

Date 20/12/2013  
OA No 521/2012

Order pronounced today on the open  
Court by the aforesaid Bench.

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20/12/13

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION NO. 521/2012**

Jaipur, the 2<sup>th</sup> day of December, 2013

**CORAM :**

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Mr. B.M. Lakhriwal son of Shri Lakhriwal, by caste Lakhriwal, aged about 63 years, resident of Village and Post Mahroli, District Sikar. Presently retired as Superintendent of Post Offices, Jhunjhunu on 30.06.2009.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Jodhpur Division, Jodhpur.
4. Superintendent Post Offices, Jhunjhunu Division, Jhunjhunu.

... Respondents

(By Advocate: Mr. Gaurav Jain)

**ORDER**

The applicant has filed this OA praying for the following reliefs:-

- "8(i) That by a suitable writ/order or the direction the respondents be directed to pay the interest(compound) with the rate of GPF on the delayed gratuity of Rs.4,83,929/- (Four lakh eighty three thousand nine hundred twenty nine only) with effect from 01.07.2009 to the actual date of payment by the department as per the orders of the department.
- 8(ii) That by a suitable writ/order or the direction the respondents be directed to pay the interest (compound) with the rate of GPF on delayed amount of commutation Rs.4,60,531/- (four lakh sixty thousand five hundred thirty one only) w.e.f. 01.07.2009 to the actual date of payment by the department.

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2. At the outset, the learned counsel for the applicant submitted that he is restricting his claim only with regard to relief No 8(i) i.e. payment of interest on delayed payment of gratuity.

3. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant superannuated on 30.06.2009. Therefore, the gratuity should have been paid to the applicant within three months after retirement.

4. However, before the date of retirement, a charge memo dated 23.06.2009 was served to the applicant under Rule 14 of the CCS (CCA) Rules, 1965. Therefore, no retiral benefits were paid to the applicant at the time of his superannuation on 30.06.2009.

5. That the final order was passed by the President on 23.06.2011 (Annexure A/6) and the applicant has been exonerated in the disciplinary proceedings pending against the applicant. Therefore, as per the **Government of India, Department of Personnel & A.R., OM No. F.7(1)-PU.79, dated 11.07.1979 and No. 1(4)/Pen. Unit/82 dated 10.01.1983**, the applicant is entitled for the payment of interest on delayed payment of retiral gratuity. This decision of the Government of India has been quoted below the Rule 68 of

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the CCS Pension Rules, which deals with interest on delayed payment of gratuity.

6. The learned counsel for the applicant submitted that the applicant was superannuated on 30.06.2009 and he was paid the gratuity amount of Rs.4,83,929/- on 16.08.2011. Therefore, he is entitled for the interest from 30.06.2009 to 16.08.2011.

7. On the other hand, the learned counsel for the respondents stated that it is not correct to say that under the Presidential order dated 23.06.2011 (Annexure A/6), the applicant has been exonerated. Vide this order, the disciplinary proceedings against the applicant were ordered to be dropped with the observations that mis-conduct was there against the applicant did not appear grave enough to warrant a cut in his pension and, therefore, continuance of the departmental proceedings were not justified. It is clear from the above observations that misconduct was there against the applicant but the same was not considered grave enough to impose the punishment specified in the rules and it was for that reason that the proceedings against the applicant were dropped. Therefore, the applicant cannot be said to have been exonerated in the disciplinary proceedings.

8. The learned counsel for the respondents further argued that as per Para 2(i) (c) of Government of India's decision No.

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(3) below Rule 68 of CCS (Pension) Rules, 1972, it has been clarified that payment of gratuity will be deemed to have fallen due on the date of issue of orders by Competent Authority for payment of gratuity where the Government servant is not fully exonerated on the conclusion of disciplinary/judicial proceedings and where the Competent Authority decides to allow payment of gratuity. In view of this clarification, payment of gratuity in the present case is deemed to have fallen due on the date on which the case was finally decided by the Competent Authority i.e. 23.06.2011.

9. The applicant was paid the gratuity amount on 16.08.2011, therefore, the gratuity amount has been paid to the applicant within three months from the date of its falling due i.e. 23.06.2011. Therefore, there is no justification for the payment of interest on the amount of gratuity.

10. Heard the rival submissions of the parties and perused the documents on record. It is not disputed that prior to the retirement of the applicant, a charge memo dated 23.06.2009 (Annexure A/3) under Rule 14 of the CCS (CCA) Rules, 1965 was served to the applicant. Finally these disciplinary proceedings were decided by the order of the President dated 23.06.2011 (Annexure A/6). Para 6 of the order is quoted below:-

"6. The President has also considered all other relevant facts and circumstances of the case and observed that the case of misconduct against the Charged Officer does not appear grave enough to warrant a cut in his pension.

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Therefore, the continuance of the departmental proceedings against Shri B.M. Lakhiwal, the then Supdt. Of Post Offices (Retd.) under Rule 9 of the CCS (Pension) Rules, 1972 does not seem justified."

11. However, from the perusal of the order, it is clear that there were 3 Articles of Charges against the applicant. With regard to Article No. 1, the finding of the Disciplinary Authority in Para No. 5(i) is quoted below:-

".....Therefore, the above point of allegation in the charge sheet does not stand as valid and thus cannot be accepted, irrespective of the finding of the IO."

Similarly with respect to Article 2, the findings of the Disciplinary Authority are quoted in Para No. 5(ii), which are as under:-

".....Therefore, Shri B.K. Lakhiwal, the charged officer cannot be held responsible for non-compliance of CCS (CCA) Rules as alleged. Thus, this point of allegation stands invalid, irrespective of the finding of the IO."

With regard to Article 3 of the Charge Memo, the findings of the Disciplinary Authority are recorded in Para No. 5 (iii) of the order, which are quoted below:-

".....However, it has not been clarified in clear terms either in the charge sheet or in the Inquiry Report as to how his appointment as GDS on 01.02.1993 and his position at Sl. No. 519 of the gradation list makes the said GDS ineligible for recruitment to Group 'D' in the next three years. Therefore, the opinion of the IO that this charge is proved is not convincing and cannot be accepted as proved."

12. Thus bare perusal of the order of the President dated 23.06.2011 (Annexure A/6), it is clear that none of the charges were proved against the applicant by the Disciplinary Authority.

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Therefore, this will amount to exoneration of the applicant in the disciplinary proceedings. There is no finding given by the Disciplinary Authority that the applicant was guilty of any misconduct whether minor or major. Therefore, there was no question of cut in his pension. Thus mere mention in Para No. 6 of the order dated 23.06.2011 (Annexure A/6) that the case of misconduct against the Charged Officer does not appear grave enough to warrant a cut in his pension is of no importance. The Disciplinary Authority has not proved any misconduct against the applicant. Therefore, I am of the considered opinion that vide order dated 23.06.2011, the applicant was exonerated by the Disciplinary Authority and, therefore, in the present case the provisions of Para No. 3 of the **Government of India, Department of Personnel & A.R., OM No. F.7(1)-PU.79, dated 11.07.1979 and No. 1(4)/Pen. Unit/82 dated 10.01.1983** would apply. The provisions in this regard are quoted below:-

"3. In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/ disciplinary proceedings against them and against whom proceedings are consequently dropped."

13. Therefore, I am of the opinion that the applicant is entitled to interest on the delayed payment of gratuity at the

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rate applicable to GPF deposits from the date from which gratuity payable to the applicant i.e. from 30.06.2009 to 16.08.2011, excluding three months which are provided as grace period under the rules. Thus the interest would be calculated w.e.f. 01.10.2009 to 16.08.2011. The respondents are directed to pay the interest on the delayed payment of gratuity within a period of three months from the date of receipt of a copy of this order.

14. With these observations, the OA is disposed of with no order as to costs.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

AHQ