

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.3262/2014

**Reserved On:03.05.2017
Pronounced On:05.05.2017**

Hon'ble Mr. P.K. Basu, Member (A)

Kultar Chand Rana,
S/o. Late Sh. Thakur Hamir Chand,
R/o. RZ-581/313,
Gali No. 6 B Gitanjali, Sagarpur (West),
New Delhi.

...Applicant

(By Advocate: Shri S.R. Jolly)

Versus

1. Union of India
Through Secretary Power
Shram Shakti Bhawan,
New Delhi – 110 001.
2. Member Secretary
Northern Regional Power Committee
CEA, 18-A Katwaria Sarai,
New Delhi.
3. Chairman-cum-Managing Director
Powergrid Through Manager (HR)
NRLDC, Powergrid,
18-A NPRC Complex, Katwria Sarai
New Delhi.

...Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan for R-1 & R-2
Ms. Anisha Upadhyay with Shri Pawan Upadhyay and
Shri Nishant Kumar for R-3)

ORDER

By Hon'ble Mr. P.K. Basu, Member (A)

The applicant was appointed on 04.03.1983 as Wireless Operator paid from contingency on monthly basis in the erstwhile Northern

Regional Electricity Board (NREB) which was under the Central Electricity Authority (CEA) at that time and which is now Northern Regional Power Committee (NRPC) and was put on his duties in the Northern Regional Load Despatch Centre (NRLDC). He was regularised in the same capacity on work charged regular basis with effect from 05.09.1986. Five Regional Load Despatch Centres (RLDCs) including NRLDC were transferred in a phased programme starting from 31.12.1993 and it was stipulated that POWERGRID Corporation of India (POWERGRID) would absorb the personnel posted in these RLDCs with effect from actual date of transfer of the RLDCs with their grade fitment and pay fixation determined on the basis of their status in the CEA as on 31.12.1993. As such, NRLDC was transferred from NREB, CEA to POWERGRID along with the staff with effect from 31.12.1995.

2. Applicant amongst others was declared permanent as Wireless Operator with effect from 31.12.1993.

3. As per directions and conditions of permanent absorption circulated vide letter dated 06.02.1997 for pensionary benefits, it was provided as follows:-

“3. Pensionary Benefits:-

a. The Permanent Work Charge staff shall have an option to retain the pensionary benefits available to them under the Government rules or be governed by the rules of the POWERGRID. This option shall also be available to quasi-permanent and temporary work charge staff after they have been confirmed in the POWERGRID.

b. The Work Charge Staff who opt to be governed by the pensionary benefits available under the Government, shall at the time of their retirement, be entitled to pension etc. in accordance with the Central Government rules in force at that time”.

The applicant opted for retaining the pensionary benefits available to him under the Government rules in force at the time of his retirement (Annexure-4).

4. The applicant approached the Tribunal in OA No.1442/2008 as the respondents had not accorded him pro-rata pension as he had not completed 10 years of service. This OA was disposed on 21.04.2009 partly allowing the OA and directing the respondents to grant pro-rata pension to the applicant on his work-charged benefits deeming it on relaxation having completed 10 years service, with arrears. The respondents filed RA No.206/2009 against this order, which stood dismissed vide order dated 09.11.2009. The respondents approached the Hon'ble High Court of Delhi in **Writ Petition (C) No.5/2010** which was dismissed by the Hon'ble High Court vide order dated 27.01.2010. The respondents approached the Hon'ble Supreme Court in **Special Leave to Appeal (Civil) Nos. 8578/2010** which also stood dismissed by the Hon'ble Supreme Court.

5. Thereafter, the respondents-Ministry of Power issued letter dated 17.05.2010 to the Chairman & Managing Director, PGCIL which I quote below for ready reference:-

“Sub: Implementation of Cat order dated 21.04.2009 in OA No.1442/2008 – filed by Shri K.C. Rana, ex-employee of NRPC, CEA Vs. Union of India in the CAT Principal Bench, New Delhi for grant of pensionary benefits.

Sir,

I am directed to refer to PGCIL's endorsement No.CC/HR/Estt/10.17090 dated 13.05.2010 on the subject mentioned above and to say that in view of the dismissal of SLP filed by the Government against CAT order dated 21.04.2009, the matter had been considered in consultation with Department of Pension & P.W. and Ministry of Law, Department of Legal Affairs, it has been decided to implement the CAT order dated 21.04.2009 by granting pensionary benefits to Shri K.C. Rana for the combined service of Govt. and POWERGRID as per CCS (Pension) Rules applicable at the time of retirement from the POWER GRID.

2. The Government has also decided that the pensionary benefits are to be borne by the POWER GRID for the combined service of Govt of POWER GRID. The pensionary benefits availed by Shri Rana from the POWERGRID viz. CPF etc. at the time of his retirement from PGCIL are to be recovered from the pensionary benefits for the combined service.

3. It is, therefore, requested that pensionary benefits for the combined service may be granted to Shri Rana immediately in the light of the decision taken by the Government in compliance to the directions of court, under intimation to this Ministry”.

6. Vide their letter dated 01.10.2013 (Annexure R-1), the PGCIL informed the applicant that he has to refund the amount received from POWERGRID on account of contribution of EPF & EPS-95 (Employer's contribution) along with 6% interest plus bonus as accrued with interest on PF (Employer's contribution) from the date of disbursement till September 2013. A total amount of Rs.5,33,095/- was asked to be deposited by the applicant in favour of POWER GRID. The applicant deposited the said amount on 02.12.2013.

7. Finally, POWERGRID released the applicant's pensionary benefits vide their Pension Payment Order No.02/2014 dated 19.02.2014. The applicant has filed this OA seeking the following relief:-

- i. Issue directions to the respondents including Power grid to produce the complete records of the applicant with respect to the Pension and Pensionary benefits and gratuity etc.
- ii Set aside/quash the letter No. NRLDC/HR/Pen/2013878 dated 01-10-2013 Northern Regional Load Dispatch Centre, Power Grid Corporation of India, so far it concerns charging of 6% interest.
- iii Refund the Interest charged by the Power grid wrongly and illegally.
- iv. Set aside and quash the portion of Pension Payment Order No. 02/2013 issued from File No. POSOCO/NRLD/Pension CCS/18090/198 19.02.2014 relating to the charging of the TDS (w/o issue of a proper certificate on the Commutation of Pension which has been exempted under Income Tax Act.
- v. Direct the respondents to pay the applicant Interest @ 18% on the delay in releasing pensionary arrears and pensionary benefits of the applicant.
- vi. Direct Payment of Commutation of Pension in full with interest thereon.
- vii. Direct the respondents to release the gratuity of the applicant along with its interest which has illegally been withheld till date.
- viii. Payment Leave encashment as per Govt. rules with interest.
- ix. Refund of Employees' contribution and EPS 1995 the being the subscription made by the employee along with interest @ 6% as charged by the Power grid illegally.
- x. Allow cost of OA.

- xi. Pass any other relief which this Hon'ble Tribunal deem fit and just in favour of the case of the applicant."

8. The applicant has made the above claim based on the following grounds:-

- (i) Since the option of the applicant of computing pensionary benefits as per Government rules was available with the respondents, the POWERGRID should not have included the applicant in the EPF Scheme and made payments to him and since these payments have wrongly been made by the POWERGRID, those are not recoverable from the applicant after his retirement. In this regard, he relies on judgment of the Hon'ble Punjab & Haryana High Court in the matter of ***Net Ram Vs. Pepse Road Transport Corporation 2007 (4) SCT 825 (P&H)*** in which the High Court has held as follows:-

"Recovery of wrong payments if not made by misrepresentation, collusion, favouritism, negligence or, carelessness, etc., cannot be recovered after the beneficiary has retired from Government service".

- (ii) According to the terms and conditions circulated vide letter dated 06.02.1997, Rule 3(ii) and 3(iii) lays down as follows:-

"(ii) The retirement gratuity shall be paid on the expiry of a period of 7 years from the date of permanent absorption. The amount however can be paid earlier in the event of death/retirement/resignation/discharge from service.

(iii) The amount of retirement gratuity mentioned in clause (ii) above shall remain with the Government and earn interest at the rate prescribed for the General Provident Fund deposits from time to time for the period they remain with the Government”.

Therefore, it is claimed that the applicant is entitled for release of his gratuity along with interest as per Rule 3(ii) above;

(iii) Rule 68 of CCS (Pension) Rules, 1972, provides for payment of interest on the delayed payment of pensionary benefits and gratuity. It is also stated that the respondents have not released gratuity;

(iv) In accordance with order of this Tribunal in OA No.1442/2008 as upheld by the Hon'ble High Court and Hon'ble Supreme Court, the respondents were directed to make payment of pension etc. But for the intervention of the court, the respondents had kept the applicant without pensionary benefits in the evening of his life and hence they cannot charge any interest from the applicant, rather the respondents are liable to pay interest to the applicant;

(v) The applicant has also relied on the following judgments:

(a) **Dr. Uma Agrawal Vs. State of U.P. and Another 1993 (3) SCC 438**. In this case, the Hon'ble Supreme Court has held that where a retired Government servant claims interest for delayed payment, the court can certainly keep in mind the

time schedule provided in the rules/instructions apart from other relevant factors applicable to each case.

(b) **Kunwar Singh Knnaujtya Vs. State of U.P. and Others 2007 (4) SCT 14.** The Hon'ble Allahabad High Court held that it is well settled exposition of law that no person can take advantage of their own wrong in the context that the respondents were guilty of delay in that case for not taking steps for payment of pension and post retiral benefits. It was held that inaction is nothing but culpable delay warranting liability of interest on such dues.

(c) The Delhi High Court in the matter of **Union of India Vs. M/s Seil Ltd. (Unit of Mawana Sugar Works) & Others, 127 (2006) Delhi Law Times 611 (Vol.CXXVII) DB** has held that:-

“There is often a misconception about interest. Some people think that interest is a penalty or punishment. But that is not true. As stated above, interest is the normal accretion on capital and is not a penalty or punishment at all”.

(d) **State of Kerala and Others V. M. Padmanabhan Nair (1985) 1 SCC 429.** In the said case, the Hon'ble Supreme Court held as follows:-

Pension and gratuity are no longer any bounty to be distributed by the government to its employees on their retirement but have become under the decisions of this court, 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.

(e) **Alok Shankar Pandey vs. Union of India Civil Appeal No. 1598 of 2005**. In the said case, the Hon'ble Apex Court held that:

“It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital.....Therefore, this court has no hesitation in arriving at the conclusion that as the respondent/DTC withheld the pension of the petitioners illegally and without any just cause or sufficient reason, it is liable to pay compound interest to the petitioners on the arrears of pension from the date the said amount was due and payable, till the same was paid, @ 12% per annum.....”.

(f) **Vijay L. Mehrotra Vs. State of UP and Others (2001 (9) SCC 687)**. In the said case, the Hon'ble Supreme Court observed as follows:-

“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. The interest on the delayed payments would be awarded where there is no justification for not making the payments in time.”

(g) **T.S. Nimbekar Vs. Union of India & Ors. O.A. No. 915/96** decided on 27.2.1997 by this Tribunal. In the said case, it was held as under-

“We note that the applicant himself has filed this OA on 2.5.1996 and thereafter the respondents have made the payments of due pension amount including gratuity by the order dated 4.9.1996. Taking into account, therefore, the facts and

circumstances of the case, we direct the respondent to pay 12% interest on the pension and other retiral benefits paid to him”.

(h) **State of Mysore v. C.R. Sheshadri and Ors. 1974-I-LLJ-301 (SC)**. In the said case, the Hon’ble Supreme Court observed that:-

“...This court stated that the necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement could not be over emphasized and it would not be unreasonable to direct that there would be a liability to pay penal interest on their retirement benefits. In several cases, decided by this Court, interest at the rate of 12% per annum has been directed to be paid by the State.”

(i) **OA No.326/2010 – Shri Kanta Prasad (Retd.) Vs. The Director General, CPWD and Others**. In the said case, the Tribunal held that:-

“10. The delay in making payment of retrial dues to the applicant is admitted by both sides. The delay has been sought to be justified by the respondents on account of audit objection as to the correct fixation of the applicant’s pay. Nevertheless, the fact remains that the delay is not attributed to any act or omission on the part of applicant. Besides, the pension Rules clearly specify the time limit for taking the various steps in respect of pension etc. as two years in advance of the date of retirement. Furthermore, nothing came out from the audit objection. Nor it was clarified as to why the audit objection on fixation of pay could not have been clarified well in time. This does not ex facie justified delay in making payment in time. On the face of record, it is clearly established that the delay in making payment of retrial dues is attributable to the administrative lapses.

11. The administrative instructions, issued under Rule 68 of CCS(Pension) Rules provide for interest for delayed payment at the rate applicable to GPF deposits where the payment of DCRG has been delayed beyond three months from the date of retirement. On the same analogy, such interest can be awarded in respect of other retrial dues as well for the interest being normal accretion on capital, can, thus, be recovered for wrongful withholding of payment of any amount when it is due and payable as has been held by the Hon'ble Delhi High Court in the case of Union of India and another Vs. M/s Seil Ltd. (Unit Mawana Sugar Works) Ors., referred to above".

(j) He has also relied on an order of this Tribunal in **OA No.577/2002 – Hanumantha Rao S. Dixit Vs. UOI and Others** wherein it was held that:-

“ It is no doubt true that the rules do not provide for payment of interest on delay payment of pension after the applicant has retired on superannuation. However, on ground of equity, the applicant would be entitled to the payment of interest on such delayed payment of pension if it can be established that the delay has occurred on account of the respondents”.

9. The learned counsel on behalf of the PGCIL stated that since PGCIL was not a party to the original OA and has not been notified under Section 14 (1) of the Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction over PGCIL.

10. Learned counsel for respondents No.1 and 2, Dr. Ch. Shamsuddin Khan stated that in compliance to the letter of Ministry of Power to POWERGRID, POWERGRID had made payment to the applicant on account of pensionary benefits and now the applicant is

seeking interest due to delay in making payments and for release of his gratuity. It is stated in their reply that the applicant, ex-Wireless Operator, was permanently absorbed in POWERGRID with effect from 01.10.1996. He superannuated from POWERGRID and, therefore, responsibility of making final payment rests with the POWERGRID Corporation of India Limited and no responsibility rests with NRPC and since POWERGRID was not made a party in the original OA, it is submitted that the present OA is liable to be dismissed on the ground of non-joinder of necessary parties.

11. Learned counsel for the applicant places before us the order of this Tribunal in **General Manager, Southern Railway, Madras and Others Vs. Presiding Officer, Central Government Labour Court, Quilon and Others ATR 1988(1) CAT 91 (TA No.213 to 217 of 1987)** decided on 06.10.1987 and specifically to the following:-

“In view of the amendment, the Central Administrative Tribunal acquired jurisdiction to entertain the grievance of even persons governed by the provisions of the Industrial Disputes Act, provided, however, such persons were covered by section 14(1) of the Act. Section 28 of the Act dealing with exclusion of jurisdiction of the Courts and Authorities only saved the jurisdiction of the Courts and Authorities constituted under the I.D. Act but not that of the High Court. As a result of the Commission of Section 2(b), the Central Administrative Tribunal acquired jurisdiction over matters covered by the I.D. Act and as a consequence the High Court which hitherto had jurisdiction under Articles 226/227 to entertain petitions against the orders of the authorities constituted under the I.D. Act, was now barred u/s 28 from entertaining the same”.

On the basis of the above order, the learned counsel submits that the Tribunal has jurisdiction over POWERGRID as well.

12. Heard the learned counsels and perused the pleadings and various judgments.

13. The applicant had to approach the Tribunal to get his pension released. This took him almost 7 years. The court cases were disposed of and final order issued by the respondents, Ministry of Power on 17.05.2010 and pensionary benefits could be released only in February, 2014. In the meantime, the POWERGRID also recovered Rs.5,33,095/- as employer's contribution of EPF & EPS-95 along with 6% interest plus bonus as accrued. Clearly, it is a case of harassment of the applicant by the respondents.

14. On the question whether Tribunal has jurisdiction or not, I agree with the contention of the learned counsel for POWERGRID that the Tribunal does not have jurisdiction as POWERGRID is not covered by Section 14(1) of the Act and to this extent I also hold that the Tribunal's order in TA 127/1987 (supra) is not relevant at all.

15. What the Ministry of Power and POWERGRID do between themselves is not the applicant's concern. The applicant's dues had to be paid soon after his retirement, which has admittedly not been paid within the time limit. Therefore, the respondents are directed to pay

interest at the rate applicable on GPF deposits from a date starting from 3 months from the date of retirement till actual payment is made of all retiral dues as Pension, Commutation, Leave Encashment, Gratuity. I, however, do not find any ground to accept the contention of the applicant that the employer's contribution of EPF & EPS-95 should be refunded to him as it was wrongly deducted by the respondents as he had opted for Government pension. But the 6% interest which has been charged is directed to be refunded to the applicant. As regards quashing of operation of PPO No.02/2014 relating to charging of TDS, the respondents would examine this in the light of Income Tax Act and take a decision and communicate to the applicant the decision so taken.

16. The respondents are directed to comply with this order within a period of 90 days from the date of receipt of a certified copy of this order. No costs.

(P.K. BASU)
MEMBER (A)

Rakesh