

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA No.3780/2017**

**Reserved on: 26.02.2019**

**Pronounced on: 11.03.2019**

**Hon'ble Mr. A.K. Bishnoi, Member (A)**

Dinesh Kumar Jain,  
Aged 56 years, Group 'A',  
(Retired as Executive Engineer (Civil),  
S/o Shri S C Jain,  
R/o B-4/44, Rajasthali Apartments,  
Pitampura, New Delhi-110034.

-Applicant

(By Advocate: Shri Ashish Nischal)

**Versus**

1. Union of India  
Through its Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi-110108.
2. The Pay and Accounts Officer,  
Central Public Works Department,  
West Zone,  
Ministry of Urban Development,  
101, M K Road, New Marine Lines,  
Mumbai-400020.

-Respondents

(By Advocate: Shri K.M. Singh)

**ORDER**

The present OA has been filed seeking the following reliefs:-

- “i) Quash and set aside the order No.PAO/CPWD/WZ/F.PENSION/VCC/PENDING/73 7 dated 2<sup>nd</sup> August 2017;
- ii) respondent be directed to release all the retiral benefits, as admissible to the applicant, with interest @ 9% percent per annum till its realization;

iii) Pass any other Order(s) which this Hon'ble Tribunal deems fit".

2. The brief facts of the case are as follows:-

2.1 The applicant, who was working with the respondents as Executive Engineer (Civil) on 06.04.2017 applied for voluntary retirement under FR 56 (k). On 26.05.2017 (Annexure A-3), the Vigilance Unit of the respondent, with regard to the vigilance status of the applicant, stated that no case is pending against him. However, disciplinary proceeding against him in one case was under contemplation and CVC's 1<sup>st</sup> stage advice has been sought. Subsequently, he was allowed to retire voluntarily vide Office Order dated 04.07.2017 (Annexure A-4). Thereafter the applicant sent a letter on 06.07.2017 followed by certain other letters seeking payment of his retiral dues and delivery of Pension Payment Order. The dues of the applicant, however, were not paid on account of the fact that some complaint was pending against him which was investigated following which it was decided to initiate minor penalty proceedings against him. The matter was sent to CVC for seeking 1<sup>st</sup> stage advice and after receiving the revised advice of the CVC, the complaint was closed against him vide order dated 09.03.2018 (Annexure R-4) following which the remaining retiral dues were paid. The applicant has submitted that till date no charge sheet has been issued to him and no disciplinary proceedings are pending

against him and that once the vigilance clearance has been given, retiral benefits cannot be withheld. Hence the present OA.

2.2 Both sides agree on the point of fact that now, during the pendency of the proceedings, the applicant's retiral dues have been paid and the only issue which is left to be decided is the payment of interest for the delay that has taken place in making the payment by the respondents.

2.3 That being so, the issue in the present OA narrows down to the payment of interest and the method of computation only.

3. Shri Ashish Nischal, learned counsel appearing on behalf of the applicant drew my attention to the order passed by this Tribunal in OA No. 908/2014-**U. Rai Arya vs. Union of India & Another** dated 18.02.2015 in which this Tribunal had allowed to the applicants therein the payment of interest @ 9% on all retiral benefits. The said judgment was challenged before the Hon'ble High Court of Delhi in W.P. (C) No.7131/2015-**Union of India & Ors. vs. U. Rai Arya**, which was dismissed on 29.07.2015.

4. Shri K.M. Singh, learned counsel arguing on behalf of the respondents drew my attention to Government of India's Decisions (3) (ii) in the context of Rule-68 of CCS (Pension) Rules, 1972 as given in Swamy's Pension Compilation which makes a distinction between retirement other than on superannuation and retirement

on superannuation for the purposes of calculation of interest on gratuity. He also submitted that the logic contained in the provision relating to gratuity may be extended to all retiral benefits but was not able to cite any specific rule on the subject. Attention was also drawn to the Govt. of India's instructions contained in O.M. No. 38/64/98-P. & P.W. (F), dated the 5<sup>th</sup> October, 1999 as per which no interest is payable on account of delayed payments of leave encashment and CGEGIS.

5. I have carefully gone through the pleadings and considered the arguments made by the learned counsel for two sides.

6. As regards payment of interest on gratuity the position has been made clear in Govt. of India's instructions contained in OM No. 7/20/89/P. & P.W. (F), dated the 22<sup>nd</sup> January, 1991. It says:

### **On retirement than on superannuation**

"Such cases of retirement will be either under Clause (j) or Clause (k) of FR 56 or Rules 38, 39, 40, 48 or 48-A of the CCS (Pension) Rules, 1972. In such cases, the pension sanctioning authority does not get adequate time for processing pension papers, as is available to it in the case of retirement on superannuation. Instructions have already been issued from time to time that the work relating to verification of service should be done on year-to-year basis and should not be kept in arrears. Provisions also exist that on completion of 25 years qualifying service or on one being left with five years service before the date of retirement, whichever is earlier, the Head of Office should verify the service rendered by such Government servant and communicate to him the period of qualifying service as determined vide Rule 32 of the CCS (Pension) Rules, 1972. It is, therefore, expected that even in cases of retirement other than on superannuation, it should not take unduly long time for all Heads of Offices to prepare pension papers of retiring employees. It has, therefore, been decided that where the payment of gratuity in such cases is delayed beyond six months

from the date of retirement, interest should be paid for the period of delay beyond six months from the date of retirement”.

This being so there is no need for further discussion regarding interest on delayed payment of gratuity as this is based on sound logic which has not been challenged by either side.

7. In **U. Rai Arya** (supra), this Tribunal has held as follows:-

“7.....When he was entitled to get his retirement benefits immediately after his superannuation on 30.06.1994, he actually got them only on 01.02.2008. The only way to compensate for the loss suffered by him is to pay him the interest. The respondents have paid him the interest on DCRG, as there is a specific rule by the respondents to pay interest if there was delay in payment of DCRG. However, there is no rules framed by the respondents to pay interest on the other retirement dues. **Just because the Respondents have no rules for payment of interest on the other retirement benefits, the employee cannot be made to suffer. In such circumstances, as held by the Apex Court in the case of S.K. Dua (supra), the Articles 14, 19 and 21 of the Constitution of India would apply because the retirement benefits are not a bounty.....**

8. In the above facts and circumstances of the case, I allow this O.A. and direct the respondents to give the applicant interest @ 9% on all dues which would have been otherwise admissible to him had he been allowed to retire on superannuation on 30.06.1994 itself. They shall also pay the difference of salary and allowances for the suspension period with 9% interest, if not paid already. The respondents shall calculate the interest payable on each of the items separately and furnish the calculation sheets to the Applicant for his verification.....”

(emphasis supplied)

8. The order of this Tribunal was challenged in **Union of India & Anr. vs. U. Rai Arya** (supra) wherein it was held as follows:-

“9. The short question which gains importance in this case is as to **whether the retirement dues of the respondent were withheld on account of any fault of the respondent.....**”

(emphasis supplied)

9. There is one difference between **U. Rai Arya** (supra) and the applicant in the present case. The applicant in **U. Rai Arya** (supra) retired on superannuation and in the present case the applicant had sought voluntary retirement. Having said that, the essential and the important common feature between the case cited above and the present case is that the retirement dues were not withheld on account of any fault of the retired employee but due to flaw in the decision-making process of the respondents.

10. Thus, the principle enunciated in the above cited case would apply to the case of the applicant and the absence of any provision for claiming any interest could not come in the way of his right to be so granted.

11. A distinction, however, has to be made between retirement on superannuation and voluntary retirement. As regards payment of interest on gratuity there is a specific provision '**on retirement other than on superannuation**', in Govt. of India's instructions contained in OM dated the 22<sup>nd</sup> January, 1991 (ibid), which reads as follows:-

"In such cases, the pension sanctioning authority does not get adequate time for processing pension papers, as is available to it in the case of retirement on superannuation".

xxx xxx xxx

"It has, therefore, been decided that where the payment of gratuity in such cases is delayed beyond six months from the date of retirement, interest should be paid for the period of delay beyond six months from the date of retirement".

12. The same principle can be applied to the other retiral benefits admissible to the applicant also for the purpose of deciding the date from which interest would become due. The applicant is entitled to receive interest on the retiral benefits only from such date as he would have ordinarily got them from if the issue of administrative action had not arisen at all. As this is a case of retirement other than on superannuation, on the lines of the provision relating to delay in payment of gratuity, it is reasonable to stipulate that for other retiral benefits also interest should be paid for the period of delay beyond six months from the date of retirement.

13. As for the rate of interest, in the OA it has been claimed at the rate of 9% per annum whereas in the calculation sheet submitted by the learned counsel for the applicant subsequently, it has been claimed at 8% per annum. It is reasonable to fix this at the prevailing GPF rate of interest. It is, therefore, directed that the respondents shall pay to the applicant interest at the prevailing GPF rate of interest on all retiral dues admissible to him for such period as exceeds the period of six months from the date of retirement upto the time when payments were actually made. While doing so, the respondents shall provide to the applicant the

calculation sheet which shall be item-wise. This shall be done within a period of two months from the date of receipt of a certified copy of this order.

14. The OA is partly allowed in the aforesaid terms. No order as to costs.

***(A.K. BISHNOI)***  
***MEMBER (A)***

cc.