

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3375/2015

Reserved on : 25.04.2018.

Pronounced on : 15.05.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Dr. (Mrs) Nirojini Mallick (Retd)
W/o Dr. A.K. Mallick,
R/o 903 Mahavir Apartments,
Plot 5A, Sector-22, Dwarka,
Delhi-110077.

..... Applicant

(through Sh. Deepak Verma, Advocate)

Versus

1. The Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
2. The Director General,
Employees State Insurance Corpn. (ESIC)
Panchdeep Bhawan, CIG Road,
New Delhi-110002.
3. The Medical Supdt.,
ESIC Model Hospital,
Bharat Nagar, Ludhiana-141001.

..... Respondents

(through Sh. Murari Kumar, Advocate)

ORDER

Brief facts of the case are that the applicant joined as Medical Officer in Employees State Insurance Corporation (ESIC), New Delhi on 17.12.1990. Vide Office dated 17.04.2008, the Medical Officers

working in the pay scale of Rs.12000-375-16500 + NPA to the post of Dy. Medical Commissioner/Medical Supdt./Director (Medical) NFSG were granted the pay scale of Rs. 14300-400-18300 + NPA w.e.f. 01.03.2008. 6th Central Pay Commission pay scales, as applicable to Central Govt. servants, were adopted by the ESIC. Pursuant to the recommendations of the DPC, which met on 21.07.2011, the respondents vide Office Order No. 4461/2011 ordered promotion of General Duty Medical Officers to the Grade of SAG in Pay Band 4 (Rs.37,400-67,000) with Grade Pay of Rs.10,000/- on regular basis. The applicant was promoted to SAG and joined as such on 03.01.2011. Her basic pay was fixed at Rs.44,500/-.

2. The applicant applied for voluntary retirement and was permitted to do so on 21.11.2013. After considerable delay, the respondents released her Pension + DCRG + Commutation (Rs.29,61,224) on 26.07.2014, GPF (Rs. 18,19,989) on 02.09.2014 and Leave Encashment (Rs.8,04,033) on 17.09.2014. Surprisingly, her three months salary was also not paid to her prior to the voluntary retirement on 21.11.2013. This was paid as late as 04.09.2014.

3. The applicant states that she submitted a representation on 13.10.2014 for payment of interest on the delayed payment of pension and other retiral dues as well as her withheld salary. The same was, however, rejected by the respondents on 18.11.2014

giving frivolous grounds. The applicant also sent a legal notice on 16.01.2015 to DG, ESI, New Delhi with copy to Secretary, M/o Labour & Employment, New Delhi but to no avail.

4. The applicant avers that it is a settled law that pension and retiral benefits are not a bounty but hard earned benefits of a government servant after having put in decades of satisfactory service. The applicant has relied upon the decision of Hon'ble Supreme Court in the case of **Dr. Uma Agarwal Vs. State of U.P. & Anr.**, (1999) 3 SCC 438 wherein it was held that the employee shall be entitled to interest on the delayed payments of pension and other retiral benefits.

5. Aggrieved by the action of the respondents, the applicant has filed the current O.A. seeking the following reliefs:-

- “(i) Quash & set aside the Order dated 18.11.2014 (Annexure-A1).
- (ii) Direct the respondents to pay penal interest & 18% per annum on the delayed payment of pension, retiral benefits as well as withheld salary from the date the same fell due till it was paid.
- (iii) Any other of further orders the Hon'ble Tribunal may deem it fit and necessary in the interest of justice.”

6. Per contra, the respondents submit that there was no delay on their part and that the applicant herself is to be blamed for the delay. The applicant made an application for VRS on 21.11.2013, which was forwarded to Medical Commissioner on 13.12.2013. The Competent Authority, after following the required procedure,

accepted her request, and allowed her to take voluntary retirement w.e.f. 21.11.2013.

7. The applicant was sent pension papers for filling up the details on 10.01.2014, which were received back by the respondents on 03.02.2014. The proposal relating to the pension of applicant was received by ESIC Headquarter only on 03.04.2014. On the basis of the proposal, the PPO was released on 02.07.2014 and consequently the applicant received the pension on 25.07.2014.

8. I have carefully gone through the facts of the case considered the rival submissions. I am not convinced by the arguments advanced by the respondents that the applicant herself was responsible for delaying the process of payment of retiral benefits to her.

8.1 Undoubtedly, voluntary retirement is different from a normal superannuation where the date of retirement of an employee is known well in advance and his/her pension papers are already in a state of readiness with the respondents, for disbursement to the applicant at the time of her superannuation. While a reasonable delay in finalizing the pensionary dues is perhaps understandable, but in the instant case, the dues have been released after an inordinate delay ranging from 09 to 11 months.

8.2 It is not disputed that the applicant was allowed to take voluntary retirement w.e.f. the requested dated i.e. 21.11.2013. While the pension, DCRG and Commutation were released to her on 26.07.2014, the GPF amount was released on 02.09.2014 and leave encashment amount was released only on 17.09.2014.

9. In the O.A. as well as in the rejoinder, the applicant has submitted that she repeatedly requested the respondents to release her pension and other retiral benefits including the withheld three months' salary, but all in vain. She then specifically requested the Medical Superintendent on 29.05.2014 that at least the "provisional pension" be sanctioned to her, but the respondents paid no heed to this request either. The respondents have not been able to explain as to why the salary of the applicant was withheld for three months, prior to her voluntary retirement petition dated 21.11.2013.

9.1 The applicant has cited the O.M. No. 38/64/98-P.&P.W.(F) dated 05.10.1991, which stipulates that:-

"Wherever delays are anticipated, provisional pension should be sanctioned immediately."

9.2 The Hon'ble Supreme Court in the case of **Gorakhpur University Vs. Shitla Prasad Nagendra (Dr)**, (2001) 6 SCC 591 has held that:-

"5.....pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and properly in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest....."

9.3 The Hon'ble Supreme Court in the case of **S.K. Dua Vs. State of Haryana & Ors.**, (2008)3 SCC 44 has held that:-

"....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 of 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...."

10. After going through the corollary of dates in the instant case, I am convinced that the claim of the applicant for interest on delayed retiral dues is justified. I, therefore, have no hesitation in quashing the impugned order dated 18.11.2014 and allowing the OA. However, I agree with the plea taken by the respondents that voluntary retirement cannot be placed on a similar footing as a normal retirement. It is an unforeseen eventuality, and the procedure regarding payment for retiral benefits can only be started, after the request for voluntary retirement is accepted by the competent authority. Subsequent processing of papers, along with other formalities is bound to take some time since the department is not in a state of preparedness for the superannuation of the retiree. Therefore, I am inclined to condone this delay by three months. The respondents are directed to pay interest on the delayed payment of

pension, GPF and leave encashment etc. to the applicant after three months w.e.f. 13.12.2013 (i.e. the date of acceptance of voluntary retirement), at GPF rate.

11. The delay in payment of salary or withholding it for no plausible reasons, however, is to be viewed differently. An employee has a legitimate right to expect and receive her/his salary at the end of each month. The respondents have not even attempted to explain as to why the salary of the applicant was withheld for three months preceding the date of voluntary retirement. For this unjustified and inexplicable action, I direct the respondents to pay interest @18% on the amount of Rs. 3,78,612/- (salary for September, October and November, 2013) till 04.09.2014, to the applicant. This exercise must be completed within 03 months from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

/Vinita/