

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1044/2011

Order Reserved on: 03.09.2015
Order pronounced on 10.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)

Rajender Singh Tushir
House No.1125
Vill & P.O.Alipur
Near Sabji Mandi
Delhi – 36.

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Applicant

(By Advocate: Sh. Puneet Verma)

Versus

1. Secretary
Department of Posts
Ministry of Communications & IT
Govt. of India
Dak Bhawan, Ashoka Road
New Delhi – 1.
2. Secretary
Department of Telecommunication
Ministry of Communications & IT
Govt. of India
Sanchar Bhawan, Ashoka Road
New Delhi – 1.
3. General Manager (Finance)
Postal Accounts, Delhi
Department of Posts
Sham Nath Marg
Civil Lines
Delhi-110 054.
4. Communication Accounts Officer (GPF)
Office of Controller of Communication Accounts

Department of Telecom
Ministry of Communications & IT, Govt. of India
DTO Building, Near Fire Station
Prasad Nagar,
New Delhi – 110 005. ... Respondents

(By Advocate: Shri Subhash Gosain)

ORDER

The applicant, a retired employee, filed the OA seeking the following relief(s):

8.1 Call for the records of the case for perusal;

8.2 Quash Letters dated 14.9.2009, 11.5.2009, 11.7.2007 (Annexure A-2 (Colly)), Letter dated 18.1.2007 (Annexure A1) (Colly)) and any other letter(s) or order(s) to same effect; being illegal, arbitrary, discriminatory, malafide, untenable, without jurisdiction with all its consequences;

8.3 Direct the Respondents 1 to 4 to pay interest @12% on GPF amount of Rs.307570/- which was illegally kept by the respondent No.3 for 4 months from (19.6.2006 to 25.10.2006) and pay remaining amount of GPF of Rs.28319/- which was illegally withheld by respondent No.3 and pay interest @12% thereon from 25.10.2006 till the actual payment of the said amount;

8.4 Direct the respondents 1 to 4 to pay interest @12% on the delayed payment of gratuity, arrears of pension and pension commutation, leave encashment within a reasonable time;

8.5 Direct the respondents to pay compensation of Rs.50,000/- towards mental agony and harassment of the applicant done by the respondents for about 5 years;

8.6 Allow cost of application;

2. The OA was originally disposed of by this Tribunal along with some other identical OAs in OA No.2297/2011 and batch dated 06.07.2012, as under:

"15. We, therefore, deem it appropriate to dispose of the OA in terms of the following directions:

- (a) the respondents shall pay interest at the GPF rate of interest on the delayed payments of the retiral benefits computed beyond the period of six months from the date of permanent absorption in BSNL till the date of actual payment in the year 2010. This may be done within a period of two months from the date of receipt of a copy of this order. Further delay, if any, beyond the aforesaid two months would attract payment of interest at a higher rate of interest of 12%.
- (b) We leave it to the Secretary, Department of Posts to expedite action, as directed in letter dated 11.02.2010 (Annexure A3) for fixing of responsibility (including recovery, if deemed fit) on the officers/officials responsible for the delayed authorization of the retiral benefits of the applicant. This may be done expeditiously and preferably within a period of three months from the date of receipt of a copy of this order.

16. The OA is disposed of as above. No costs.

17. Similarly, OA Nos.1044, 2298-2316 of 2011 are also disposed of accordingly.

18. A copy of this order be kept in the other OAs files also."

3. The applicant, however, filed RA No.138/2013 in OA No.1044/2011, by contending that in addition to certain identical prayers, the applicant has also prayed for a direction to the respondents to pay interest at the rate of 12% on the delayed payment of leave encashment, but while disposing of the OA on 06.07.2012 along with other OAs, the Tribunal has not considered the said prayer and that no finding was recorded about the same, and in view of the said error apparent on the face of the record, prayed for reviewing the order dated 06.07.2012 in OA No.1044/2011. This Tribunal by its order dated 11.11.2014 having found merit in the RA,

allowed the same and recalled the order in the OA No.1044/2011 and directed to be listed for fresh adjudication.

4. When this OA is taken up for fresh hearing, in pursuance of the aforesaid RA orders, the learned counsel for the applicant submits that since the order dated 06.07.2012 in OA No.2297/2011 and batch wherein certain identical relief(s) prayed by similarly situated persons were granted, have attained finality and the respondents have granted those benefits to the applicant also, though the order in his OA was recalled. Hence, now the learned counsel submits that he is restricting his prayer to the extent of a direction to the respondents 1 and 3 to pay interest at the rate of 12% on the delayed payment of leave encashment from the due date to the date of actual payment.

5. Heard Shri Puneet Verma, the learned counsel for the applicant and Shri Subhash Gosain, learned counsel for the respondents 1 and 3, and have perused the pleadings on record.

6. The applicant, while working as Postal Assistant under the Respondents No.1 and 3, was initially appointed as JAO, on deputation, in the 2nd Respondent-Department of Telecommunications (DoT). Later, on his permanent absorption, into the 3rd Respondent-DoT, his technical resignation was accepted by the Respondents No.1 and 3 w.e.f. 14.02.2005. As per rules, in view of the acceptance of his technical resignation, he is deemed to have retired from the service of the Respondents No.1 and 3 and entitled for all the retirement benefits.

7. As aforesaid, the respondents though paid the retiral benefits entitled by the applicant but paid the Leave Encashment with substantial delay and for which the applicant is seeking interest in this OA.

8. The applicant was deemed to have retired from the service of Respondent No.1 and 3 w.e.f. 14.02.2005 and according to the applicant, his leave encashment amount was due from the said date. However, the same was paid only on 10.06.2006, i.e., with much delay. The learned counsel for the applicant placed reliance on a Coordinate Bench Judgement of this Tribunal in OA No.1014/2011 (**Smt. Raman Munjal v. Govt. of NCT & Others**) decided on 19.07.2011 and a Judgement of the Hon'ble High Court of Delhi dated 13.03.2012 in WP(C) No.1227/2012 (**Delhi Police v. Balwant Singh**). In **Balwant Singh's** case (supra), the Hon'ble High Court held as under:

"4. The first issue that we have to consider is whether any interest, at all, is payable on the delayed payment of the leave encashment amount. This question need not detain us any longer inasmuch as recently, in the case of **Government of NCT of Delhi v. S.K. Srivastava: WP(C) No. 1186/2012** which was decided on 29.02.2012, we had decided that interest would be payable on delayed payment of the leave encashment amount where the delay is on account of no fault on the part of the employee. In that decision, we had observed as under:-

"The learned counsel for the petitioner states that all other dues had been paid to the respondent along with interest at the GPF rate, but since there was no provision in the leave rules for grant of interest, that is why the present petition has

been filed. We do not agree with the submission made by the learned counsel for the petitioner that because there are no rules providing for grant of interest, the respondent would not be entitled to the same. There is also no bar to the grant of interest whenever the leave encashment amount is delayed for no fault on the part of the employee. The Government has retained the money from the year 2000 till 2011, which, in any event, was due to the respondent in the year 2000 itself, particularly in view of the fact that even the conditions specified in Rule 39(3) had not been complied with. Consequently, grant of interest on the said amount at the GPF rate by the Tribunal cannot be faulted. In any event, we may also point out that between 2000 and 2011, because of inflation, the real value of the amount that was due to the respondent had substantially eroded, the payment of interest at the GPF rate would only be a kind of balm applied to the injury suffered by the respondent. It may, in fact, actually turn out that the petitioner would not be paying anything more in real terms than what it was liable to pay in the year 2000."

Thus following the said decision, interest would be payable by the petitioner even on the leave encashment amount and, therefore, the Tribunal’s decision in this regard cannot be faulted. In the case of **S.K. Srivastava (supra)**, we had also directed that the rate of interest be granted at the GPF rate. The learned counsel for the respondent has placed before us a decision of the Supreme Court in the case of **Vijay L. Mehrotra v. State of U.P. & Ors: JT 2000 (5) SC 171**, where the Supreme Court had granted interest on, *inter alia*, the delayed payment of the leave encashment amount at the rate of 18% per annum. The relevant portion of the said Supreme Court decision is as under:-

“2. The appellant retired from service on 31st August, 1997. From the response, filed by the respondent, it is clear that most of the payments of the retiral benefits to her were made long after she retired on 31st August, 1997. The details of the payments so made are as under:

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(i)	GPF 90%	Rs	27.11.1997
		1,80,899.00	
(ii)	GPF 10%	Rs	25.04.1998
		20,751.00	
(iii)	GIS	Rs	27.02.1998
		13,379.00	
(iv)	Enchashmen t of leave	Rs	27.09.1998
		41,358.00	
(v)	Arrears of pay	Rs	27.09.1998
		15,495.00	
(vi)	Gratuity	Rs	05.12.1998
		1,09,753.00	
(vii)	Commutd pension	Rs	05.12.1998
		20,484.00	
(viii)	Detained amount	Rs	05.11.1999
		45,000.00	

3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay the appellant within 12 weeks from today simple interest at the rate of 18% per cent with effect from the date of her retirement i.e. 31st August, 1997 till the date of payment."

5. Since in the aforementioned case, the Supreme Court had directed that interest be paid at as high a rate as 18% per annum on both gratuity as well as the leave encashment amount, we see no reason to interfere with the directions of the Tribunal granting interest at the rate of 9% per annum.

Consequently, this writ petition is dismissed. There shall be no order as to costs."

9. Per contra, Shri Subhash Gosain, the learned counsel appearing for Respondents No.1 and 3, while not denying the aforesaid facts, however, submits that the OA is liable to be dismissed as the same is barred by limitation. The leave encashment amount was paid on 10.06.2006 whereas the present OA is filed on 08.03.2011 and hence, the same is barred by limitation. It is further submitted that the delay is not abnormal and even otherwise the same is not deliberate or intentional and hence, the respondents are not liable to pay any interest on the leave encashment amount for the delayed period.

10. It is settled law that every employee is entitled to for all his retiral benefits as on the date of his retirement itself. Any unexplained delay in payment of the same entails the Government servant with interest.

11. Admittedly, there was delay of about 16 months in payment of leave encashment amount of the applicant and the respondents have

failed to explain the said delay with cogent reasons and hence, as categorically held in Delhi Police case (supra), wherein the case of the Hon'ble Apex Court in **Vijay L. Mehrotra's** case (supra) has been relied upon, the applicant is entitled for interest on the delayed payment of leave encashment, at reasonable rates.

12. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents No.1 and 3 are directed to pay interest at GPF rates, to the applicant on the leave encashment amount for the delayed period, within 90 days from the date of receipt of a copy of this order. No costs.

(V. Ajay Kumar)
Member (J)

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