

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.740/2014

Dated this the 3rd day of March, 2017

CORAM: HON'BLE MS. B.BHAMATHI, MEMBER (A)

Shri S.N. Jagtap
Sub Dvisional Engineer (Retd)
O/o CGMT BSNL Mah.Circle
Admn Bldg Santacruz (W)
Mumbai-400054
Residing—Hemkunj F.No.11, Second
Floor, Opp. Hetal Apts Kartap Road,
Badalapur (East) Distt. Thane.

... Applicant.

(By Advocate Shri G.B. Kamdi)

Versus.

1. Bharat Sanchar Nigam Ltd.
Through Chairman & Managing Director,
Bharat Sanchar Bhawan H C Mathur
Lane Janpath New Delhi-110001.

2. The Chief General Manager,
BSNL, Telecom Maharashtra Circle,
Admn Bldg. Juhu Road Santacruz (W)
Mumbai 400054.

3. The Chief Accounts Officer, (cash)
BSNL, Telecom Maharashtra Circle,
Admn Bldg Juhu Road Santacruz (W)
Mumbai-400054.

... Respondents.

(By Advocate Shri V.S. Masurkar)

Reserved on 17.02.2017.

Pronounced on 03.03.2017.

ORDER

Per:-HON'BLE MS.B. BHAMATHI, MEMBER (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“(a). To allow the Original application.

(b). This Hon'ble Tribunal may be pleased to call for record of the case and after going through its propriety and legality be pleased to direct to the respondent to pay the penal interest at the rate of 10% from the date of his retirement to the date of actual payments of leave encashment.

(c). Direct the respondent to modify and revise the impugned order dated 10.01.2014 with interest.

(d). To pass any other just and appropriate orders this Hon'ble Tribunal may deem fit, proper and necessary if the facts and circumstances of the case.

(e). The cost of this original application please be provided.”

2. The applicant's case is that he retired on superannuation w.e.f. 31.05.2013. His last pay drawn was Rs.41,730/- and D.A. Rs.31,256/- for the month of May 2013. He was entitled for leave encashment for 300 days of Earned leave, which remained in his credit on the date of retirement. The respondent had issued a pensioner's Identity Card with all

relevant details regarding date of retirement and last pay drawn and sanction of pension amount etc. vide PPO dated 18.07.2013. Respondents failed to grant him the amount under leave encashment

2.2. When the applicant was paid all the pensionary benefits except leave encashment in the month of July, 2013, he approached R-2 through email on 16.09.2013. No action was taken on the said representation. The applicant again submitted a representation on 18.11.2013 to R-2 seeking 10% interest on delayed payment of leave encashment.

2.3. Rule 39 of CCS Leave Rules, 1972 reads as follows:-

“where a Government servant retires on attending the normal age prescribed for retirement under the terms and conditions governing his service the authority competent to grant leave shall *suo motu*, issue an order granting cash equivalent to leave salary for both earned leave and half pay leave, if any at the credit of the Government servant on the date of his retirement subject to a maximum of 300 days”.

2.4. Accordingly, to the above formula was applicable for grant of leave encashment:-

Cash equivalent pay admissible on Number of days
The Earned leave= date of retirement of unutilized
Plus Dearness earned leave
Allowance on that at credit
date subject to the

total if earned leave
and half
pay leave not

exceeding 300
days.

According to above formula the applicant was entitled for leave encashment as under:

Rs.41730+Rs.31286
Rs.729860/- = ----- x 300
days
earned leave."

2.5. However, the respondents sanctioned leave encashment for Rs.723740/- only on 10.01.2014, i.e. after a lapse of seven months and that too involving reduction of an amount of Rs.6120/- without any reason. No reason for delay was given.

2.6. There is no provision to hold up the amount of leave encashment without any reasons as per Rule 39 (3) which reads as under:-

"the competent authority to withhold whole or part of cash equivalent to earned leave in the case of Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him."

2.7. On the date of retirement, there was no disciplinary or criminal case pending against the applicant nor any recovery of departmental dues were

pending against the applicant but the respondents purposely held up payment of even Rs.723740 for more than a year after sanctioning the amount to harass the applicant without any reason. The applicant has suffered a financial loss and loss by way of interest if it was invested in fixed deposit in any Nationalised Bank or investment in property.

2.8. Even when the sanctioned order was issued vide letter dated 10.01.2014, the amount was not paid to the applicant nor the same was credited to the Bank Account of the applicant. Thereafter, applicant again represented vide representation dated 26.03.2014 to R-2 and requested for early payment with 10% interest from the month of June 2013 since it was due from that date. But the payment was not released despite sanction order and despite the representation.

2.9. On 04.06.2014, after a lapse of five months from the date of sanction order, R-3 credited the amount of Rs.723740/- to the Bank Account of the applicant. Hence, the respondent has been paid the said amount after a lapse of 12 months period from the date of retirement. Hence, the applicant is

entitled for interest on the amount which was held-up without any reasons by the respondents.

2.10. It is come to the knowledge of the applicant from the reply filed before this Tribunal in O.A.No.10/2014 that the respondent has revised the pay to the applicant without giving any copy to the applicant since the respondent had revised the promotion order. However, this act of the respondents is already challenged by the applicant in OA.1/2014 filed by him. The said OA is pending before this Tribunal.

2.11. The applicant has relied upon number of judgments of the Courts and Tribunals in support of his contention for entitlement to interest on delayed payment of leave encashment, which are as follows:-

1. **State of Kerala & Others vs. M. Padmanabhan Nair [(1985) 1 SCC 429] delivered on 17.12.1984.**

2. **Hon'ble High Court of Delhi in the case of W.P. (C) No.1227/2012, Delhi Police vs. Balvant Singh decided on 13.03.2012.**

2.12. During the course of oral hearing following judgments have also been placed for consideration of the Tribunal which are as follows:-

1. **2008 AIR (SC) 1077 in Civil Appeal No.184/2008 S.K. Dua vs. State of Haryana**

decided on 01.09.2008.

2. 1999 AIR (SC) 1212 in Case No.71/1995 Uma Agrawal vs. State of Utter Predeesh decided on 22.03.1999.

3. Hon'ble High Court of Delhi in W.P. (C) 1186/2012 S.K. Srivastava vs. Govt. of NCT of Delhi decided on 29.02.2012.

4. CAT, Principal Bench, New Delhi in OA 1821/2013 SAH Suraj Bhan Vs. Union of India decided on 18.02.2014.

5. CAT, Principal Bench in OA.3813/2012 Dr.Santosh Singh Vs. Union of India decided on 21.10.2013.

6. CAT, Principal Bench, New Delhi in O.A.No.1014/2011 Smt. Rama Manjal Vs. Govt. of NCT decided on 19.07.2011.

7. CAT, Principal Bench, New Delhi in O.A.No.746/2005 Shri Ram Pal Vs. Delhi Development Authority decided on 27.10.2009.

3. In the reply the respondents have stated that the request for settlement of leave encashment dues in respect of applicant was processed on 01.06.2013 with the account section and after getting approval on 12.10.2013 sanction order was issued on 10.01.2014 by the AGM (Staff), office of the CGMT, Maharashtra Circle, Mumbai. However after obtaining the approval of leave encasement the file was missing and search memo was issued on 21.11.2013. Subsequently, the file was traced out on

10.01.2014 and the encashment memo was issued on the same day.

4. In the Rejoinder, the applicant has disputed the contentions of the respondents in the reply to the OA. It is stated that the contention of the respondent that settlement of leave encashment dues was processed on 01.06.2013 is not correct. As per the Note Sheet (R-3) the encashment calculation was put up only on 03.10.2013 by D/A, which was duly sanctioned by the Sr.GM (HR) on 12.10.2013 and file was returned to AD (Staff B) on 14.10.2013. This shows that the leave encashment was calculated and put up for sanction 4 months after his retirement on 31.05.2013. No explanation is given by the respondent for this delay of 4 months. Further, the leave sanction memo was issued on 10.01.2014 after getting approval on 12.10.2013 after a lapse of three months period. This period of delay has also not been explained.

4.1. As per R-3 the sanction memo was put up for signature on 17.10.2013 which was duly submitted by D/A to the AD (Staff B) and same day file was marked to D/A without any remark by AD (Staff B). This

shows that the draft was signed by AD (STB) on 17.10.2013. No further remark is noted in the file. From the Note Sheet dated 17.10.2013, there is remark of 'Resubmit please'. But which authority asked for resubmission is not on record. Again the file was moved by D/A on 10.01.2014 for signature on the sanction memo without any further remark. This proves some mischief or negligence has been committed by somebody and respondents have failed to investigate the same.

4.2. It is also denied that the file went missing and search memo was issued on 21.11.2013 without any remark regarding file going missing. If the file was missing the said remark was required to be noted in file but nothing was noted before resubmission of the file and hence the contention of the respondent is not correct. The statement that the file was missing and showing issue of search memo dated 21.11.2013 is a cooked up reason to cover up the deliberate delay.

4.3. Further, when the sanction memo was issued on 10.01.2014, there is no justifiable reason for not remitting the amount of leave encashment till 04.06.2014. This has also not been explained by

the respondents. Hence, six months more has been taken by Accounts Section. Hence, the respondents have failed to put up correct reason for delay in payment of leave encashment in the case of the applicant.

4.4. The applicant had submitted three representations dated 16.09.2013, 18.11.2013 and 26.03.2014 but the respondent has not paid any heed to the said representations and failed to file reply even.

5. The Tribunal has gone through the O.A. alongwith Annexures A-1 to A-9 and rejoinder filed by the applicant.

6. The Tribunal has also gone through the Reply alongwith Annexure A-1 and R-3 filed on behalf of the official respondents.

7. The Tribunal has heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

8. The facts of the case as stated by the applicant are completely and overwhelmingly borne out from the

records. The respondents have also not denied that there was delay. Whether it was a case of missing file or not there is nothing on record before this Tribunal to conclude that delay has been satisfactorily explained before this Tribunal. Although, leave rules do not envisage payment of interest on delayed payment of leave encashment, as per a catena of decisions of the Hon'ble Supreme Court, interest payment for delayed payment of retiral dues is an entitlement, where delay has occurred and where the Govt. Servant has not been responsible in the delay, which is applicable in the present OA. We recall these judgment, hereinafter.

9. In the case of **S.K. Dua (Supra)** the Hon'ble Supreme Court allowing the appeal has held that

“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 the absence 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.”

10. In the case of **Sh. Suraj Bhan (Supra)** the CAT, Principal Bench, New Delhi in OA 1821/2013 decided on 18.02.2014, allowing the OA, the Tribunal directed the respondents to pay the interest to the applicant on the amount of commuted value of pension and leave encasement and Group Insurance. Relying on the judgment of CAT, Principal Bench, New Delhi in the case of **K.C. Uttreja vs. The State Government of NCT of Delhi** in OA.No.1709/2007 decided on 21.02.2008, following the decision of the Hon'ble Supreme Court in **Vijay L. Malhotra Vs. State of U.P.** reported in **AIR 2000 SC 3513** decided on 31.01.2000, relying on **S.K. Dua's case (Supra)** and a Full Bench decision of the Tribunal and other decisions of the Hon'ble High Court, the Tribunal, while considering a similar question, observed and held as follows:-

“12. It is trite law that an administrative instruction issued by the Govt. though supplements the rules if rules are silent on an aspect of the matter. However, when the rules do not stipulate as to the methodology in the present case of interest on commuted value of pension, insurance and leave encashment, the law declared by the Apex Court, which holds the field, overrides any administrative instructions and in law does not allow through an administrative order to overturn the judicial decision or its effect except by a due

process of law, i.e., framing of the rules, as held by the Full Bench of this Tribunal at Mumbai Bench in of this Tribunal in *R. Jambukeswaran and others v. Union of India and others*, 2004 (2) ATJ CAT 1.

13. A Division Bench of the Chandigarh Bench of this Tribunal in *Unreserved Employees Association v. Union of India*, 2005 (1) ATJ 1 ruled that a judicial pronouncement cannot be overturned by issuing an administrative order. Moreover, in *Govt. of Andhra Pradesh v. G.V.S.K. Girls High School*, 2002 (1) SC SLJ 224, the Apex Court ruled that legislation cannot overrule a judgment, unless it removes the basis of the legal right upon which the judgment is based. The aforesaid has also been re-iterated by the Apex Court in *State of Haryana v. Ram Kumar*, JT 2000 Suppl. 1 SC 294. In the above backdrop of the matter the Apex Court from time to time in several pronouncements held the right of interest on delayed retiral dues in *Union of India v. M.S. Abdulla*, 2006 SCC (L&S) 1410, and interest was allowed on account of delayed payment of retiral dues, including pension and revision of the pay scale as per the recommendations of the Central Pay Commission by granting 12% interest. The Apex Court also in *U.P. Raghavendra Acharya and others v. State of Karnataka and others*, 2006 SCC (L&S) 1948, in so far as pension is concerned, held pension not to be a bounty but a deferred salary akin to the right to property.

14. In *Dr. Uma Aggarwal (supra)* a three-Judge Bench of the Apex Court ruled as to interest of retiral dues, including pension in the light of the decision of the Apex Court in *State of Kerala v. M. Padmanabhan Nair*, 1985 (1) SCC 429, with the following observation:

We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps at least two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired Government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the Government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

17. Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in *Dodge v. Board of Education* (1937 (302) US 74 : 82 Law Edn. 58) a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

17. If one has regard to the above, though the question of non-existence of rules was considered, yet when it is observed that interest can be claimed on the basis of Articles 14, 19 and 21 of the Constitution of India being a Fundamental right, the same holds field and for want of any provision under the Pension Rules the OM of Department of Pension and Pensioners Welfare dated 5.10.1999, which is in direct conflict with the pronouncements of the Apex Court, including the decision in Gorakhpur Univeristy (supra), where the interest was allowed to be disbursed, the instructions cannot override the judicial pronouncements. It is trite that once an arena is covered by judicial pronouncements, the administrative instructions, unless transformed into a valid legislation, cannot be allowed to infiltrate the said arena.

18. In the light of the above, though the Pension Rules do not contain any provision of interest on other heads of retiral dues, other than gratuity, yet the judicial pronouncements estop the right of Govt. servant if the retiral dues are delayed."

11. The Hon'ble High Court of Delhi in W.P. (C)

1186/2012 S.K. Srivastava vs. Govt. of NCT of Delhi

decided on 29.02.2012 the Court held as follows:-

"4. The learned counsel for the petitioner states that all other dues had been paid to the respondent along with interest at the GPF rate, but since there was no provision in the leave rules for grant of interest, that is why the present petition has been filed. We do not agree with the submission made by the learned counsel for the petitioner that because there are no rules providing for grant of interest, the respondent would not be entitled to the

same. There is also no bar to the grant of interest whenever the leave encashment amount is delayed for no fault on the part of the employee. The government has retained the money from the year 2000 till 2011, which, in WP (C) No.1186/2012 Page 3 of 4 any event, was due to the respondent in the year 2000 itself, particularly in view of the fact that even the conditions specified in Rule 39(3) had not been complied with. Consequently, grant of interest on the said amount at the GPF rate by the Tribunal cannot be faulted. In any event, we may also point out that between 2000 and 2011, because of inflation, the real value of the amount that was due to the respondent had substantially eroded, the payment of interest at the GPF rate would only be a kind of balm applied to the injury suffered by the respondent. It may, in fact, actually turn out that the petitioner would not be paying anything more in real terms than what it was liable to pay in the year 2000."

12. In the case of **Uma Agrawal (Supra)** the Hon'ble Supreme Court held that in view of the departmental delay in payment of retiral benefits it was fit case for awarding interest to the petitioner. In the said case, the Hon'ble Supreme Court has held that all papers pertaining to settlement of retiral dues must be prepared at least two years in advance of the date of retirement and the Court/Tribunal should be keep in mind the time schedule prescribed in the Rules/instructions part from other relevant factors applicable to each case where the retired government servant claims interest

on retiral benefits. In the case of leave encashment since the final calculations can be arrived at only after the date of retirement, one year delay in making the payment is untenable and hence, applicant is entitled to interest.

13. In the case of CAT, Principal Bench in OA.3813/2012 **Dr.Santosh Singh (Supra)** relying on the case of **Vijay L. Melhotra (Supra)** allowed the OA regarding payment of interest over the delayed payment of leave encashment and CGEGIS at the rate at which it is awarded on the deposits of GPF within a period of two months.

14. In the case of **Smt. Raman Munjal (Supra)** decided on 19.07.2011 relying on the case of **Vijay L. Melhotra (Supra)** disposed of the OA with a direction to the respondents to grant interest to the applicant on the amount of leave encasement for the period from 01.09.2002 to 17.07.2007 at the rate of 8% per annum within a period of two months.

15. In the case of **Shri Ram Pal Vs. Delhi Development Authority (Supra)** the CAT, Principal Bench, New Delhi in O.A.No.746/2009 delivered on 27.10.2009 relying on the case of **S.K. Dua vs. State**

of Haryana & Another (2008 (3) SCC 44) and **Hukum**

Chand Vs. Union of India & Others in

O.A.No.1393/2009 decided on 16.09.2009, the Tribunal held that even in the absence of rules/administrative instructions, interest is payable on the delayed payment of retiral dues and the respondents are directed to pay interest on delayed payment of leave encashment and commutation of pension at the rate as applicable to GPF, to the applicant within three months from the date of receipt of a certified copy of this order.

16. In the case of **State of Kerala & Others vs. M. Padmanabhan Nair (Supra)** the Hon'ble Supreme

Court held retirement dues must be paid promptly to a Government servant immediately after his retirement. This cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

17. In the case of **Delhi Police vs. Balvant**

Singh (Supra), the original respondent filed a writ petition against the order passed by the CAT,

Principal Bench in O.A.No.3933/2010 dated 19.05.2011
wherein the Tribunal has passed the following
directions:-

“Keeping in view the totality of facts and circumstances of this matter, the Tribunal is of the considered opinion that a simple interest at the rate of 9% per annum should be granted to the applicant on the delayed payment released on 23.04.2010, and 19.07.2010 from the date of retirement of the applicant i.e. from 01.09.2003 till the actual payment is made.”

The Hon'ble High Court Delhi dismissed the writ petition and upheld the order of the Tribunal vide its judgment dated 13.03.2012.

18. In view of the above, there has been deliberate and unexplained delay on the part of the respondents and that there was no delay on the part of the applicant, both of which stand established in a resounding manner. Hence, the applicant is entitled to payment of interest on delayed payment of leave encashment even though the CCS (Leave) Rules, 1972 does not provide for payment of interest due to delay. This issue has already been covered by the aforesaid judgments of the Hon'ble Supreme Court, which have been rightly relied upon by the applicant in the present case.

19. Hence, the OA is liable to be allowed. The impugned order dated 10.01.2014 is hereby quashed and set aside. The respondents are directed to pay the interest at rates of interest permissible for investment in fixed deposit in any Nationalised Bank within a period of one month from the date of receipt of certified copy of this order. The period will be calculated from June, 2013 till the date of actual payment.

20. Accordingly, OA is allowed. It is also fit that the respondents are imposed a cost of Rs.5000/- payable to the State Legal Service Authority, Mumbai within a period of one week from the date of receipt of certified copy of this order.

(Ms.B. Bhamathi)
Member

(A)

Amit/-

