

Central Administrative Tribunal  
Principal Bench: New Delhi

**OA No.1948/2015**

Reserved on: 28.09.2016  
Pronounced on: 04.10.2016

**Hon'ble Dr. B.K. Sinha, Member (A)**

Harsharan Jit Singh  
S/o Sh. Manohar Singh  
Retired JTO from MTNL  
New Delhi  
R/o B-13, South Extn., Part-II,  
Delhi – 110 049. ....Applicant

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Union of India through the Secretary,  
Ministry of Communication & IT,  
Department of Telecommunications,  
Sanchar Bhawan,  
New Delhi.
2. Mahanagar Telephones Nigam Limited,  
Through its Chairman & Managing Director,  
K.L. Bhawan, Janpath,  
New Delhi.
3. The Executive Director,  
Mahanagar Telephones Nigam Limited,  
K.L. Bhawan, Janpath,  
New Delhi.
4. The General Manager (A)  
Mahanagar Telephones Nigam Limited,  
K.L. Bhawan, Janpath,  
New Delhi.
5. The General Manager (HR),  
M.T.N.L. Copn.office,  
9, CGO Complex,  
New Delhi. ....Respondents

(By Advocate: Mr. A.K. Singh for R-1 and Mrs. Rachna  
Joshi Issar for R-2 to R-5.)

**O R D E R**

The issue involved in the instant Original Application is as to whether the applicant is entitled to interest on delayed payment of leave encashment for a period of 21 months from the date of his retirement i.e. 31.05.2013 till 10.03.2015 when it was actually released.

2. The case of the applicant, briefly stated, is that he was initially appointed in the Department of Telecom in the year 1975 to the post of Auto Exchange Assistant (AEA for short). He was subsequently promoted as Junior Telecom Officer [JTO] in 1991 and continued on this post till his superannuation on 31.05.2013. In 2001, the applicant had been chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 [Rules of 1965 for short] vide Memo dated 15.09.2001. A penalty of reduction by one stage in the time scale of pay for a period of one year was imposed upon him with immediate effect and on expiry of this period, the reduction would have the effect of postponing his future increments of pay. On 24.05.2004, the applicant was arrested in a CBI case and was placed under deemed suspension w.e.f. 23.05.2004 which was subsequently revoked vide order dated 25.08.2009. The applicant was finally acquitted from the criminal case vide judgement dated 21.10.2011 consequent to which the competent authority decided to

treat the period of his suspension i.e. from 23.05.2004 to 18.09.2009 as period spent on duty with all consequential benefits arising thereof. The competent authority, vide order dated 04.04.2013, also granted the applicant financial upgradation i.e. IDA pay scale (pre-revised) Rs.10750-300-16750 (E-2) to Rs.13000-350-18250 (E-3) on completion of 5 years qualifying service including training period in the scale of Rs. 10750-300-16750 (E-2) w.e.f. 01.02.2005. The applicant was also granted all consequential benefits including arrears of difference of pay and allowances. It is the case of the applicant that vide order dated 04.05.2013, he was subsequently promoted to the grade of Deputy Manager (Telecom)/SDE (Telecom) on regular basis notionally w.e.f. 30.11.2006 without getting any arrears of pay. Aggrieved, the applicant filed OA No.1956/2013 which was decided by this Tribunal vide order dated 31.03.2014 directing the applicant to make a representation within a period of one week. The applicant submitted his representation on 28.05.2014. He also filed contempt petition bearing CP No.93/2015 against the respondents. In the meantime, the respondents passed the impugned order dated 23.02.2015 and released the difference of pay & allowances for the back period and also granted leave encashment amount to the applicant.

3. The applicant has relied upon the decision of the Hon'ble Supreme Court in *S.K. Dua v. State of Haryana* [2008 (3) SCC 44] providing that the applicant could claim interest on the basis of statutory rules in absence of which executive instructions and in absence of both on the basis of Article 14, 19 and 22 of the Constitution. It is a settled principle that if an employee is not responsible for the delay, in sanction of retiral benefits, the same shall be paid by the concerned employer along with interest to the concerned employee. The applicant has also relied upon a Full Bench decision of the Hon'ble High Court of Punjab & Haryana in the case of *A.S. Randhava v. State of Punjab & Ors.* [1974 (4) SLR 617] as also *Nalini Kant Sinha v. State of Bihar & Ors* [1993 Supp (4) SCC 748]; *Punjab State Electricity Board & Ors. v. Kuldip Singh* [2005 (13) SCC 372]; *Gammon India Limited v. Niranjan Das* [1984 (1) SCC 509]; *Parmasivan & Ors. v. Union of India & Ors.* [2003 (12) SCC 270] and *Govt. of West Bengal v. Tarun K. Roy & Ors.* [2004 (1) SCC 347].

4. The applicant has also placed reliance on the decision of the Hon'ble Supreme Court in *Union of India v. Justice SS Sandhawalia* [1994 (2) SCC 240]. Explaining the delay in submission of his representation, the applicant submitted that the delay had occurred due to late receipt of the certified copy of the order i.e. on 22.05.2014 whereas he

promptly filed the representation on 28.05.2014. Therefore, there is no delay involved on his part. The applicant also submits that the situation was not of his making but had been thrust upon him. Subsequently, all his stands have been vindicated saving the dispute under reference.

5. The respondents have filed the counter affidavit in which they primarily relied on four grounds. In the first place, the respondents contend that the delay in payment of interest has occurred due to negligence of the applicant and, hence, they are not liable for the same. The order in OA No.1956/2013 (supra) had been pronounced on 31.03.2014 whereas the representation was filed by the applicant on 28.05.2014 i.e. after a delay of 1 month and 21 days whereas it should have been filed by 07.04.2014. Therefore, the applicant is himself responsible for his own travails.

6. In the second place, the contention of the respondents is that against the contempt petition filed by the applicant for disobedience of the Tribunal's order dated 31.03.2014, the respondents, during the pendency the contempt petition, passed order dated 23.03.2015 and the Tribunal having satisfied with the afore order of the respondents, dismissed the CP with liberty to the applicant to approach the court in respect of surviving grievances, if any. Hence, the matter has already been considered and adjudicated.

7. In the third place, it is submitted that the applicant has himself given an undertaking to the effect that he has received all his dues and nothing is due against the respondents. Therefore, the applicant is prevented from raising any dispute relating to the matter right now.

8. In the fourth place, the respondents submit that since the Certificate required under the letter dated 29.08.2012 was furnished only on 04.03.2015 (Annexure R-3), the respondents immediately released an amount of Rs.7,17,790/- in respect of leave encashment vide cheque no.651247 dated 10.03.2015 drawn on Indian Overseas Bank, New Delhi during the pendency of the CP. This establishes good faith on part of the respondents.

9. I have carefully gone through the pleadings of the parties and documents so adduced as also the law citations relied upon. I have also heard the oral submissions advanced by the learned counsel for both the parties.

10. The issue has already been spelt out. To begin with, I find that the charges of negligence and responsible for delay put at the door steps of the applicant are not sustainable as the certified copy of the Tribunal's order dated 31.03.2014 appears to have been received by the applicant on 22.05.2014 following which the representation was filed by

him on 28.05.2014. However, what is more pertinent is that whether the applicant had complied with the formalities necessary for grant of the benefit of leave encashment in due course of time. However, I take note of the OM of the MTNL dated 29.08.2012 wherein submission of an undertaking had been made mandatory in a given proforma. For the sake of greater clarity, the relevant provisions as contained in 3(a) (b) and (C) of the afore OM are being reproduced as under:-

- “3(a) *The earned leave account of Government service at their credit as on date of permanent absorption into MTNL is to be calculated as per service records and to allow full exemption upto 300 days on the date of superannuation/retirement etc. as an employee of Central Govt. under Section 10 (10AA) (i) of income Tax Act, 1961.*
- (b) *if leave encashment at credit is less than 300 days at the time of absorption, the balance leave earned during MTNL will be taxable subject to exemption limit of Rs.3,00,000/- (i.e. present limit of exemption) under Section 10(10AA)(ii) of Income Tax Act, 1961 at the time of superannuation/retirement etc.*
- (c) *However, by giving effect of the above an Undertaking shall be taken from each retiree that if any tax liability occurs or imposed by Tax Authorities including interest, penalties etc. will be borne by retiree. The proforma of Undertaking is also enclosed herewith.”*

The clarification dated 15.09.2012 relating to tax deducted at source of leave encashment at the time of retirement provides that the payment from 29.08.2012 i.e. the date of issuance of earlier OM, would be the effective date for implementation. The process of calculation on the basis of

last pay drawn at the time of retirement as per the existing provisions remained unchanged. It is the submission of the respondents that the undertaking as required under the provision 3(c) of OM dated 29.08.2012 was received only on 04.03.2015, which has been placed at Annexure R-3 (page 48 of the paper book). The respondents thereafter made payment of leave encashment to the applicant amounting to Rs.7,17,790/- vide cheque no.651247 dated 10.03.2015 drawn on Indian Overseas Bank, New Delhi. The respondents further submitted that while receiving the aforesaid cheque, the applicant had written in his hands on the photocopy of the cheque as under:-

*“I, H.J. Singh, have been paid all the dues by MTNL and I have no grievances left from MTNL. I shall withdraw the contempt petition on the next date.”*

11. The argument of the applicant in this respect was, however, that the undertaking had been given in respect to the claims covered in OA No.1956/2013 which did not include interest on leave encashment. As such, the applicant is at liberty to make the claims for payment of interest as he has done in the instant OA. I am of the view that a person cannot be coerced into giving an undertaking against his own interest. However, the fact remains that there appears to be no responsibility on part of the respondents for the delay. Per contra, they appear to have acted in the good faith in the sense they released the payment as soon as the required undertaking was received as per the rules even

during pendency of the contempt petition. As such, they have established their bonafide and good faith.

12. The applicant has relied upon several cases including *S.K. Dua v. State of Haryana* (supra) wherein the applicant was Engineer-in-Chief who had reported against the then Secretary S.Y. Quraishi for the deeds of omission and commission. He was then sent on punitive transfer as a matter of vendetta. A show cause notice was also issued against him. His pensionary dues were not paid. However, the proceedings were finally dropped and all retiral benefits were paid to the applicant after a period of four years. The relevant part of the aforesaid judgment of the Hon'ble Supreme Court is reproduced as under:-

*"13...It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of mal-practices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.*

*14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The*

*submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.”*

13. In the instant case, the negligence is on part of the applicant in the form of delayed submission of the requisite certificate. The respondents, therefore, cannot be made to pay for the omission of the applicant.

14. Likewise, in *A.S. Randhava v. State of Punjab & Ors.* (supra), the issue involved was different being that as to whether a retiree could approach the Hon'ble High Court under Article 227 of the Constitution to claim interest only on delayed payment of post retiral benefits whereas in the instant case, the issue involved is as to whether the claim of interest on leave encashment is due to the applicant even when there is proven negligence on part of the applicant. As such, this judgement is distinguishable from the facts of the case at hand.

15. The applicant has also relied upon the decision of the Hon'ble High Court of Delhi in *Delhi Police v. Balwant Singh* [WP(C) No.1227/2012 decided on 13.03.2012] wherein the dispute was relating to the rate of interest as to whether the same should be paid @ 8% or 9% as awarded by the

Tribunal. Again, the facts of this case are distinguished by the case in hands.

16. In another decision of the Hon'ble High Court of Delhi in *Govt. of NCT of Delhi v. Nand Lal Singh* [193 (2012) DLT 133(DB)], the respondents had not alleged negligence on part of the applicant. Hence, this decision is also of no help to the applicant being the facts different from the present case.

17. Thus, in full consideration of the facts and the discussion above, I am of the considered opinion that the applicant cannot disown negligence on his part in not complying with the instructions contained in clause 3(c) of the OM dated 29.08.2012 and having not complied with the same, the applicant cannot now at this stage turn around and ask for interest on the delayed payment of leave encashment. Hence, the instant OA, being bereft of merit, is dismissed with no order as to costs.

(Dr. B.K. Sinha)  
Member (A)

/Ahuja/