

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

LIBRARY

No.O.A.712 of 2011

Date of order : 29.09.2016

Present : Hon'ble Justice Mr. Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

BHUSAN CHANDRA DAS  
VS.  
UNION OF INDIA & ORS.  
(Income Tax)

For the applicant : Mr. A. Chakraborty, counsel  
For the respondents : Ms. M. Bhattacharyya, counsel

ORDER

Per Justice V.C. Gupta, J.M.

Heard Id. Counsel for the applicant and Id. Counsel for the respondents.

2. The short question for consideration before this Tribunal is whether the applicant is entitled to any interest for delayed payment of gratuity and pension which was not released due to not verifying the earlier period of service of the applicant in the Office of the Accountant General, Uttar Pradesh.

3. The contention of the applicant is that it is laches on the part of the department that in spite of the verification of service they have not released the amount after counting his service in the Office of the Accountant General, Uttar Pradesh.

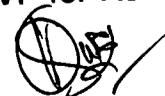
4. On the contrary, the respondents' counsel submits that unless and until the period of earlier service is duly verified by the resignation authority, the benefit of extension cannot be granted. It was further contended that

*(Signature)*

the amount of gratuity of Rs. 2,86,788/- was paid to the applicant. In para 11 of the reply the respondents have stated that:-

the respondents submit that the applicant by wrongful projection of fact in dishonest way with the sole object to mislead the Hon'ble Tribunal has stated that P.P.O. No.569710603047 was issued on 12.08.2008 to substantiate his claim of interest for 2 years 10 months 10 days. The P.P.O. No.569710603047 dated 08.09.2006 was actually issued on 11.09.2006 instead of 12.08.2008. The Cheque No.156676 and 156675 dated 27.06.2006 of gratuity for Rs.2,86,788/- & CVP for Rs.3,37,621/- were actually returned by the applicant and subsequently he received the same amount of gratuity along with withheld amount of Rs.1,000/- (i.e. Rs.2,87,788/-) & C.V.P. of Rs.3,37,621/-. Hence no cause of action for demand of interest arises. He willfully suppressed the fact of drawal of pension and other benefits against P.P.O. No.569710603047 dated 11.09.2006. After due process of law his service for 3 years 6 months 16 days rendered under A.G. , U.P. was accepted for qualifying service for the purpose of pensionary benefits. After such acceptance the revision of pension and other benefits were made and differential amount of gratuity for Rs.34,144/- and CVP for Rs.40,025/- along with arrear of pension of Pre-2006 was released for payment. So the payment of differential amount of gratuity for Rs.34,144/- and CVP for Rs.40,025/- along with arrear pension of Pre-2006 was delayed for the inaction on the part of the applicant himself.

The above facts reveal that PPO was issued on 11.09.2006 . The applicant returned the amount of gratuity and subsequently he accepted the same. The return of gratuity for Rs.2,86,788/- & CVP for Rs.3,37,621/-



by the applicant and subsequently receipt of the same amount of gratuity along with withheld amount of Rs.1,000/- (i.e. Rs.2,87,788/-) & C.V.P. of Rs.3,37,621/- does not make any cause of action for demand of interest for his own fault. In para 14 of the reply it has been stated that the Pay and Accounts Officer accordingly advised to draw provisional pension and issued the cheque No.156676 dated 27.06.2006 amounting to Rs52,992/- and cheque No.156675 dated 27.06.2006 amounting to Rs.2,86,788/- being 100% provisional pension and gratuity respectively on total qualifying service of 29 years 8 months and 18 days as per undisputed service record.

5. Admittedly the applicant retired on 31.10.2005 and the aforesaid amount was given only after counting the service of the applicant of 29 years 8 months and 18 days in the Income Tax department. Hence at the very outset it might be possible that applicant was of the view that acceptance of the amount without any protest will cause an impediment in claiming the entire amount in future.

6. It is strange that on one hand the department is accepting the verification of service of the applicant with Accountant General, Uttar Pradesh in 1993 and the Income Tax Authority at Kolkata vide letter dated 22.05.2001 had allowed to count the period of service rendered by the applicant in Accountant General, Uttar Pradesh and on the other hand they are not extending such benefit at the time of retirement to the applicant. No statutory provision prohibiting to count his service after due verification in 1993 and acceptance by the department in 2001, has been placed before us.

7. According to the provision of Section 7 of the Gratuity Act, the Gratuity was payable to the employee within one month from the date of

28/9/16

retirement. Section 7 of Payment of Gratuity Act is extracted herein below:-

**"7. Determination of the amount of gratuity.—(1)** A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

[(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

(4) (a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

2[\* \* \* \* \* \* \* \* \*]

[(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

[(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

1  
Burg

[(d)] The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

[(e)] As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit—

- (i) to the applicant where he is the employee; or
- (ii) where the applicant is not the employee, to the <sup>29</sup> [nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority."



8. Sub-section (2) of Section 7 of Payment of Gratuity Act provides that as soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined. Sub-section (3) of Section 7 of Payment of Gratuity Act provides that the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable and if it is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. Therefore, in case a delay is occurred of more than 30 days, the employer is under legal obligation to pay interest at the statutory rate which in the present case has not been done.

9. So far as the amount of pension is concerned, the same has also not been paid on the date of retirement and has been paid in September, 2006 when the PPO was issued. It is not the case of the respondents that delay in issuing PPO was on account of any act or omission the applicant nor any conduct of the applicant has been attributed for causing such delay. Hence the applicant will be entitled to get interest on that part of delay.

10. Now the question arises till which date the interest will be payable. Normally the interest is payable till actual date of receipt of the amount.

11. In this case, the amount has been tendered in 2006 to the applicant though it was not full amount of gratuity after including the period of his



service spent in the earlier department i.e. Accountant General, Uttar Pradesh and the applicant refused to accept the same. The fact that the amount has been tendered has not been denied though the amount has not been accepted by the applicant on the pretext that the entire period of his service has not been counted. However, the applicant could have accepted the amount with protest which he had not done.

12. Therefore, we are of the view that the applicant would be entitled to get interest till the date of tendering the amount of gratuity and pension. So far as the remaining amount which was paid to the applicant after verifying the services, we are of the view that the applicant would be entitled to interest till the date when the revised amount was actually paid counting from the date of retirement.

13. So far as the rate of interest is concerned, the respondents will pay the statutory interest on the amount of gratuity. So far as the amount of pension is concerned, simple interest at the rate of 12% would be payable to the applicant. All these payments should be made on the basis of the aforesaid calculation, to the applicant within a period of one month from the date of communication of this order.

14. Hence, the application is disposed of. No order as to cost.

(J. Das Gupta)  
Administrative Member

3/41  
(Justice V.C. Gupta)  
Judicial Member

s.b