1995 to 31.12.1996.

iii) The respondents shall pay interest at the rate of 10% per annum to the applicant on the amount of Gratuity i.e. on Rs.50,000/- from 01.05.1995 (three months after the date of retirement) to March 2001 and on Rs.50,000/- from 01.05.1995 to October, 2001.

iv) The respondents shall pay interest at the rate of 10% per annum to the applicant on the amount of leave encashment of Rs.41,276/- from 01.02.1995 to 14.04.1999 and on the balance amount from 01.02.1995 to 18.10.2001.

v) The respondents shall pay interest at the rate of 10% per annum to the applicant on the amount of CGEIS Rs.22,690/- from 01.02.1995 to 15.03.1998.

20. The applicant shall also get a cost of Rs.2,000/- from the respondents.



(G.L.Gupta)

Vice Chairman.

jsv.