

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

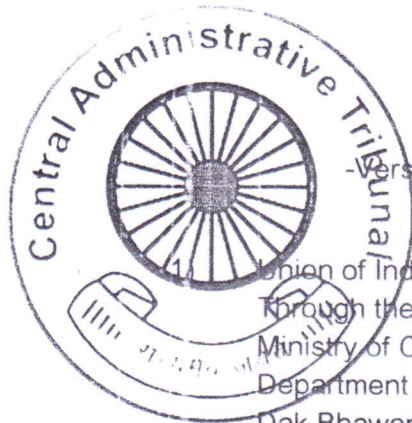
O.A. No.350/00981 of 2017

Date of order: 29-6-18

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member.

Shri Uma Sankar Ghosh,
Son of Late Ramesh Chandra Ghosh,
Retired from service as
Assistant Director of
Postal Services (Court),
West Bengal Circle,
Residing at Nabajiban Colony,
P.O. Bisharpara,
Kolkata 700 158.

.....Applicant.



-versus-

1) Union of India,
Through the Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan,
New Delhi – 110 001.

- 2) The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan,
36, Chitta Ranjan Avenue,
Kolkata – 700 012.

.....Respondents

For the Applicant : Mr. N. Roy

For the Respondents : Mr. S. Paul

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

- 1) This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.
- 2) Ld. Counsels were heard and materials on record were perused.
- 3) The applicant has sought for the following reliefs:
 - (a) Direction upon the respondent to pay interest at the rate of 18% on Delayed Payment of portion of DCRG amounting to Rs.3,72,076/- along with residual amount of gratuity for Rs.56,727/- sanctioned on 20.06.2016 for 38 months to be applied forthwith.
 - (b) To issue further direction upon the respondent to pay interest @ 18% on Delayed Payment of Other Pensionary benefit such as residual Commutation Value of Pension, Leave Encashment and Arrear Pension to the applicant forthwith.
 - (c) To quash, cancel and/or set aside the order dated 03.01.2017 forthwith.
 - (d) Any other order or orders as the Ld. Tribunal deem fit and proper.
 - (e) To produce connected Departmental Record at the time of hearing on the ground that the amount fell due on 28.02.2016 but sanctioned on 20.06.16.
- 4) The amount of Rs.3,72,076/- which was deducted unlawfully from D.C.R.G. was refunded to the applicant on 16-05-2016 who retired from service under usual terms and conditions on 28-02-2013.

- 5) On 17-06-2016, the Sr. Accounts Officer (Pension) issued Revised Pension Payment Order to the Postmaster, Belghoria a copy whereof was given to the applicant and his last pay was revised to Rs.27,080/- for pension calculation and issued sanction to the Postmaster Belghoria for payment of residual amount of Commuted value of Pension to the applicant amounting to Rs.37,561/-.

On 20-06-2016 the Chief Post Master General, West Bengal Circle, Yogayog Bhawan, Kolkata conveyed about payment of Rs.56,727/- being residual amount of DCRG to the Applicant as per revised pay and on 23-06-2016, the Chief PMG, W.B. Circle issued a memo, for payment of Rs.34,093/- being residual amount of Leave Encashment being unutilized Earned Leave. Further, on 28-06-2016, the Postmaster Belghoria communicated sanction for payment of Rs.78,726/- being the arrear of Pension for the period from 01-03-2013 to 30-06-2016 as per revised pay.

He preferred representation on 05-07-2016 for payment of interest for delayed payment of DCRG, Leave Encashment, Pension and Commuted Value of Pension long after 38 months followed by representation on 15-08-2016, 03-10-2016, 02-12-2016 and 31-12-2016.

On 03-01-2017, the Chief PMG, W.B. Circle issued impugned order to justify delay in payment of DCRG and other pensionary benefit, that the amount of Rs.3,72,076/- which was recovered from the DCRG amount was actually treated as over drawal amount of pay and allowances and same was refunded on receipt of Court's order.

Applicant has contended that as per CCS Pension Rules interest for delayed payment of DCRG can be sanctioned by Secretary, Deptt. of Posts.

Rule 68 of CCS Pension Rules provides that if the payment of gratuity has been authorized later than the date when it's due for administrative lapses, interest shall be paid at such rate as may be prescribed according to Rule.

Applicant has further stated that since no reply was received from appropriate authority regarding payment of interest on delayed payment DCRG, on 27-02-2017 he made a website complaint to the PORTAL of Centralized Public Grievance Redress and Monitoring System (CPGRAMS), Department of Administrative Reforms & Public Grievances, Govt. of India for payment of interest for delayed payment of Rs.5,79,177/- of DCRG and other pensionary benefit received long after 38 months of retirement. The complainant has been requested to make further correspondence with the appropriate authority in this regard as this is not the appropriate portal to lodge such type of grievance.

Applicant has contended that the Hon'ble Apex Court has decided on delayed payment of interest vide Civil Appeal No.7113 of SLP(C) No.25015 of 2011, **D.D. Tewari – Vs – Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.** when the respondents have erroneously withheld payment of gratuity. The applicant is entitled in law for payment of penal amount of the delayed payment of gratuity under provision of the Payment of Gratuity Act, 1972.

6) Per contra, respondents have averred as under:

Sri Uma Sankar Ghosh while working in the cadre of IRM was promoted to ASRM cadre purely on temporary and ad-hoc basis and continued to officiate in the higher post of ASRM cadre from 14.02.1994 to 14.05.2003 i.e. beyond 01 year without any break.

As per DOP&T guidelines communicated by the Postal Directorate vide OM no. 1-6/98-PAP dated 01.06.1998, in cases where Ad-hoc appointments have continued beyond one year, pay & allowances etc. after 01.01.1998 of such Ad-hoc appointments are released only if the arrangement for the particular period has been approved by the Department of the Personnel and Training. No approval of the Competent Authority for officiating in higher post/service for the period from 01.01.1998 to 14.05.2003 was issued in favour of Sri Uma Sankar Ghosh.

Accordingly, the pay of Sri Ghosh was fixed at Rs.25,170/- instead of Rs.27,080/- by the office of the GM(PA&F), Kolkata. Also, a sum of Rs.3,72,076/- being the Govt. dues in connection with over payment of pay and allowances for the period of his officiating arrangement in ASRM post from 01.01.1998 to 14.05.2003 was recovered from the Death cum Retirement Gratuity of Sri U.S. Ghosh vide circle office memo no. A&P/A/R-2093/2013 dated 22.03.2013.

Sri Uma Sankar Ghosh filed OA no.511 of 2013 in the Hon'ble CAT Bench which by its order dated 05.02.2015 directed the respondents to refund the recovered amount within a period of 2 months from the date of communication of the order and restore the basic pay to Rs.27,080/- and to fix the pension accordingly.

The Department of Posts filed WPCT no.54 of 2016 in the High Court, Calcutta challenged the said order of the Hon'ble CAT, Calcutta. The Hon'ble High Court, Calcutta vide its order dated 30.03.2016 dismissed the Writ Petition filed by the Department.

The Postal Directorate vide its order no.4-11/2013-SPB-II dated 09.05.2016 conveyed its decision to implement the order of the Hon'ble Tribunal/Court in the instant matter. Accordingly, the Competent Authority has to refund the said recovered amount of Rs.3,72,076/- to said Sri Ghosh and restore the basic pay to Rs.27,080/- and to fix the pension accordingly.

Accordingly, on 16-05-2016 the applicant received the cheque of Rs.3,72,076/- vide No.664360 dated 16-05-2016 drawn on State Bank of India, Kolkata Main Branch and with this payment the issue was settled. Hence, the question of interest on delayed payment of DCRG does not arise as per provision contained in GID below Rule 17 and Rule 68 of CCS (Pension) Rules.

The applicant had neither claim of interest on delayed payment nor any such order was passed in the Hon'ble Tribunal in O.A. No.511/2013 or in the WPCT No.54 of 2016 passed by the Hon'ble High Court. Such payment was treated as over-drawal of pay and allowances.

7) The applicant has relied upon the following decisions in support of his claim:

- (i) **S.K. Dua v. State of Haryana & Anr.** Reported in AIR 2008 Supreme Court 1077 when Hon'ble Apex Court, in a case where delay of payment had occurred due to pendency of departmental proceedings and proceedings were finally dropped and all retiral benefits were extended to the appellant after four years, opined "prima facie, we are of the view that the grievance voiced by the appellant 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. In 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."

(ii) O.A. No.350/00981/2014 where the following order was passed:

"Learned Counsel for respondents further submitted that no interest should be charged on the delayed payment, since the delay occurred due to pendency of the proceedings."

"In my considered opinion dropping the memo proposing review of penalty with no intention to proceed afresh, with a clear indication of releasing all pensionary benefits, but after a delay of more than 2 years should be construed as dropping of proceedings itself, which would render its initiation itself as nullity. Such futile initiation causing delay in disbursement of pensionary benefits for more than 2 years was harassing and therefore ought to be visited with a penalty of interest."

"Here I seek to be guided by the following decisions:

(i) **S.K. Dua vs State of Haryana & Anr.** Reported in 2008(3) SLJ 108, the Hon'ble Apex Court allowed the interest on delayed payment of retiral benefits released after the delay of 4 years.

(ii) The Hon'ble High Court of Gujarat in the case of **Suresh O Shah vs. State of Gujarat** in Special Civil Application No.220/2003, rendered on 03.02.2005.

In a case where delay was made without any explanation, held

that "it would always be open to the Court to grant interest on the delayed payment of the retiral dues."

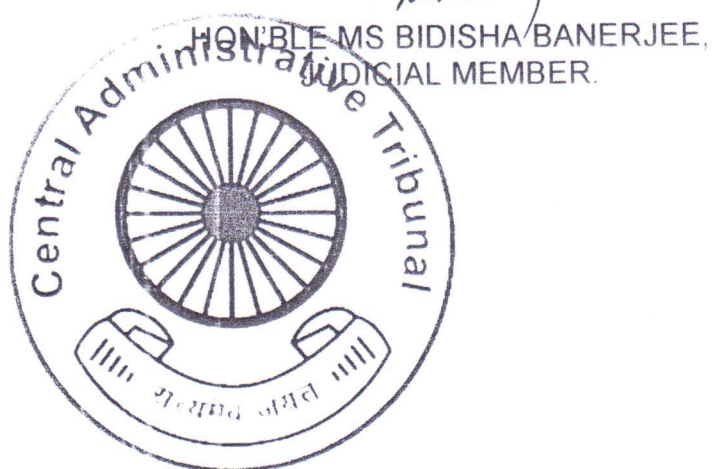
(iii) In **Bhatal Mahipal Pater vs. Union of India & Ors**, reported in 2014(2) SLJ 32 CH, it was held that delayed payment of retiral/terminal benefits is liable to be shackled with payment of interest till such payments were made.

(iv) In OA 2832/2012 in the case of **Aswini Kumar s Union of India & Ors.** Principal Bench on 11.02.2015 allowed interest on arrears of pension, gratuity as well as leave encashment.

In view of above, the OA is disposed of with a direction upon the respondent authorities to release all the payments with interest @ 8% from the due date till the date of actual payment.

- 8) In the instant case, as it is noticed that the delay is not attributable to the applicant, the respondents are directed to release interest @ 6% p.a. on the delayed payment within 2 months from the date of communication of this order.

No costs.



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