

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**O. A. No. 300 OF 2013*Calcutta* Cuttack, this the 11 day of August, 2016**CORAM****HON'BLE MR. ASHOK KUMAR PATNAIK, MEMBER (JUDL.)
HON'BLE MS. JAYA DAS GUPTA, MEMBER (ADMN.)**

.....

Shri Tarun Kumar Roy, Son of Late Abanindra Kumar Roy, aged about 68 years residing at 58 B.N.Sarani Mathpara, PO. Nana Chandanpukur, Barrackpore, Kolkata-700122, West Bengal retired as Assistant Engineer (Civil) under the Garrison Engineer, Ranchi.

.....Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Ayudh Bhawan, South Block, New Delhi-110011.
2. The Engineer-in-Chief, Director General (Personnel)/E1 (DPC-1), Integrated Head Quarter of Ministry of Defence, Kashmir House, New Dehi-110011.
3. The Chief Engineer, HQ, Eastern Command, Engineer Branch, Fort William, Kolkata-700021.
4. The Chief Engineer, Central Command, Pin-900450, C/O 56 APO.
5. The Chief Engineer (EC), Ordnance Factory Board, 6, Esplanade East, Kolkata-700069.
6. The Central Record Office (Officer), Pin-9001006, C/O 56 APO.
7. The Garrison Engineer (MES), Ranchi, 7, Club Road, Ranchi-834001.
8. The Principal CDA (Pension), Allahabad, Pin-211014.

.....Respondents

For the Applicant : Mr. B.C.Deb, Counsel

For the Respondents : Mr. B.P.Manna, Counsel

all

ORDERA.K.PATNAIK, JUDICIAL MEMBER:

The Applicant while working as Assistant Engineer (Civil) under the Garrison Engineer, Ranchi, on reaching the age of superannuation, retired from service w.e.f. 30.06.2005. Alleging non payment of 2nd financial up gradation under ACP and consequential benefit of revision of pay and pension and pensionary benefits and payment the arrears, he has filed this Original Application under section 19 the Administrative Tribunals Act, 1985 seeking the following reliefs:

" a) Direction upon the respondents to grant/pay fixation for 2nd ACP benefit in the pay scale of Rs. 10, 000-15200 with effect from 09.08.1999;

b) Direction upon the respondents to grant/pay arrears of pay on enhance rate with effect from 09.08.1999 to 30.06.2005 and enhance rate of pensionary benefit and pension with effect from 07/2006;

c) Direct the Respondents to pay the applicant interest % 17% per annum from the date of accrual till the date of actual payment;

d) Any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper."

2. The Respondents have filed their reply in which while explaining the steps taken in granting the benefit of 2nd financial up gradation under ACP, it has been stated that in the meantime, the 2nd Financial Upgradation has been granted and the benefit of arrears of pay and pension, consequent upon fixation of the pay of the applicant after granting such financial up gradation under ACP scheme have been extended. Accordingly, it has been stated that since the benefits asked for by the applicant have already been



made to him there remains nothing further to be adjudicated in this OA and this OA be accordingly dismissed.

3. In the rejoinder, the applicant admitted the receipt of the arrears of pay and pension consequent upon revision of his pay after 2nd financial up gradation under ACP scheme. But by placing decisions of the Apex Court, the applicant has prayed for grant of the interest on the delayed payment of the benefits. According to the applicant, he was entitled to and paid the 2nd financial benefit under the ACP scheme w.e.f. 09.08.1999. He retired from service on 30.06.2005. Whereas, he received the said benefits only on as under:

- ✓ (i) Arrears of ACP of Rs. 173674/- on 19.08.2013;
- ✓ (ii) Arrears of Gratuity of Rs. 44154/- on 01.11.2013;
- ✓ (iii) Arrears of commutation of Rs. 56623/- on 01.11.2013;
- ✓ (iv) Arrears of pension of Rs. 214175/- on 01.11.2013.
- ✓ (v) Arrears on leave salary of Rs. 26,760/- on 03.04.2014;

The decisions relied upon by the applicant for grant of the interest due to delayed payment of the benefits are as under:

- (a) **Union of India vs Justice S.S.Sandhawalla, (1994) 2 SCC 240;**
- (b) **S.R.Dutta vs State of Hariyana, (2008) 3 SCC 44 at page 47;**
- (c) **OA No. 15 of 2004 disposed of on 14.7.209 by the Calcutta Bench of the Tribunal in the case of Kiron Sankar Bandyopadhyay and 13 others vs Union of India and others;**
- (d) **OA No. 135 of 2010 disposed of on 17.2.2011 by the Calcutta Bench of the Tribunal in the case of Sarojendu Biswas vs Union of India and others;**
- (e) **OA No. 631 of 2012 disposed of on 13.06.2013 by the Calcutta Bench of the Tribunal in the case of Sarojendu Biswas vs Union of India and others;**

Will

- (f) OA No. 1039 of 2012 disposed of on 09.07.2013 by the Calcutta Bench of the Tribunal in the case of **Pranab Kumar Mallick vs Union of India and others**.

4. We have heard the learned counsel for both sides and perused the records. According to the learned counsel for the applicant as the delay in making payment was fully attributable to the Respondents, by applying the law laid down in the aforesaid cases, the applicant is entitled to interest and, therefore, he has prayed for a direction for payment of the interest at an early date.

On the other hand, the learned counsel appearing for the Respondents has strongly and stoutly refitted and rebutted the arguments advanced by the learned counsel for the applicant and submitted that it is not as though the benefit will be granted to an employee unlike drawing the amount from ATM. For this purpose, certain pre conditions such as constitution of records, consideration of the case of the applicant by the screening committee and getting the approval have to be fulfilled; which was exactly occurred in the instant case. As it is not the case of the applicant that the delay occasioned was intentional and deliberate, the applicant was not entitled to the interest as claimed by him and as the benefits have already been paid to the applicant. Therefore, he submitted that the OA is liable to be dismissed.

5. We have considered the rival submission of the respective parties and perused the records. We have also gone through some of the decisions quoted above. Admittedly, the applicant was entitled to the second financial up gradation under ACP w.e.f. 09.08.1999 and he retired on 30.06.2005. If it was not

all

granted to him, instead of keeping silence over these years, he ought to have taken shelter of the appropriate court of law challenging the inaction and claiming the benefit to which he was entitled to but he failed to do so and it was only after retirement i.e. in the year 2013 he has filed the instant OA claiming the benefit. This was not the situation in the decisions relied on by the applicant. The facts of those cases are different and distinct and as such are of no help to the applicant. In view of the above, we hold that the applicant is not entitled to interest on the arrears of ACP benefit which was paid to him only on 19.08.2013. But whatever shall be the reason, for such delay the applicant suffered in the matter of non payment of his pension and pensionary dues at the right time for which we are of the view that the applicant shall be entitled to interest at the rate of 6% per annum from the date when the pension and other pensionary dues were paid to the applicant till the actual payment made, as stated above. Accordingly, the Respondents are directed to calculate the interest and pay the same to the applicant within a period of three months from the date of receipt of a copy of this order and the Respondents are free to recover the same from the officer(s)/Official(s) responsible for such delay.

6. With the aforesaid observation and direction this OA stands disposed of. No costs.

(Ms. Jaya Das Gupta)
Admn. Member

2016

(A.K. Patnaik)
Judicial Member