

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.3029 OF 2013

New Delhi, this the 28th day of March, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
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Shri Bhram Dutt Yadav,
S/o late Shri Ram Rikh,
R/o House No.223, Khasra No.211.
Shani Bazar,
Village Rajokri,
New Dehi 110038

(By Advocate: Mr.Sachin Chouhan)

Vs.

1. Govt. of NCTD,
through the Chief Secretary,
Govt. of NCTD,
Naya Sachivalaya,
New Delhi
2. The Commissioner of Income Tax (Appeals) VII,
Office of the Income Tax Commissioner (Appeals) VII,
D-Block, Vikas Bhawan,
New Delhi 110001
3. The DDO Headquarters (Finance),
Chief Commissioner of Income Tax through
Commissioner of Income Tax,
Delhi XII,
Vikas Bhawan, I.P.Estate,
New Delhi 110002

4. The Commissioner of Income Tax,
Delhi XII, New Delhi, through
Commissioner of Income Tax,
Delhi XII,
Vikas Bhawan, I.P.Estate,
New Delhi 110002

5. The Deputy Commissioner of Income Tax,
Headquarter (Finance),
C.R.Building,
New Delhi.

6. The Drawing & Disbursing Officer,
CIT-XII, through Commissioner of Income Tax,
Delhi XII,
Vikas Bhawan, I.P.Estate,
New Delhi 110002

7. Union of India, through its Secretary,
Ministry of Finance,
North Block,
New Delhi 1

8. The Central Pension Accounts Officer,
Govt. of India,
Department of Expenditure,
Ministry of Finance,
Trikut-2, Bhikaji Cama Place,
New Delhi

1 1 Respondents

(By Advocates: Mr.R.N.Singh for Respondents 2 to 8, and Ms.Sangeeta Rai for R-1)

1 ..
ORDER

The applicant, who had joined the Government service in the year 1972, retired from service on attaining the age of superannuation on 28.2.2010. It is his case that though he had submitted all the requisite

documents, his retirement benefits were not released to him by the respondent-departmental authorities soon after the date of his retirement. On query, he came to know that due to non-completion of verification of his service particulars, the retirement benefits were not released by the respondent-departmental authorities in his favour. Despite repeated approaches made by the applicant, the respondent-departmental authorities having failed to release his retirement benefits, the present O.A. was filed by him on 21.8.2013 seeking the following reliefs:

- o(i) To direct the respondents to release the regular pension and retiral benefits to the applicant forthwith with all consequential benefits. To further direct the respondents to release the arrears of regular pension from the date of superannuation i.e. 28.02.2010 to the date of actual payment forthwith.
- (ii) To direct the respondents to grant 12% rate of interest on the entire amount of retiral benefits along with the arrears of regular pension from the date of superannuation to the date of actual payment. To further imposed a heavy cost of at least Rs.1,00,000/- on the respondents for delaying the release of pensionary benefits of the applicant on account of administrative delay.

Or/and

- (iii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant.ö

2. In their counter reply filed on 19.11.2013, respondent nos. 2 to 6 have stated, *inter alia*, that the retirement benefits were not disbursed to the applicant due to non-availability of vigilance clearance, and deficiency in his service book. Necessary actions were taken by them for disbursal of the provisional pension and group insurance amount to the applicant shortly. Though the pension papers were required to be submitted 3 ó 6 months before the date of his retirement, the applicant submitted the same only on

10.2.2010. The vigilance clearance was not issued in favour of the applicant, because an FIR No. 281/09, dated 15.7.2009, under Sections 341, 323, 354, 506/24 IPC, was filed against him at Vasant Kunj Police Station, New Delhi. The criminal case was pending in the court. Due to this, the pensionary benefits could not be released in favour of the applicant. Only in the month of October 2012, the verification of applicant's service particulars was completed. There is no provision for payment of interest on the delayed payment of leave encashment, CGEGIS, commutation of pension/regular pension/provisional pension, etc. In view of the above, the said respondents pray for dismissal of the O.A.

3. The applicant has filed a rejoinder reply refuting the stand taken by the respondents.

4. I have carefully perused the records, and have heard Mr. Sachin Chauhan, the learned counsel appearing for the applicant, and Mr. R.N. Singh and Ms. Sangeeta Rai, the learned counsel appearing for the respondents.

5. Rule 58 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the 'CCS (Pension) Rules'), which relates to "preparation of pension papers", states that "every Head of Office shall undertake the work of preparation of pension papers in Form 7, two years before the date on which the Government servant is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement whichever is earlier". Rule 59 of the CCS (Pension) Rules deals with the 'stages for the completion of pension papers'. Clause (a) of Sub-

Rule (1) of Rule 59, *ibid*, bears the heading, First Stage, and refers to the verification of service details. There are five parts in this Clause. Clause (b) of Sub-Rule (1) of Rule 59, *ibid*, refers to the Second Stage, namely, making good omission in the Service Book of the retiring Government servant. Sub-clause (ii) of Clause (b) of Sub-Rule (1) of Rule 59, *ibid*, is important, and it states very clearly as follows:

"Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to sub-clause (i) of this clause. Any omission, imperfections or deficiencies including the portion of service shown as unverified in the Service Book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the Service Book."

This directive in the rules is obviously intended to see that once the period is quite close to 10 months before the retirement of an employee, further time is not to be wasted in verifying data which it has not been possible to verify by following the procedure in Rule 59(1)(a), *ibid*. Clause (c) of Sub-Rule (1) of Rule 59, *ibid*, refers to the Third Stage, and it states that at least 10 months before the date of retirement, the Head of Office shall take various steps by issuing a Certificate to the retiring Government servant who can offer his remarks, and thereafter, he shall be furnished Form 4 and Form 5 which he has to fill up and send to the Head of Office at least 8 months before the date of retirement. Rule 60 of the CCS (Pension) Rules refers to 'completion of pension papers' in Part-I of Form 7 at least 6 months before the date of retirement of the Government servant. Rule 61 of the CCS

(Pension) Rules deals with the 'Forwarding of Pension Papers to Accounts Officer' in Form 5 and Form 7 with a covering letter in Form 8 along with Service Book duly completed, up to date, and other documents. This has to be done at least 6 months before the date of retirement. Rule 63 refers to recovery of amounts due to be paid by the Government servant and the particulars in this behalf are to be sent by the Head of Office to the Accounts Officer at least 2 months before the date of retirement of the Government servant so that the same could be recovered from the gratuity payable to the retiring Government servant. Rule 64 of the CCS (Pension) Rules deals with provisional pension. Rule 65 of the CCS (Pension) Rules requires the Accounts Officer to assess the amount of pension and gratuity at least one month before the date of retirement.

6. From the foregoing, it is clear that it was the responsibility of the concerned Head of Office, or, for that matter, the respondent-departmental authorities to complete verification of the service details of the applicant much prior to the date of his retirement. If at all there was any deficiency in the service book or service particulars of the applicant, the applicant could not have been held responsible therefor, and the respondent-departmental authorities ought to have rectified the same much prior to the date of retirement of the applicant. Save and except making a bald statement that the applicant submitted the pension papers only on 10.2.2010, the respondent-departmental authorities have not produced before this Tribunal any document to substantiate the said statement. The statement made by the

respondent-departmental authorities, in their counter reply filed on 19.11.2013, that the verification of the applicant's service details was completed in the month of October 2012, i.e., after about two years and eight months of the date of retirement of the applicant, clearly goes to show that they have utterly failed to follow the provisions of the rules regarding verification of service details of the applicant, and payment of retirement dues to the applicant soon after retirement.

7. Though the applicant retired from service on attaining the age of superannuation on 28.2.2010, the respondent-departmental authorities even failed to pay provisional pension, and CGEGIS amount to the applicant till 19.11.2013, i.e., the date of filing of their counter reply wherein they have stated that the provisional pension and CGEGIS amount would be paid to the applicant shortly.

8. The other plea taken by the respondent-departmental authorities is that as an FIR No.281/09, dated 15.7.2009, under Sections 341, 323, 354, 506/34 IPC was filed against the applicant at Vasant Kunj Police Station, the vigilance clearance was not issued in his favour, and, therefore, the retirement benefits could not be released to the applicant. Mere registration of an FIR against an employee at the time of retirement from service cannot be construed to be institution of criminal proceedings against him on the date of his retirement from service. Rule 9(6)(b)(i) of the CCS (Pension) Rules stipulates that judicial proceedings shall be deemed to be instituted in the case of criminal proceedings, on the date on which the complaint or

report of a Police Officer, of which the Magistrate takes cognizance, is made. It is not the case of the respondent-departmental authorities that the report of the police officer, which is commonly known as charge sheet, had been filed against the applicant in the said criminal case/FIR, and the Magistrate had taken cognizance thereof, as on 28.2.2010, i.e., the date of retirement of the applicant from service on attaining the age of superannuation. Therefore, there was at all no reason, far less any justifiable reason, to withhold either issuance of the vigilance clearance, or payment of the retirement benefits to the applicant soon after his retirement.

9. As regards the claim of the applicant for payment of interest on the retirement dues for the period of delay, i.e., from the date following the date of his retirement till the date of actual payment, the respondent-departmental authorities have taken the plea that there is no rule providing for payment of interest on the leave encashment, CGEGIS, commutation of pension/regular pension/provisional pension, etc.

10. **In State of Kerala and Ors. v. M. Padmanabhan Nair, AIR (1985) SC 356**, it has been observed by the Hon'ble Supreme Court that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but are valuable rights and property in their hands, and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. This view was reiterated by the

Hon'ble Supreme Court in **Dr. Uma Agrawal v. State of U.P. and Anr.**, AIR 1999 SC 1212.

11. In the case of **K.C.Uttreja Vs. The State Government of NCT of Delhi**, OA No.1709 of 2007, decided on 21.2.2008, following the decisions of the Hon'ble Supreme Court in **Vijay L.Malhotra Vs. State of U.P. & Ors**, JT 2000(5) SC 171, and **S.K.Dua Vs. State of Haryana & others**, (2008) 3 SCC 44 and a Full Bench decision of this Tribunal and other decisions of the Hon'ble High Court, this Tribunal has observed and held in paragraphs 12, 13, 14, 17, 18, 19, 20 and 21 of the judgment as follows:

12. It is trite that an administrative instruction issued by the Govt. though supplements the rules if rules are silent on an aspect of the matter. However, when the rules do not stipulate as to the methodology in the present case of interest on commuted value of pension, insurance and leave encashment, the law declared by the Apex Court, which holds the field, overrides any administrative instructions and in law does not allow through an administrative order to overturn the judicial decision or its effect except by a due process of law, i.e., framing of the rules, as held by the Full Bench of this Tribunal at Mumbai Bench in of this Tribunal in **R. Jambukeswaran and others v. Union of India and others**, 2004 (2) ATJ CAT 1.

13. A Division Bench of the Chandigarh Bench of this Tribunal in **Unreserved Employees Association v. Union of India**, 2005 (1) ATJ 1, ruled that a judicial pronouncement cannot be overturned by issuing an administrative order. Moreover, in Govt. of **Andhra Pradesh v. G.V.S.K. Girls High School**, 2002 (1) SC SLJ 224, the Apex Court ruled that legislation cannot overrule a judgment, unless it removes the basis of the legal right upon which the judgment is based. The aforesaid has also been re-iterated by the Apex Court in **State of Haryana v. Ram Kumar**, JT 2000 Suppl. 1 SC 294. In the above backdrop of the matter the Apex Court from time to time in several pronouncements held the right of interest on delayed retiral dues in **Union of India v. M.S. Abdulla**, 2006 SCC

(L&S) 1410, and interest was allowed on account of delayed payment of retiral dues, including pension and revision of the pay scale as per the recommendations of the Central Pay Commission by granting 12% interest. The Apex Court also in **U.P. Raghavendra Acharya and others v. State of Karnataka and others**, 2006 SCC (L&S) 1948, in so far as pension is concerned, held pension not to be a bounty but a deferred salary akin to the right to property.

14. In **Dr. Uma Aggarwal** (supra) a three-Judge Bench of the Apex Court ruled as to interest of retiral dues, including pension in the light of the decision of the Apex Court in **State of Kerala v. M. Padmanabhan Nair**, 1985 (1) SCC 429, with the following observation:

ö5. We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case.ö

17. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in **Dodge v. Board of Education** (1937 (302) US 74 : 82 Law Edn. 58) a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

17. If one has regard to the above, though the question of non-existence of rules was considered, yet when it is observed that interest can be claimed on the basis of Articles 14, 19 and 21 of the Constitution of India being a Fundamental right, the same holds field and for want of any provision under

the Pension Rules the OM of Department of Pension and Pensioners& Welfare dated 5.10.1999, which is in direct conflict with the pronouncements of the Apex Court, including the decision in **Gorakhpur University** (*supra*), where the interest was allowed to be disbursed, the instructions cannot override the judicial pronouncements. It is trite that once an arena is covered by judicial pronouncements, the administrative instructions, unless transformed into a valid legislation, cannot be allowed to infiltrate the said arena.

18. In the light of the above, though the Pension Rules do not contain any provision of interest on other heads of retiral dues, other than gratuity, yet the judicial pronouncements supports the right of Govt. servant if the retiral dues are delayed.

19. Non-fixation of basic pay of applicant when he was drawing Rs.9,000/- and clarification sought by the respondents is certainly a delay caused by the Govt. without any fault attributable to applicant. Merely because applicant has written that on the minimum of the pay scale, his retiral dues may be accorded would not amount to any estoppel or acquiescence, as no estoppel functions against a fundamental right to be granted pension and other retiral dues. The applicant with a view to get whatever is readily payable to him has done this but this does not extinguish his right to claim interest. The fault to correctly re-fix the pay and thereafter pension is squarely lies on the respondents but despite applicant has submitted his papers before time could not have been anticipated and redressed his grievance. Moreover, Government cannot approbate and reprobate simultaneously. Once DCRG of applicant on account of delayed payment has been revised with interest and arrears thereof, the same holds good mutatis mutandis for other heads of retiral dues, including commutation of pension, leave encashment, insurance etc.

20. It is pertinent to note that in **Vijay L. Mehrotra** (*supra*) the Apex Court not only accorded interest on GIS but also on encashment of leave, gratuity, commuted pension etc., which would on all fours be a binding precedent and would apply to the instant case.ö

12. In the light of the above decisions, and in view of the fact that the retirement benefits of the applicant have been withheld by the respondents without any justifiable reason, I have no hesitation in rejecting their plea of absence of rule providing for payment of interest on the

retirement dues, such as, leave encashment, CGEGIS, commutation of pension/regular pension/provisional pension, etc, for the period from the date following the date of retirement of the applicant till the date of actual payment.

13. For the foregoing reasons, and on the facts and in the circumstances of the case, I direct respondent nos. 2 to 8 to forthwith release the pension and all other retirement benefits to the applicant. The said respondents are also directed to pay to the applicant interest at GPF rate on all the retirement dues from the date following the date of his retirement till the date of actual payment. The said respondents shall comply with the directions contained in this order within three months from today.

14. In the result, the O.A. is partly allowed to the extent indicated above. No costs.

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

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