

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 332/00018/2016

**Order reserved on : 27.04.2018
Pronounced on : 30.05.2018**

Hon'ble Mr. Justice V.C. Gupta, Member (Judicial)

JITENDRA SRIVASTAVA, aged about 67 years, s/o Late Gyanendra Srivastava, Ex-Presiding Officer, CGIT, Bhubaneswar, R/o House No. 75, Uphar Eldeco Udyan-II, Raibareli Road, Lucknow-226025.

.....Applicant

By Advocate : Applicant in person.

Versus

1. Union of India through its Secretary, Ministry of Labour & Employment, Sharm Aur Rozgar Mantralaya, New Delhi.
2. CGIT-CM-LABOUR COURT, through its Presiding Officer, Ministry of Labour & Employment, H-24, Jaydev Nagar, Nageswartzangi, Lewis Road, Bhubaneswar.
3. CONTROLLER OF ACCOUNTS, Pay & Accounts Office (MS), Government of India, Ministry of Labour & Employment, Sharm Shakti Bhawant, Rafi Marg, New Delhi-110001.

.....Respondents

By Advocate : Sri S. Lal.

ORDER

Delivered by: Justice V.C. Gupta, Judicial Member:

This original application has been preferred by the applicant who was Presiding Officer of CGIT-cum-Labour Court, Bhubaneswar, Orissa and demitted the office on 09.03.2014. He was appointed to the post of Presiding Officer by Ministry of Labour and Employment, Government of India vide appointment letter dated 30.10.2009. The copy of which has been annexed as Annexure-6. For ready reference the same has been extracted herein below :

"No. A-11016/8/2008-CLS-II

Government of India

Ministry of Labour and Employment

Shram aur Rozgar Mantralaya

New Delhi, dated the 30 October, 2009

To,

Shri Jitendra Srivastava
117/N/66 Raniganj, Kakadeo,
Kanpur Nagar (UP)

Subject : Appointment to the post of Presiding Officer, CGIT-cum-Labour Court, Bhubaneshwar.

Sir,

I am directed to say that Competent Authority has approved your appointment to the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneshwar with effect from the date of assumption of charge of the post for a period upto 09.03.2014 on the terms and conditions as follows:

- (a) The pay will be fixed in that of the following existing pay-scales in which the judicial official had drawn his last pay before retirement on superannuation in his parent State Judiciary:
 - (i) Distt. Judge(Entry Level) – 16,750-400-19250-450-20500/-.
 - (ii) Distt. Judge (Selection Grade) – 18750-400-19150-450-21850-500-22850/-.
 - (iii) Distt. Judge (Super time Scale)- 22850-500-24850/-.
- (b) The officer will be entitled to D.A. as per Rules applicable to the Central Govt. employees from time to time subject to the condition that relief of pension is deducted from emoluments drawn the period of re-employment as per instructions contained in the Ministry of Law letter No. 166/2/78-Justice dated 4th August, 1978.
- (c) The CCA/HRA/MEDICAL CONCESSION/TA is to be regulated under the Rules as applicable to the Central Government employees.
- (d) During the period of re-employment, the officer will be governed by the Central Civil Service (Leave Rules) 1972 as amended from time to time.
- (e) The officer will be entitled to residential accommodation according to the rules of the Central Government.
- (f) The period of re-employment will commence from the date of assumption of charge of the post of Presiding Office, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneshwar under the Central Government.

- (g) Employment is liable to termination at one month's notice on either side without assigning any reason.
- (h) As per provisions of Para 12 of CCS (fixation of pay of re-employed pensioners) Orders 1986, the officer will be entitled to subscribe to Contributory Provident Fund.
- (i) Any amount of overpayment pertaining to pre-retirement period including the amount written off on the ground that he was no longer in Government Service would be recoverable by adjustment of the pay and allowances admissible to him during the period of re-employment {as per GOI decision (5)(2) below Rule 73 of the CCS (Pension), 1972}.

2. In case the appointment is acceptable to you on the terms and conditions as mentioned above, it is requested that you may kindly assume charge of the post within a period of 30 days.

Yours faithfully,
 Sd/-
 (P.K. Tamrakar)
 Under Secretary to the Govt. of India"

2. The applicant after demitting the office filed this original application on 12.01.2016 claiming the following relief(s):

- "(i) an order for realization of Rs. 4,58,997-00 from the opposite parties be passed as per details given in paras 4.8, 4.14, 4.196 and 4.24 of this application with pendentelite and future interest from 10.01.2016 @ 12% per annum till realisation.
- (ii) an order be passed quashing the order of the Government of India about non-admissibility of Transfer TA on retirement to re-employed pensioners issued vide letter No. A-9011/6-2009-CLS-II dated 26th February, 2014 including OM No. 19030/6/2014-E-IV dated 10.02.2012 of Department of Expenditure, Ministry of Finance Government of India, if it any way contrivances the right of the applicant for getting Transfer TA on retirement (Annexure No.1).
- (iii) an order be issued to the opposite parties directing them re process the medical bill amounting to Rs. 10,160/- for pass any payment to P and AO (M/S) and also make payment of two bills for conveyance (reimbursement of petrol charges) amounting to Rs. 35,000/- and 7,000/- without insisting for fresh bills. If the old bills are not traced out on taking utilization certificate from the applicant.
- (iv) an order be passed against the opposite parties allowing Transfer TA on retirement to the applicant and directing them to accept the transfer TA bills on retirement condoning the delay in filing then in time due to denial of transfer TA to the applicant on retirement.

(v) an order be also passed against the Opposite Parties directing them to pay the amount claimed in the application within a time limit failing which an interest @ 15% per annum instead of 12% per annum be awarded on the claimed amount against the opposite parties."

3. The perusal of reliefs claimed reveals that certain dues which according to the applicant are due and not paid though entitled, was the cause to file this original application.

4. The claimed reliefs are described in Para(s) 4.8, 4.14, 4.19 and 4.24.

5. So far as Para 4.8 is concerned; under this paragraph the applicant claimed transfer TA on retirement to his hometown. The amount claimed is including interest @ 12% p.a. from 10.03.2014 to 10.01.2016 the date of filing of OA and total amount is Rs. 185214/-.

6. In paragraph 4.14, the applicant claimed encashment of earned leave of 24 days. The amount of which according to the applicant comes to Rs. 108835/-. The amount of interest thereon @ 12% p.a. from the date of retirement till 10.01.2016 come to Rs. 23940/-. As such total amount claimed is Rs. 132775/-.

7. In paragraph 4.19, the applicant claimed interest for delayed payment of Contributory Provident Fund (CPF) of Rs. 1094258/-. The interest claimed from 09.04.2014 to 11.11.2014 @ 12% p.a. come to Rs. 77333/-.

8. In paragraph 4.24, the applicant claimed an amount of Rs. 10160/- towards medical reimbursement and Rs. 35000/- and 7000/- for reimbursement of petrol charges from 1.11.2012 to 31.05.2013 and 01.02.2014 to 09.03.2014 respectively. He also claimed interest on the amount @ 12% p.a. and as such total amount claimed under these heads come to Rs. 63635/-.

9. The applicant argued in this case in person.

10. The case of the applicant is that he was a member of Uttar Pradesh Higher Judicial Services and after retirement he was appointed by re-employment against the post of Presiding Officer of CGIT-cum- Labour Court under aforesaid appointment letter and joined at Bhubaneswar on 26.11.2009. The applicant contended that he initiated the process for grant

of transfer TA before retirement by sending a letter to the Government of India but the claim of TA was denied by Government of India on 26.02.2014 on the ground that no transfer TA is admissible after expiry of term of re-employment if TA on retirement has already claimed by re-employed pensioner from his parent department from when he was retired. The authority of GOI in this connection relied upon one OM No. 19030/6/2010-E-IV dated 10.02.2012 of Ministry of Finance, Government of India. The copy of order dated 26.02.2014 of rejection of the claim of the applicant and OM dated 10.02.2012 has been annexed as Annexure No. 1 to this OA and are extracted herein below for ready reference:

"A-19011/6/2009-CLS-II

Government of India

Ministry of Labour & Employment

Shram Aur Rozgar Mantralaya

New Delhi dated 26th February, 2014

To,

The Presiding Officer
CGIT-cum-Labour Court,
Bhubaneswar.

Sub: Approval for grant of Transfer TA advance to the Presiding Officer,
CGIT, Bhubaneswar-reg.

Sir,

I am directed to refer to your letter No. 2/4/2000-A.I dated 24.02.2014 on the above mentioned subject and to say that the terms and conditions of the appointment of Presiding Officers stipulate admissibility of TA as per Central Govt. Rules. Accordingly, admissibility of TA on retirement to re-employed pensioners under Central Govt. is governed by the Deptt. Of Expenditure O.M. No. 19030/6/2010-E.IV, dated 10.02.2012 (copy enclosed). Accordingly, no. additional TA is admissible on the expiry of the term of re-employment if TA on retirement has already been claimed by the re-employed pensioner from his parent office.

Yours faithfully,

Sd/-

(Rajesh Kumar)

O.M. dated 10.02.2012

No. 19030/6/2010-E.IV

Government of India

Ministry of Finance

Department of Expenditure

North Block, New Delhi

Dated the 10th February, 2012

Office Memorandum

Subject:- Concession to persons re-employed in Government Service :
Payment of Travelling Allowance- reg.

References have been received whether the Travelling Allowance (TA) admissible to pensioners re-appointed to Govt. service, under SR 107 of FR & SR Part II (Travelling Allowance Rules) includes TA in respect of family of the pensioner and other TA entitlements which a serving Government official is normally entitled to on transfer.

2. The matter has been considered and it has been decided that pensioners re-employed to posts, where holding of a post under the Central Government is a pre-requisite for such re-employment or where the Recruitment Rules of the post to which the pensioner is re-employed provides this as one of the qualifications, would be entitled to Travelling Allowance subject to the following:-

- i) The entitlement for Travelling Allowance would be with reference to the post last held and the last pay drawn under the Government, at the time of retirement.
- ii) The provisions of SR 116 of the TA Rules, as admissible to Govt. officials on transfer in public interest, would be applicable.

iii) Unless provided for in the terms & conditions of the post where the pensioner is re-employed, if 'TA on Retirement' has already been claimed by the re-employed pensioner from the office/organization from where he has retired/superannuated, no additional TA would be admissible on expiry of the term of his re-employment. If the re-employed pensioner has not claimed TA on Retirement' within six months of his retirement and he is re-employed under the Central Govt. before the expiry of six months from his date of superannuation/retirement, he can claim TA on Retirement' after expiry of the term of his re-employment, with reference to the post held at the time of retirement and pay last drawn at the time of retirement, in terms of GoI Order No. 2 below SR 147. In such an event, the 'TA on Retirement' would be reimbursed by the office/organization from where the re-employed pensioner had retired/superannuated.

3. Past cases, already settled would not be re-opened.

sd/-

(Subhash Chand)
Deputy Secretary to the Govt. of India"

11. After rejection of the claim, the applicant has represented and claimed the amount once again by moving an application dated 05.03.2014 address to Secretary, Government of India, Ministry of Labour and Employment. The copy of which has been annexed as Annexure No. 2 to this O.A. The Under Secretary to the Government of India vide its letter dated 30.05.2014 reiterated the earlier stands of GoI and made it clear that the applicant has joined after lapse of 8 months after his superannuation from his parent department. The copy of which

has been annexed as Annexure No. 3 to this O.A. The applicant had given detailed reply of letter dated 30.05.2014 to the Secretary, Government of India vide letter dated 17.07.2014 justifying the grant of TA on retirement and requested for reconsideration of the matter. The copy of letter dated 17.07.2014 is also annexed as Annexure No. 4. The respondents did not respond to the letter dated 17.07.2014. Thereafter he had written two letter of dated 24.11.2014 and 18.12.2015 to the Secretary, Government of India, Ministry of Labour and Employment claiming TA as well as other dues. The copy of which has been annexed as Annexure No. 5 to this O.A.

12. It was further contended that Ministry of Labour and Employment in its letter dated 30.10.2009 (Appointment letter) categorically mentioned that ***“CCA/HRA/Medical Concession/TA is to be regulated under the rules as applicable to the Central Government employees”***. It was further contended that Swamy's Handbook on TA on retirement provides that ***“when the retired employee settled down in a station other than the last station of duty this travelling allowance includes fare for self and family, expenses on transportation of personal effects and transportation of conveyance, besides composite grant transfer payable the same as on normal transfer.”***

13. It was further contended that the applicant was not virtually re-employed as both the employer of the applicant are different. As such the applicant cannot be deprived off from the benefits which are available to central government employees. It was further contended that the OM cannot change the rules subsequently by giving retrospective effect. As such O.M. dated 10.02.2012 cannot applied in the case of the applicant because the appointment of the applicant was earlier to that. It was further contended that appointment of Presiding Officer of CGIT-cum-Labour Court is made under the Industrial disputes Act, 1947 and as such his appointment is like other Central Government Employees. The terms and condition of appointment cannot be changed without prior notice to the effected employees or giving retrospective effect to the OM/Rules.

14. It was further contended that the applicant had not submitted transfer TA bill on or before the date of retirement of the applicant because same cannot be submitted earlier due to denial of grant of transfer TA on retirement and also under fear

of the bills being lost from office of CGIT, Bhubaneswar as has happened in the case of conveyance allowance bills. A request has been made in this regard to issue a mandamus to Government of India, Ministry of Labour and Employment to accept the TA bill on retirement of applicant after condoning the delay in its submission and grant the same.

15. The next claim for which this OA has been filed has been described in paragraph 4.14 i.e. the encashment of 24 days earned leave. Here it is pointed out that the same has been sanctioned by Government of India and amount claimed by applicant has been paid during pendency of this OA. The record reveals that 24 days earned leave has been approved by competent authority prior to file this OA on 24.12.2014 as evident from Para-7 of the Counter reply.

16. The other claims are of interest for delayed payment of CPF and non-payment of medical reimbursement and reimbursement of petrol charges with interest.

17. Counter reply has been filed by respondents wherein it has been contended that the applicant is not entitled to get any dues for transfer TA on retirement. The letter dated 10.02.2012 is virtually a clarification of statutory rules and not a fresh order. So far as the terms of appointment are concern the reference of Clause -C applies during continuance of reemployment period.

18. It was also contended that the applicant on retirement claimed transfer TA on retirement to hometown from his parent department. Hence, the applicant in view of FR SR Part-2 rules of TA on retirement, the re-employed pensioner would not be entitled to transfer TA on retirement if he has already claimed transfer TA on retirement from his parent department before re-employment.

19. It was further contended that the claim in this regard is also barred by time as the cause of action was accrued to the applicant on 26.02.2014 when the claim of transfer TA on retirement of applicant was rejected by reasoned order. Once cause of action started to run subsequent representations cannot stop running or change the date of cause of action already accrued. Moreover, Government of India again reiterated its stands taken earlier in this regard in the month of May, 2014. This petition has been filed after lapse of about 2 years from the date of cause of action accrued on 26.02.2014

and as such the claim of transfer TA on retirement is barred by time.

20. So far as encashment of earned leave is concerned it has been contended that the same has already been sanctioned and amount has already been received by the applicant as evident from order sheet of OA dated 08.12.2017. The order dated 17.11.2017 reads as under.

“BHARAT SARKAR
OFFICE OF THE CHIEF CONTROLLER OF ACCOUNTS
MINISTRY OF LABOUR & EMPLOYMENT
PAY & ACCOUNTS OFFICE (MAIN SECTT.)
SHRAM SHANTI BHAWAN
NEW DELHI-110001

No. PAO(MS)/L&E/Pen./2017-18 Dated 17.11.2017

To,

The Dy Registrar
Central Administrative Tribunal
Lucknow Bench,
Lucknow (UP)

Sub: Payment of 24 days leave encashment in r/o Sh. Jitendra Srivastava, Ex. Presiding Officer CGIT Cum Labour Court, Bhubaneswar-regarding.

Sir,

I am to state that this office had received bill for 24 days leave encashment in r/o Sri Jitendra Srivastava, Ex. Presiding Officer, CGIT-cum-Labour Court Bhubaneswar, submitted vide their letter No. 21/1/2017-All dt. 01.11.2017 on 07.11.2017 and the same has been passed on 17.11.2017 vide Token No. 4530 and released the payment for Rs. 112464/- to individual by E-payment.

Yours faithfully,
Sd/-
Sr. Accounts Officer (M/S)"

21. So far as interest on delayed payment of CPF is concerned it has been contended that amount of CPF was not paid on account of non clearance of vigilance. The applicant was subject to vigilance inquiry and as soon as vigilance clearance is made on 03.11.2014, the amount of CPF was released on 11.11.2014 and the same was credited in the bank and as such there is no delay in making the payment on the part of respondents and whatever delay has been occurred was occurred due to administrative reason within the fore corners of the rules. As such the applicant is not entitled to any interest on the aforesaid amount.

22. So far as the medical bill is concerned it has been contended that medical bill dated 14.08.2013 of Rs. 10259/- was not reimbursed because the same was not admissible as per Rule 2 (4) (2) of CA(MS) Rules. No bill of dated 17.02.2014 has been placed on record nor available with department as such claim of the payment of such bill dated 17.02.2014 of Rs. 10160/- is not sustainable.

23. So far as reimbursement of petrol charges are concerned such bills are not available in the office of CGIT at Bhubaneswar. Therefore, question of reimbursement of such bills do not arise.

24. Rejoinder has been filed by the applicant wherein he reiterated the stands taken earlier. It has been contended that limitation will not start running from 26.02.2014 the date of rejection of claim of transfer TA on retirement but will start to run from 25.11.2016 because last complaint / representation dated 25.05.2015 was not disposed of by the authority and as such limitation will start to run from the date when period of six month had expired and therefore within one year the OA could be filed.

25. It was further contended that so far as earned leave is concerned though the same was sanctioned vide letter dated 24.12.2014 but the amount of encashment was paid on 17.11.2017 i.e. after about 3 years and as such the applicant would be entitled for the payment of interest thereon.

26. So far as the transfer TA on retirement, the applicant reiterated the stand taken earlier.

27. I have heard the applicant in person and the learned counsel for the respondents at length and perused the record of the case.

28. From the pleadings of parties it appears that there are 4 claims, the same are as under:-

- (1) Interest on the amount of delayed payment of CPF.
- (2) Interest on the amount of Leave Encashment.
- (3) Payment of medical reimbursement bills and Petrol charges reimbursement.
- (4) Transfer TA on retirement.

29. The aforesaid claims shall be taken one by one :

INTEREST ON DELAYED PAYMENT OF CPF:

It is not denied by the applicant that the applicant relinquished the office of Presiding Officer, CGIT-cum-Labour Court, Bhubaneswar on 09.03.2014. It is also not denied that the amount of CPF was actually paid to the applicant of Rs. 1094258/- on 11.11.2014. As such according to the applicant there is delay of 8 months. The explanation of delay has been offered by the respondents that the applicant was subject to department proceedings and as soon as vigilance clearance was issued on 03.11.2014 the payment was released on 11.11.2014. The fact that applicant was subject to vigilance inquiry has not been denied by the applicant. Nothing has been brought on record that what happens with inquiry pending against the applicant on the date of retirement. The CPF includes the amount contributed by employer also. In these circumstance the delay occurred in making the payment of the CPF appears to be bonafide and in view of the above this Tribunal finds that applicant is not entitled to any interest under this head.

INTEREST ON DELAYED PAYMENT OF LEAVE ENCASHMENT:

The leave encashment was sanctioned by competent authority vide letter dated 24.12.2014 but the payment of the same was made during the pendency of this original application on 17.11.2017. Once the competent authority has taken a decision to grant the sanction to encash the earned leave of 24 days the delay of about 3 years thereafter in payment of amount of encashment of 24 days earned leave would be substantial. The explanation offered is not substantiated from the record because the order dated 24.12.2014 annexed as Annexure No. 8 to the OA clearly speaks that the competent authority approved the encashment of earned leave of 24 days to the applicant admissible to him in terms of Rule 39-6 (a) (iii) of Leave Rules for his tenure of reemployment in CGIT from 26.11.2009 to 09.03.2014. As such this Tribunal is of the view that applicant would be entitled to reasonable interest under this head for making the payment with delay.

REIMBURSEMENT OF MEDICAL BILL AND PETROL BILLS:

The pleading reveals that the medical bill related to 14.08.2013 was refuse to pay for want of original prescription and this bill was of amount of Rs. 10259/-. The non payment of such bill is not under challenge. It was contended by respondents that there was no such bill of dated 17.02.2014 of Rs. 10160/- in the office. Similarly the petrol bills were also not related to be available in the office of PAO, Bhubaneswar. The pleading in this regard made by the applicant is that he handed over the bills to the cashier Sri R.S. Behra in presence of Sri B.K.

Barric, Secretary and Ajay Kumar, MTS few days back of handing over the charge. No copy of the bills has been placed on record either of the petrol reimbursement or medical reimbursement. No person has been examined nor affidavit filed of any one of these before whom bills were alleged to be handed over. In view of the above and in absence of bills no decision could be taken by this Tribunal with regard to payment under those bills..

NON PAYMENT OF TRANSFER TA ON RETIREMENT:

In this regard the pleading of the applicant is that the order declining the grant of transfer TA on retirement is not sustainable as the OM dated 10.02.2012 cannot be applied retrospectively. It was further contended that as per terms of appointment he is entitled to transfer TA on retirement as other central government employees are entitled to get TA on retirement where the place of last posting is different with the place where the employee finally settled and no distinction could be drawn in between the re-employed employee to the Central Government or regular employee of the Central Government. It was further contended that terms of the appointment of the applicant as Presiding Officer in CGIT is made under Industrial Dispute Act and the terms clearly speaks about the payment of CCA / HRA / Medical Concession/TA would be regulated under the rules as applicable to the Central Government employees. Therefore, the rejection of the claim of transfer TA on retirement would not be sustainable. From the pleadings of the respondents it is spelt out that the claim of the transfer TA on retirement would not be admissible to those employee who are re-employed in any central government service after retirement from parent office if they have already availed transfer TA on retirement from his parent department.

The fact that the applicant had already paid transfer TA on retirement by parent department is not denied by the applicant.

In view of this, the language of the government order dated 10.02.2012 is to be looked into to ascertain whether it is a clarification of existing rules or amounts to new introduction of rule. If it is new introduction of rules the question of its retrospective applicability will be considered but if it is a clarification of existing rules the question of retrospective applicability of OM would not arise.

The government order in the form of OM dated 10.02.2012 clearly speak that the matter was considered on references made with regard to TA admissible to the pensioner on reemployment to the government service under SR 107 of FR SR Part-II. The matter was examined in the light of existing rules and it was stated that provisions of SR 146 of TA rules as

admissible to the government official on transfer in the public interest would be applicable but at the same time a clarification has been issued in respect of re-employment. In the case of re-employment the terms and condition of the post where the pensioner is reemployed would be binding. In absence of any specific terms or condition with regard to payment of transfer TA on retirement if TA on retirement has already been claimed by reemployed pensioner from the office / organization from where he has retired/superannuated no additional TA would be admissible on expiry of the term of reemployment. Rule SR 146 and 147 are the relevant rules which deal with journey on retirement or dismissal of the service or journey by family of the government servant on his death. Rule SR 146 has a general restriction and says that “*Unless in any case it be otherwise expressly provided in this section, no person is entitled to any travelling allowance for a journey made after retirement or dismissal from Government service or after the termination of such service*”

This restriction has been relaxed in SR 147 which says that “*A Competent Authority may, for special reasons which should be recorded, permit any Government servant to draw travelling allowance for a journey of the kind mentioned in Rule 146.*”

So far as the pensioners are concerned SR 107 provides that “*When a pensioner; or a Government servant who has been thrown out of employment owing to a reduction of establishment or the abolition of his post, is re-appointed to Government service, the authority which sanctions his re-appointment may in cases other than those covered by Rule 105-A permit him to draw travelling allowance for so much of his journey to join his new post as falls within India.*”

The perusal of this rule provides that the pensioner would be entitled to journey performed by him to join his new post falls within India but there is no provision for pensioner to claim the transfer TA on retirement. The reemployment is governed by terms of appointment. The perusal of terms of the appointment clearly speaks that during continuance of the re-employment of the applicant the same rules will apply which are applicable to Central Government contained in letter of the appointment. The applicant has accepted the same by joining the post on re-employment without any protest. It does not deal with any TA after completion of the period for which the applicant has been reemployed.

Therefore, this Tribunal is of the view that OM dated 10.02.2012 is not a new introduction of the rules but it is a clarification of the existing rules. Therefore, the question of applicability of the aforesaid OM from a retrospective date does not arise for consideration. Consequently, this Tribunal is of the

view that the applicant is not entitled to any transfer TA on retirement as claimed by applicant.

The pleadings further reveals that no such TA bills ever presented by the applicant in the office but it has been contended by the applicant that the same was not given because he has an apprehension in his mind that the same may also lost like other bills of the applicant. On this counts too in absence of TA bill relief claimed cannot be granted.

30. One more question has been raised by the respondents that the claim of the applicant for transfer TA on retirement is otherwise barred by time on the ground that claim of the applicant was declined before relinquishing his office as Presiding Officer on 26.02.2014 and as such cause of action accrued to him on 26.02.2014 and he could raise the claim in the Tribunal within one year from such date but in this case petition has been filed beyond period of limitation on 12.01.2016.

31. The applicant pleaded that after rejection of the claim he made representation on 05.03.2014 to reconsider the claim of the applicant and the governments again endorsed his decision taken on 26.02.2012 by giving reply to the same on 30.05.2014/10.06.2014. The copy of which has been enclosed by applicant himself as Annexure No. 3 to the OA. The applicant again represented and it has been contended that the representation was never replied. Therefore, on the basis of Section 20 of AT Act, 1985, limitation will start to run after 6 months from the date of last representation dated 18.02.2015 because the representation has not been disposed of and as such petition could be filed till 18.08.2016 but in this case petition has been filed in the month of January 2016.

32. I have considered the rival contention of the parties and this Tribunal is of the view that cause of action once accrued cannot be stopped to run for the purpose of counting the limitation for seeking remedy. The repeated representations after final decision will not extent to limitation especially when there is no provision under the rules for reconsideration. In this regard the decision rendered by Hon'ble Apex Court in the case of **C. Jacob Vs. Director of Geology and Mining (2008) 10 SCC 115, Union of India Vs. M.K. Sarkar (2010) 2 SCC 59 and Union of India Vs. A. Durairaj (2010) 14 SCC 389** are relevant.

33. I have considered all the facts and circumstances of the case and this Tribunal is of the view that this petition deserves to be allowed partly.

34. Hence, the petition is partly allowed. Applicant would be entitled to get simple interest @ 8% on the amount of leave encashment commencing from the date of sanction i.e.

24.12.2014 till the date of final payment made i.e. 17.11.2017. This amount of the interest should be paid to the applicant within a period of 30 days from the date of communication of this order. The applicant is not entitled to any other relief claimed by him in this O.A.

34. However, in the circumstances of the case, there shall be no order as to costs.

(Justice V. C. Gupta)
Member (J)

JNS

