

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/681/2016

Cuttack this the 28th day of August, 2018
CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Meghanad Nayak, aged about 66 years, S/o. Sri Birabar Nayak, Senior Accountant (Retired), Office of Accountant General (A&E), Odisha, Bhubaneswar and at present residing in Plot No.417/4515, Bajrang Vihar, Patia, PO-KIIT, Bhubaneswar-751 024, Dist-Khurda, Odisha

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
Chitra Padhi
S.Pradhan

-VERSUS-

Union of India represented through:

1. The Comptroller and Auditor General of India, Pocket-9, Dindayal Upadhyaya Marg, New Delhi-110 124.
2. Pr.Accountant General (A & E), Orissa, Bhubaneswar, Dist-Khurda, Odisha.
3. The Deputy Accountant General (Admn.), Office of the Accountant General (A&E), Odisha, Bhubaneswar, Dist-Khurda, Odisha

...Respondents

By the Advocate(s)-Mr.S.B.Jena
ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as a Senior Accountant in the Office of the Accountant General (A&E), Orissa, Bhubaneswar and would have retired on 31.07.2010 had he continued in service. He was however dismissed from service by an order bearing No.DAG(A)-Con.-MN/333 dated 5.4.2004 (A/3) on the ground that he was convicted on criminal charges under Section 5(2) read with Section 5(1)(a) of the Prevention of Corruption Act, 1947 by the Special Judge, Bhubaneswar in TR No.34/1989. The applicant had challenged the order of dismissal in this Tribunal in O.A.No.651/2004. On 8.12.2005, this Tribunal disposed of the said O.A. by remitting the matter to the Appellate Authority (Res.No.2) to dispose of the appeal filed by the applicant. The Appellate Authority remitted the matter back to the Disciplinary Authority

(Res.No.3) with some observation. On 31.3.2006, the Disciplinary Authority confirmed the earlier order of dismissal dated 5.4.2004. This was challenged by the applicant before this Tribunal in O.A.No.491/2006. This Tribunal quashed the order of dismissal vide its order dated 17.4.2007 which was challenged in the Hon'ble High Court in Writ Petition (C) No.9846/2007. The Hon'ble High Court in its judgment dated 26.3.2010 upheld the order of this Tribunal which was challenged through an SLP in the Hon'ble Supreme Court in March, 2013. In the meanwhile, the Hon'ble High Court in its judgment dated 2.3.2015 set aside the order of conviction dated 4.11.2015 passed by the Special Judge, CBI, Bhubaneswar. Following this, the respondents recalled the order of dismissal vide their order dated 29.10.2015. On 30.10.2015, the applicant was sanctioned the provisional pension by Respondent No.3. On 5.4.2016, the Hon'ble Apex Court dismissed the SLP No.2138-2139/2013 as the respondents withdrew the Civil Appeals. The Hon'ble Supreme Court also directed to pay the retirement benefits to the applicant within six weeks from the date of judgment. On 25.4.2016, the Respondent No.3 wrote to the applicant informing him that the period between the date of dismissal and the date of normal retirement , i.e., from 05.04.2004 to 31.07.2010 will be treated as duty for all purposes and he will be paid full pay and allowances for that period. On 17.6.2016 the applicant submitted a representation to Respondent No.2 for payment of interest on arrear salary, GPF and retirement benefits. Vide order dated 12.9.2016 (A/13), interest on GPF amounting to Rs.5,84,970/- was sanctioned to the applicant. At Para-5 of the order, it was mentioned that "*Rules and regulations in force do not justify for payment of interest to the applicant on arrear pay and allowances, arrear provisional pension, arrear pension (Revised), Leave Salary, HRA, Bonus & GIS etc.*" and

therefore, payment of interest on all other claims as mentioned in Para-3 above except GPF, raised by the applicant is not acceded to by the Competent Authority. The applicant has challenged Para-5 of the order dated 12.09.2016(A/13) and prayed for the following reliefs:

"In view of the submissions set forth in Para-4 above, the Applicant humbly prays that your lordship will be graciously be pleased to quash para-5 of Annexure-A/13 for the ends of justice.

AND

Be further pleased to direct the Respondents to modify Annexure-A/10 mentioning the interest amount approximately 17 lakhs on arrear pay and allowances, arrear provisional pension, revised pension, leave salary, HRA, Bonus and GIS as fully described under Annexure-A/11 for the ends of justice.

AND

Be further pleased to hold that the Applicant is entitled to interest on arrear pay and allowances, arrear provisional revised pension, leave salary, HRA, Bonus and GIS for the period as detailed under Annexure-A/11 for the ends of justice.

AND

Be further pleased to direct the Respondents to pay interest at the rate of 14% on the arrear pay and allowances and retiral dues to the extent of Rs.17 lakhs approximately for the ends of justice.

AND

Any other/further order/direction as deemed fit and proper in the circumstance of the case may kindly be extended to the applicant".

2 The respondents in their counter filed on 2.1.2017 have contested the claim of the applicant. They have submitted that the applicant has already received interest of Rs.2,32,418/- on the gratuity amount and Rs.5,84,970/- towards interest on GPF. They have quoted O.M.No.38/64/98/P&PW(F) dated 5.10.1999 of Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioner Welfare)(R/1) which lays down that there is no provision for payment of interest on delayed payment of pension/commuted value of pension, encashment of leave or CGEGIS.

3. The applicant filed a rejoinder on 11.1.2017 in which he has denied the contentions of the respondents in the counter. He has stated that since his

conviction in the criminal case was set aside by the Hon'ble High Court, he was restored in service. The Respondents were responsible for initiation of criminal case and disciplinary proceedings against him. The Respondents are bound to pay interest on the delayed payment once the conviction is set aside and the period between the date of dismissal and the normal date of retirement was treated as duty for all purposes. The applicant has cited the judgments in **Dr.Uma Agrawal vs. State of U.P. and Another (1999 SCC L&S 742)**, **Gorakhpur University and Ors. Vs. Dr.Shitla Prasad Nagrndra & Ors. (2001 SCC L&S 1032)**, **S.K.Dua vs. State of Haryana & Another (2008 SCC L&S 563)** to argue that delay in payment of retiral benefits attracts Articles 14, 19 & 21 of the Constitution of India, because, retirement benefits are as good as property rights.

4. The matter was argued by the learned counsels of both the sides on 2.8.2018 and 10.8.2018. The applicant has also filed his written note of submission enclosing the judgments in **D.D.Tiwari (D) through L.Rs. vs. Uttar Haryana Bijli Vitaran Nigam Ltd. (AIR 2014 SC (2861)**, **Y.K.Singla vs. Punjab National Bank (2013) 3 SCC 472**, **K.C.Utterja vs. The State Govt. Of NCT Order dated 21.02.2008 of CAT, New Delhi and B.Thirumorthy vs. The Secretary to Govt. (Order dated 22.03.2017 in W.P(MD) No.20062/2013** to support his arguments.

In the case of **Gorakhpur University** (supra), the Hon'ble Supreme Court had directed to pay the applicant his entire pension and provident fund with penal interest @ 18% on the ground that the University cannot be allowed to recover penal rent since the claim for penal rent was seriously disputed and a contested claim and also the University cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against

the pension, gratuity and provident found amount indisputably due and unquestionably payable to the respondents in the SLP.

In **S.K.Dua**'s case (supra), it was held by the Hon'ble Supreme Court that when the appellant was cleared of charges in the disciplinary proceedings initiated in the last month of his retirement and the retirement benefits were released to him after about four years, the matter was remitted back to the High Court to decide on the issue of payment of interest on retiral dues.

Similarly, in **D.D.Tiwari** case (supra) the Hon'ble Supreme Court had ordered payment of interest @ 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of actual payment on the ground that there was miscarriage of justice in denying interest to the employee by the employer from the date of entitlement till the date of actual payment. The Hon'ble Supreme Court had in **Y.K.Singla** (supra) held that interest on delayed payment of gratuity is payable if criminal proceedings concluded in acquittal of the employee. The Principal Bench of this Tribunal had also adjudicated on this issue in **K.C.Utreja** (supra) and it was held vide order dated 21.02.2008 that once DCRG of applicant on account of delayed payment has been paid with interest and arrears thereof, the same holds good for other heads of retiral benefits including commutation of pension, leave encashment, insurance etc. In **B.Thirumooorthy vs. The Secretary to Government (W.P.) MD No.20062 of 2013**, the Hon'ble Madurai Bench of Madras High Court upheld the right of the applicant for interest on delayed payment of pension, commutation of pension and other retirement benefits.

5. I heard the learned counsels from both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the applicant is entitled to any interest for the delayed payment of

the retirement benefits. It is a fact that the applicant would have retired on superannuation with effect from 31.7.2010 had he continued in service. He was awarded a punishment of dismissal from service vide order dated 5.4.2004 which was subsequently withdrawn by the respondents when the criminal case filed against the applicant ended in acquittal by the judgment of

the Hon'ble High Court dated 2.3.2015. After the said judgment, the respondents treated the period from the date of dismissal till the date of normal retirement as duty for all purposes and paid his salary and other dues to the applicant. They have also paid retirement benefits starting from 1.8.2010. It is also undisputed that the applicant has received interest for the amount of gratuity and GPF. The impugned order dated 12.09.2016 (A/13) states that *rules and regulations in force do not justify for payment of interest to the applicant on arrear pay and allowances, arrear provisional pension, arrear pension (Revised), Leave Salary, HRA, Bonus & GIS etc.*

6. However, there is an overwhelming force of law through judicial pronouncements in favour of payment of such interest. I have taken into account the case laws cited by the applicant. In Para-5 of Gorakhpur University (supra), the Hon'ble Supreme Court had observed follows:

"This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property 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....."

Similarly, the Hon'ble Supreme Court at Para-14 of the judgement in **S.K.Dua** (supra) had held as follows:

"14. In the circumstances, *prima facie*, we are of the view that the grievance voiced by the applicant 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 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. It 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".

7. The fact that pension and gratuity are no longer any bounty to be distributed by the Government to its employee on their retirement, but have become under the decision by the Hon'ble Supreme Court valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees was emphasized in the judgment of the Hon'ble Supreme Court in **State of Kerala & Ors. Vs. M.Padmanabhan Nair 1985 (1) SCC 429**. The same view was also reiterated in **D.D.Tiwary** case (supra).

8. In the present O.A. although there is no culpable delay on the part of the respondents since a court case was pending against the applicant in a matter of criminal conviction, the fact remains that after his acquittal when he was given the full salary and pension, he was also entitled to interest thereon having been acquitted of the criminal charges. In **Y.K.Singla** case (supra) the matter relates to payment of interest and gratuity which the applicant in the present case has already got from the respondents. However, the Hon'ble Supreme Court had observed that because the appellant has been acquitted he could not be held to be at fault and thus entitled to interest on delayed payment of pensionary benefits. This position has been consolidated in the

judgment of the CAT, Principal Bench in **K.C.utterja** (supra) in a comprehensive order which can be quoted herein below:

"20.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.

21.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 estop the right of Govt. Servant if the retiral dues are delayed.

23.It is pertinent to note that in **Vijay L.Mehotra** (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".

9. The observations of Hon'ble Madras High Court at Paragraphs-5 and 6 in **B.Thirumooorthy** case (supra) are pertinent and are quoted hereunder:

"5.Subsequently, the similar situation was considered by the Division Bench of this Court in Government of Tamil Nadu vs. N.Deivasikamani reported in (2009) 3 MLJ 1 wherein the Division Bench directed the payment of interest for the belated payment of pension, commutation of pension and other retirement benefits. The Hon'ble Division Bench had followed the dictum of the Hon'ble Supreme Court in **S.K.Dua**'s case referred supra. It is not in dispute that the petitioner, on revocation of the suspension joined duty on 23.10.1999 and salary to the period of suspension between 08.02.1999 and 22.10.1999 was paid eventually on 13.10.2010, that is, after delay of nearly 11 years. Though it is stated that the delay is due to the administrative reasons, there is no justification for such long delay as already stated.

6.The Hon'ble Supreme Court has categorically ruled that even in the absence of any Statutory Rules or Administrative instructions with regard to the interest, the concerned Government servant would be entitled to interest under Article 14, 19 and 21 of the Constitution of India. Hence, I have no hesitation in allowing the

writ petition, quashing the impugned order of the second respondent rejecting the request of the petitioner for payment of interest for a sum of Rs.92,026/- being the salary for the period from 08.02.1999 to 22.10.1999. The Division Bench has granted 10% interest by considering the bank interest that is charged. I deem it fit to direct the second respondent to pay interest on the said sum of Rs.92,026/- for a period from 23.10.1999 to 13.10.2010 at the rate of 10% per annum. Such interest shall be paid within a period of eight weeks from the date of receipt of a copy of this order. No costs".

10. I also find that similar decision on payment of interest has been upheld by the Hon'ble Supreme Court in **Union of India vs. M.S.Abdula 2006 SCC (L&S) 1410 and Dr.Uma Agarwal vs. State of U.P and Another (1999 SCC L&S 742)**. In view of the overwhelming trend of judicial decisions, I am of the considered view that the applicant is entitled to payment of interest @ 10% per annum on arrear pay and allowance, arrear provident fund, revised pension, leave salary, HRA, bonus and GIS as prayed for by him from the date it was due to the date of actual disbursement . Respondents are directed to pass necessary orders to this effect within a period of eight weeks from the date of receipt of this order. The O.A. is allowed to the above extent.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

BKS