

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT GWALIOR
Original Application No. 41 of 2003
Gwalior, this the 15th day of October, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Judicial Member

Ram Murty Kohli, S/o. Shri Baburam
Kohli, aged 66 years, Occupation
Retired Asstt. Engineer from MES, Ministry
of Defence, HQ 138 WKS Engineer, Jammu,
R/o. 93, Indramani Nagar, Gwalior (MP). ... Applicant

(By Advocate - Shri S.C. Sharma)

V e r s u s

1. The Union of India, through :
the Secretary, Ministry of Defence,
New Delhi.
2. The Principal Administrative Officer,
Central Record Office (Officers),
Delhi Cantt., New Delhi.
3. The Commander, 138, Works Engineers,
c/o. 56 APO. ... Respondents

(By Advocate - Shri P.N. Kelkar)

O R D E R

By A.S. Sanghvi, Judicial Member -

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The applicant ^{was} serving as a Assistant Engineer under the respondent No. 3 and has retired ~~also~~ on superannuation with effect from 31.7.1994, has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for interest on the delayed payment of gratuity and pension. According to the case of the applicant, he was served with a charge sheet on 21.10.1993 for an incident of 1985 and the enquiry in the charges levelled against him was not concluded even on the date of his retirement. The enquiry officer had submitted his report exonerating the applicant of the charges levelled against him in the year 1996 and the same was communicated to him by the disciplinary authority vide letter dated 27.2.1996. The applicant had submitted his representation on the report but the disciplinary authority did not take any action for a period of about 4 years and on dated 8.5.2000 served a

memo of disagreement on the applicant which was received by the applicant on 12.9.2000. The applicant has submitted his representation on the memo of disagreement on 14.9.2000 but the disciplinary authority has passed the order only on dated 24.7.2001 imposing the penalty of 10% cut in his pension for one year. In the meantime his DCRG was withheld and ^{though} ~~that~~ the provisional pension was sanctioned, ^{and} because of the defective PFO, he was also not made the payment of the provisional pension. The applicant had made several representations for the payment of the pension as well as gratuity but none of them yielded any ^{result.} ~~reason.~~ According to the applicant in view of this delay in the payment of gratuity and pension he has faced a great financial hardship and he is entitled to claim interest at the rate of 12% per annum on the amount of the arrears of Rs. 2,93,680/- of the pension from 1.8.1994 to 14.10.1999 and also on the amount of the gratuity of Rs. 65,340/- from 1.8.1994 till 1.1.1996 and also on the revised amount of gratuity from 1.1.1996 till 16.11.2002.

2. The respondents in their written reply contended interalia that the applicant was facing a major penalty charge ^{sheep} under Rule 14 of the CCS (CCA) Rules and hence his gratuity was withheld under Rule 69 of the CCS (Pension) Rules. According to them the main reason for the delay in concluding the departmental enquiry was that there were 5 officers from Group-C to Group-A involved in the lapses committed by them which had resulted in collapse of one of the hangers at Air Force Station, Maharajpur, Gwalior. The cases of all these 5 officials were required to be decided by a Single disciplinary authority under common proceedings. All of them were serving in various lower formations, whereas the cases were to be decided by the Ministry of Defence following the procedure prescribed in CCS (CCA) Rules, 1965. Therefore, there was no un-usual delay in the

final disposal of the enquiry. They have denied that the applicant is entitled to claim interest on the gratuity as well as pension.

3. We have heard the learned counsel for both the parties and duly considered the rival contentions.

4. The factual matrix of the case is more or less admitted. It is an undisputed position that the applicant was served with a charge sheet in the year 1993 and when he retired on attaining the age of superannuation with effect from 31.7.1994 the enquiry in the charges was still pending. It is also not in dispute that the enquiry officer had submitted his report in 1996 exonerating the applicant of the charges levelled against him but the disciplinary authority took more than 4 years to serve the memo of disagreement on the applicant. This delay of four years in taking the decision on the part of the disciplinary authority to disagree with the findings of the enquiry officer remains unexplained. The only explanation given by the respondents for such an inordinate gross delay in finalising the enquiry proceedings against the applicant is that there were 5 officers of different ranks facing the same charge and therefore the enquiry could not be concluded expeditiously. This is no justification for not concluding the enquiry for more than 7 years after the service of the charge sheet on the delinquent. The significant aspect of the matter is that though the applicant was sanctioned the provisional pension and the provisional PPO was issued in his favour he could not be paid the pension till 1999 on account of some defect in the PPO. The record reveals that there was a lengthy correspondence between the bank and the Department and ultimately after several representations on the part of the applicant, the applicant had succeeded in receiving the arrears of the pension in the year 1999. There is no explanation for such

lapse on the part of the Department and we are of the considered opinion that for such a lapse in releasing the provisional pension on the part of the Department, the applicant is entitled to claim the interest on the delayed payment of pension made to him. There is also no valid and the reasonable explanation from disciplinary authority in not taking a decision on the enquiry officer's report in time and not finalising the enquiry by passing appropriate orders of punishment or exoneration immediately after the report of the enquiry officer was received. Hence, the delay from the date of submission of the enquiry officer's report and till withheld gratuity was paid to the applicant clearly calls for an invitation for payment of the interest on the withheld gratuity. It is no doubt true that under Rule 69(1) the President has power to withhold the gratuity during the pendency of the enquiry but when enquiry is not completed in time and the inordinate gross delay in completion of the enquiry remains unexplained the respondents are bound to pay the interest on the withheld gratuity. ^{are,} We/ therefore, of the opinion that the interest deserves to be awarded on the amount of gratuity withheld by the respondents from three months after the receipt of the enquiry officer's report i.e. from 27.5.1996 till the gratuity was paid to the applicant.

5. Mr. Sharma the learned counsel for the applicant has in support of his submissions that interest deserves to be paid in such cases has relied on a decision in the case of Ranada Kanta Das Vs. Union of India & Others, (1992) 22 ATC 341, wherein the Calcutta Bench of this Tribunal dealing with the case of delay in concluding the enquiry and award of the interest on the withheld amount of the DCRG etc. has held as under :

"There is no justification on the part of the respondents in withholding the DCRG of the applicant after his superannuation. While it is true that

proceedings before superannuation of a government employee can be continued after his retirement, the department cannot be allowed to sit over the matter and withhold the DCRG of the retired employee concerned without sufficient reasons. There is nothing in the departmental file to explain the delay of seven months by the disciplinary authority in passing his order on the enquiry report. Even after the decision of the Disciplinary authority on 22.7.1987, there was a further delay of seven months in inter-departmental correspondence and eventual acceptance of the view that the case against the applicant should be closed in view of his retirement. There is no satisfactory explanation as to why the file remained pending in the office of the General Manager (Vigilance) for over four months. Hence the applicant is entitled to interest on the amount of Death-cum-Retirement Gratuity at 12% from 1.3.1987 to 7.3.1988."

6. In the instant case the delay is much ^{more} than that before the Calcutta Bench of the Tribunal. Here the disciplinary authority has ~~sit~~ tight over the enquiry officer's report exonerating the applicant for more than 4 and a half years before taking a decision to disagree with the report. This delay on the part of the disciplinary authority remained unexplained and as observed earlier this gross inordinate delay in concluding the enquiry in time against the applicant deserves ^{award the} ~~want~~ of interest on the withheld amount of the gratuity. It cannot be denied that withholding of the pension and the gratuity for all these years ^{great} must have caused ^{and untold miseries} mental agony to the retired employee and this cannot be compensated even by awarding the interest on the amount unduly withheld by the respondents. We, therefore, while allowing the Original Application direct the payment of interest at the rate of 10% per annum on the amount of Rs. 2,93,680/- ^{towards} pension from 1.8.1994 to 14.10.1999 and also on the amount of gratuity of Rs. 65,340/- from 27.5.1996 till 16.11.2002 i.e. when the same was paid and further direct that the payment of the interest shall be made within four months from the date of receipt of a copy of this order. If the same is not paid within four months as directed, the same shall become payable at the rate of 16% per annum.

7. With the aforesaid directions, the Original Application stands disposed of. There shall be no order as to costs.

(A.S. Sanghvi)
Judicial Member

(M.P. Singh)
Vice Chairman

"S A "

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अर्पितः—

पतिलिपि अर्पण दिनांक :-

- (1) सदस्य, सचिव, अध्यक्ष, सह अध्यक्ष, जवेलपुर
(2) अध्यक्ष, सचिव, अध्यक्ष, सह अध्यक्ष, जवेलपुर
(3) अध्यक्ष, सचिव, अध्यक्ष, सह अध्यक्ष, जवेलपुर
(4) अध्यक्ष, सचिव, अध्यक्ष, सह अध्यक्ष, जवेलपुर
- सूचना एवं आवश्यक कार्यवाही हेतु
- S. C. Sharma
P. W. Kulkarni

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Issued
On 19-10-09