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CALCUTTA BENCH, CALCUTTA

O.A. 350/01607/2014

Order dated: 11.01.2016

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

JAYANTA KUMAR KARMAKAR

VS.

UNION OF INDIA &amp; ORS. (BSNL)

For the Applicant : Mr. K. Sarkar, Counsel

For the Respondents : Mr. S. Panda, Counsel  
Mr. S.K. Ghosh, CounselORDER

This matter is taken up in the 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. The applicant who retired on superannuation on 1.7.2009 would be aggrieved as his pensionary benefits have been disbursed on 13.3.2010 for no fault on his part. Therefore he would seek interest on delayed payments.

3. Per contra the respondents would argue that the delay in releasing the benefits was directly attributable to the applicant and therefore he would not be entitled to claim interest.

4. The following admitted position could be noticed:

(i) The applicant who was supposed to retire on superannuation on 1.7.09 was sought to be furnished pension forms on 27.10.2008, (Annexure A to supplementary affidavit of respondents), but whether it was actually furnished on that date is highly disputed and is not borne by records.

(ii) The applicant figured in the superannuation list prepared on 4.8.2008 (Annexure B), i.e. almost 11 months prior to his retirement.

(iii) However, he submitted filled inform only on 30.5.2009 i.e. 1 month prior to his retirement.

5. In regard to Preparation of Pension Papers the following mandatory provisions could be noted:

**"56. Preparation of list of Government servants due for retirement**

(1) Every Head of Department shall have a list prepared every six months, that is, on the 1<sup>st</sup> January, and the 1<sup>st</sup> July each year of all Government servants who are due to retire within the next 24 to 30 months of that date.

(2) A copy of every such list shall be supplied to the Accounts Officer concerned not later than the 31<sup>st</sup> January or the 31<sup>st</sup> July, as the case may be, of that year.

(3) In the case of a Government servant retiring for reasons other than by way of superannuation, the Head of Office shall promptly inform the Accounts Officer concerned, as soon as the fact of such retirement becomes known to him.

(4) A copy of intimation sent by the Head of Office to the Accounts Officer under sub-rule (3) shall also be endorsed to the Directorate of Estates if the Government servant concerned is an allottee of Government accommodation.

**58. Preparation of pension papers**

Every Head of Office shall undertake the work of preparation of pension papers in Form 7 two years before the date on which a government servant is due to retire on superannuation, or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

**60. Completion of pension papers**

The Head of Office shall complete Part-I of Form 7 (1. The expression "not later than six months of the date of retirement" should be interpreted to mean "not later than six months before the date of retirement".) [not later than six months of the date of retirement] of the Government servant.

**61. Forwarding of pension papers to Accounts Officer**

(1) After complying with the requirement of Rules 59 and 60, the Head of Office shall forward to the Accounts Officer Form 5 and Form 7 duly completed with a covering letter in Form 8 along with Service Book of the Government servant duly completed, up-to-date, and any other documents relied upon for the verification of service.

(2) The Head of Office shall retain a copy of each of the Forms referred to in sub-rule (1) for his records.

(3) Where the payment is desired in another circle of accounting unit, the Head of Office shall send Form 7 in duplicate to the Accounts Officer.

(4) The papers referred to in sub-rule (1) shall be forwarded to the Accounts Officer not later than six months before the date of retirement of Government servant."

6. Further Swamy's compilation provide the following:

"1) **List of retiring Government servants.** – Every Head of the Department shall have a list prepared every six months, i.e., on 1<sup>st</sup> January and 1<sup>st</sup> July of all government servants who are due to retire within the next 24 months to 30 months of that date and forward the same to the Accounts Office responsible for issue of Pension Payment Order.

2) **Preparation of pension papers.** – Two years in advance of the date on which the Government servant is due to attain the age of superannuation or the date of his anticipated retirement, if earlier, the Head of Office would undertake the work of preparing pension papers, including verification of service and complete the particulars required in Form 7.

3) **Furnishing of particulars of qualifying service, etc., to retiring government servant.** – Before ten months to the date of retirement, the Head of Office shall furnish to the retiring Government servant a certificate regarding the length of qualifying service proposed to be admitted for pension and gratuity as also the emoluments and average emoluments proposed to be reckoned with for retirement gratuity and pension. He shall also forward to the retiring Government servant Form 5 advising him to return the same duly completed so as to reach the Head of Office not later than eight months prior to the date of his retirement.

4) **Forwarding of pension papers to the Accounts Officer.** – The Head of Office, not later than six months of the date of retirement of the Government servant, shall forward to Accounts Officer Form 5 and Form 7 duly completed with a covering letter in Form 8 along with Service Book of the Government servant duly completed up to date, and any other documents relied upon for the verification of service. He should prepare the 'Pension Calculation Sheet' in the prescribed Form in triplicate and forward it to the Accounts Officer along with pension papers."

In my considered opinion the aforesaid mandatory provisions if scrupulously followed would never have resulted in delaying the payments. Unfortunately, the list of retirees in this case was not prepared well in advance as mandated (supra). Therefore a person who would retire on 1.1.2009 figured in the list prepared on 4.8.2008 i.e. only 4 months prior to retirement, irrefutably and inarguably violating the provision as Rule 56 (ibid) would mandate.

Similarly the pension papers that had to be prepared 2 years in advance were not so prepared, violating provision of Rule 58 ibid.

Particulars through form 5 which were required to be furnished 10 months in advance were not so furnished. Therefore provision of Rule 61 ibid was violated.

The form 5 & Form 7 were not forwarded to Accounts office by the Head of office 6 months in advance with Pension Calculation Sheet again in violation of Rule 60 & 61 (ibid).

As such, violation of the aforesaid provisions, by the respondents, is loud and clear. No reason has been assigned to such ~~directions~~ <sup>desiations</sup>.

In view of the above factual matrix the delay in payment of pension could not be attributed to the applicant. The delay has not been satisfactorily explained too.

7. I have further noted that interest on delayed payments of gratuity would be admissible under Rule 69 (ibid). In regard to allowing interest on delayed payments of retiral dues, the following decision, wherein authorities have been asked to pay interest on delayed payments, are noted:

(i) In **S.K. Dua vs. State of Haryana & Another** [(2008)3 SLJ-108], the retiral benefits were released to the appellant after a delay of four years, and in the circumstances the Apex Court held that he would be entitled to interest on such benefits. Their Lordships further held that even in the absence of statutory rules, administrative instructions, guidelines or norms prescribed for the purpose, an employee can claim interest under Articles 14, 19 and 21 of the Constitution.

(ii) In **Suresh O Shah vs. State of Gujrat** decided by Hon'ble High Court of Gujrat in Spl. Civil Appeal No. 220/2003 on 03.02.2005 it was held that the claim for interest on the ground that there was delay in making the payment of retiral dues, could be decided in the light of the given facts of the case, and that if there is a delay without any reasonable explanation, it would always be open to the Court to grant interest on the delayed payment of the retiral dues.

(iii) Such view was adopted by coordinate Benches in O.A. 2832/2015 reported in (2015)2 AISLJ(CAT)-405 and **Bhaijal Mahijibhai Patel vs. Union of India** [(2014)2 SLJ (22) CAT]. In (2015)2 AISLJ(CAT)-405 the Bench found that there appears to be a delay of about one year in releasing the payment of arrears of pension, gratuity and leave encashment, which were paid on 27.12.2011, 17.10.2011 and 2.12.2011 respectively, and the delay has not been explained satisfactorily.

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The fact remains that the amount of pension, gratuity and leave encashment became payable after acceptance of his resignation, i.e. w.e.f. 1.11.2010, and thus the applicant is entitled to get interest on the aforesaid amounts from the date of acceptance of his resignation till the date of actual payment.

8. Considering the factual matrix in aforesaid legal backdrop, I would direct the authority to release interest @ 8% on from the date the payments became due till the date it was released.
9. O.A. is accordingly disposed of.
10. No costs.

(Bidisha Banerjee)  
Member, (J)

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