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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No. 174 of 2005

Jabalpur, this the 19th day of July, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Ms. Sadhna Srivastava, Judicial Member

C.P. Mishra, S/o. Shri
Ram Kripal Mishra,
Retired Addl. Commissioner
of Income Tax, 27, Kashikunj, Opp.
Sai Mandir, 3186, Narmada Road,
Jabalpur – 482002.

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Applicant

(By Advocate – Shri A.P. Shrivastava)

V E R S U S

1. Union of India, through Secretary,
Ministry of Finance, North Block,
New Delhi – 110001.
2. Union of India, through Secretary,
Ministry of Urban Development,
New Delhi – 110001.
3. Commissioner of Income Tax – 1,
Central Revenue Bldg. Aaykar Bhavan,
Napier Town, Jabalpur – 482001.
4. Commissioner of Income Tax,
Aaykar Bhavan, Vyapar Vihar,
Bilaspur (CG).
5. Zonal Accounts Officer,
Central Board of Direct Taxes,
Income Tax Department,
184, M.P. Nagar,
Bhopal – 462011.
6. Principal, Chief Controller of Accounts,
Central Board of Direct Taxes,

New Delhi.

Respondents

(By Advocate – Shri S.A. Dharmadhikari)

O R D E RBy Dr. G.C. Srivastava, Vice Chairman –

Through this Original Application, the applicant, C.P. Mishra retired Additional Commissioner of Income Tax seeks the following relief:

B. Direct the respondent to make payment for leave encashment for 300 days and not for 297 days as paid,

C. Direct the respondent to grant interest on late payment of GPF from 1.1.04 to 30.6.04 @ 12%,

D. Direct the respondent to reimburse collection charges of Rs. 1,068/- for sending draft for commuted pension at Bilaspur payable at Jabalpur,

E. Direct the respondent to compensate for arbitrarily sending draft of gratuity as payable at Bilaspur where the applicant after retirement resided at Jabalpur,

F. Direct the respondent to refund Rs. 19,393 with interest, recovered as penal interest on HBA,

G. Direct the respondent to grant interest on late payment of pension, DCRG, leave encashment and CGEGIS.”

2. The case of the applicant is that he retired as Additional Commissioner of Income Tax, Bilaspur on 31.12.2003, but he got his retirement benefits considerably late, as indicated below:

- i) commutation of pension on 3.3.2004,
- ii) DCRG on 13.5.2004,
- iii) GPF on 23.6.2004,
- iv) leave encashment on 29.7.2004 and
- v) CGEGIS on 13.9.2004.

3. The applicant has demanded interest for late payment of retirement benefits and has also alleged that the leave encashment amount has not been paid to him in full and that he had to suffer financial loss because the draft

for commuted pension payable at Jabalpur was sent to Bilaspur and the draft of gratuity was made payable at Bilaspur, although he was residing at Jabalpur after retirement. Another grievance of the applicant is that an amount of Rs. 19,393/- has been wrongly deducted from his retirement benefits as penal interest of house building advance. Originally, the applicant had added pay fixation as another item of relief, but it was later on dropped, because it was subject matter of another OA, which was dismissed.

4. Counter reply was filed by the Income Tax Officer, Jabalpur for and on behalf of the respondents. Counter reply is seen to be very sketchy and has been filed in a very casual manner, as is clear from the fact that although it is said to have been filed on behalf of all the respondents, reply to para 4.10 says that "the details in this regard can be provided by the respondent no. 05". Similarly in reply to para 4.11, it has been mentioned that "respondent no. 05 will be able to provide the details and grounds on which the recovery was made". In reply to paras 5.1 to 5.9, it has been mentioned that "the details of the recovery made can be provided by the respondent no. 05". No separate counter reply has been filed by respondent no. 5 i.e. the Zonal Accounts Officer, Central Board of Direct Taxes, Bhopal.

5. The sketchy counter reply does not say much except that the applicant is not entitled to the relief sought for.

6. We have heard arguments advanced by the counsel for both the parties and have gone through their pleadings and documents on record. So far as the averments of the applicant on the facts of the case are concerned, there is no dispute except that the respondents have denied that the applicant is entitled to leave encashment of 300 days. But even in respect of this ground of appeal, the respondents do not say anything much except that the payment has been made as per the entries in the service book and the leave record of the applicant. It is seen that the applicant has given full details of his earned leave account vide annexure A-6 showing that he had 300 days of

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leave to his credit at the time of his retirement but the respondents have neither controverted these assertions nor filed copies of service book or the leave record of the applicant to show that he had only 297 days of leave in his account. As a result, we are not in a position to accept the contention of the respondent that the applicant is entitled to only 297 days of leave encashment and not 300 days as claimed by him. We, therefore, hold that the applicant is entitled to 300 days of leave encashment and is therefore entitled to the payment of the balance amount on account of leave encashment for three days.

7. Regarding the deduction of Rs. 19,393/- from the DCRG bill on account of his HBA interest, the respondents' reply states that this amount was deducted as penal interest for not getting the house insured until the recovery of the HBA was completed. The reply further states that the details in this regard can be provided by the respondent no. 5, but, as stated earlier, there has been no separate counter reply by respondent no. 5 and consequently no further details have been provided by the respondents. The case of the applicant is that a house building advance of Rs. 51,000/- was sanctioned to him on 29.2.1980 (annexure A-21) and the sanction order did not contain any clause to the effect that if the house is not insured, penal interest will have to be paid. It was further contended by the applicant that it was on 20th May, 1980 that OM No. 1/17011/4/78/-H-III, was issued by the Department saying that sanctions for grant of house building advance should show rate of interest at 2.5% higher than the prescribed rates and this can be allowed as rebate if the conditions attached to the ~~application~~^{Sanction in} application are fulfilled completely to the satisfaction of the competent authority (annexure A-22). Although the sanction letter itself includes the condition that loanee has to insure the house at his cost immediately after its completion and has to keep it insured till the entire amount of advance together with interest has been fully recovered, there was no provision authorizing levying of penal interest for breach of this condition. The applicant has taken the plea that the house

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was insured from 1995 to 1998 till the date of repayment and therefore, insurance for earlier period should not be of any significance. The applicant has further averred that this was the stand taken by the head of the department, who returned the mortgage deed without objecting to non-insurance. It has further been submitted that at best the amount that was required to be paid for insurance could have been deducted as penalty for non insurance; this amount would not have been ~~more~~ ^{more} than Rs. 1,000/-. Accordingly, the applicant contended that the recovery of an amount of Rs. 19,393/- on this account is unjustified.

8. We have looked into the conditions of grant of house building advance. The clause regarding insurance has been included with a view to safeguard the interest of the Government in case of a mishap that may cause loss of property and give a ground to the loanee for defaulting in repayment of the loan. There is nothing on record to show that the applicant defaulted in repayment. Since the entire amount of the loan along with interest has already been repaid by the applicant, the necessity of insisting on insurance of the property loses its significance. We find it unreasonable on the part of the respondents to penalize the applicant for non-insurance and that too on the basis of a circular, which was issued after the loan was sanctioned and despite having released the mortgage deed after repayment was made in full. Accordingly, we hold that deduction of amount of Rs. 19,393/- from DCRG on account of HBA interest is illegal and this amount has to be paid back to the applicant along with interest till the date of payment.

9. Regarding the claim for grant of interest on GPF amount till the date of payment i.e. from 1.1.2004 to 23.6.2004, the counter reply of the respondents says that the delay in payment was due to incorrect and incomplete papers and therefore the applicant is not eligible for any interest on delayed payment. The contention of the applicant is that he had submitted his papers in time and delay has deliberately been caused. From annexure A-8 it is seen that the pension papers were sent to the Pay and Accounts Officer

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on 15th September, 2003 by the head office. Government of India's instructions under Rule 34 of the General Provident Fund (CS) Rules provide that if the subscriber submits application for final payment in the prescribed form in writing before retirement and if the payment cannot be made within one month after the date of retirement, due to administrative difficulties or otherwise, the subscriber is entitled to interest under rule 11 of the General Provident Fund (CS) Rules on the expiry of the said one month from the second month onwards.

10. In the instant case, the respondents have not controverted the assertion of the applicant that he sent papers on 15.9.2003. They have stated that the delay was caused due to incorrect and incomplete papers, but it has not been stated that there has been any lapse on the part of the applicant. In view of this, there is no doubt that the delay in payment has been caused because of ^{or other Gr} administrative reasons. In terms of Government of India's instructions on the subject, the applicant is therefore entitled to grant of interest from 1.2.2004 till the date of payment i.e. 23.6.2004.

11. So far as delay in payment of commuted pension, DCRG and CGEIGS is concerned, the applicant has not given any details to show that delay has been caused due to any deliberate action on the part of the respondents. Hence, we are not inclined to grant any relief on this account. Similarly, the applicant has not furnished any details regarding his claim for repayment of collection charges for the draft for commuted pension or compensation for the draft of gratuity, which was made payable at Bilaspur. Accordingly, we are unable to grant any relief on this account also.

12. In view of the above, we hold that the applicant is entitled to (i) leave encashment for 300 days (ii) refund of Rs. 19,393/- and (iii) interest as per rule 11 of the General Provident Fund (CS) Rules from 1.2.2004 to 23.6.2004 on delayed payment of GPF amount. Since these amounts were not paid to the applicant without any valid reasons, he is also entitled to get

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interest on these amounts at the rate of 9% per annum from 1.2.2004 till the date of actual payment. We have mentioned earlier that the respondents have adopted very casual approach not only towards the applicant but also in dealing with the case in the Tribunal. We therefore, award cost of Rs. 1,000/- payable to the applicant.

13. Before parting, we would like to mention that this is a case in which a retired officer has been unduly harassed for legitimate retirement benefits, which should have been paid to him without any extra effort from his side. Instead, he was driven to this Tribunal for seeking relief because of callous approach adopted by the respondents especially by respondent no. 5. In order to avoid recurrence of such cases, we direct respondent no. 6 to fix responsibility for delayed payment of retirement benefits to the applicant as well as for withholding of some of the payments without any valid reasons. The interest that is to be paid to the applicant in terms of this order will be recovered from the official found responsible. Payment to the applicant shall however be made without waiting for the outcome of this inquiry.

14. The orders contained in paras 12 and 13 above shall be complied with by the respondents within three months from the date of receipt of this order.

15. In the result the OA is allowed partly in terms of order contained in paras 12, 13 and 14 above. ~~.....~~ G.C. Srivastava

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Judicial Member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

"SA"

प्राप्तिकर्ता सं. ओ/न्या..... जवालपुर, दि.....
प्रतिलिपि दर्शने दित्त:-

- (1) सचिव, उच्च अमान्यम वार अधिकारी, जवालपुर
- (2) अधिकारी, विभागी, दि..... वक्त काउंसल
- (3) अधिकारी, श्री/मि. नानी, दि..... वक्त काउंसल
- (4) विधायक, विभागी, जवालपुर व्याधीनी

सूचना एवं आवश्यक अन्यांशों के

2/2 अप. रजिस्ट्रार

R.P. Srivastava 02/02/06

S. D. Sharma 02/02/06

02/02/06

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