

**Central Administrative Tribunal
Principal Bench**

OA No. 3762/2017

MA No.1354/2019

Order reserved on : 05.08.2019

Order pronounced on: 02.09.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

P.K.Chaturvedi,
S/o Late Dr. D.D.Chaturvedi,
Aged about 61 years,
R/o 161, DDA Flats,
Sector 1, Dwarka, New Delhi-110075,
Retired Chief Engineer from Employees
Provident Fund Organisation,
New Delhi on 30.4.2015.

... Applicant

(By Advocate: Sh. Padma Kumar S.)

VERSUS

1. Union of India through
The Secretary,
Ministry of Labour and Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110001.
2. Central Provident Fund Commissioner,
Employees Provident Fund Organisation,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi-110066.

... Respondents

(By Advocate: Sh. Keshav Mohan with Sh. Rishi Awasthi)

ORDER

The applicant is a retired Army officer, who had attained the rank of Lt. Col. He was deputed to Employees' Provident Fund Organisation (EPFO in short) on 15.05.2001 and was in receipt of

Army rank, pay and allowances including deputation allowance. As per terms of deputation, provident fund (PF), share of pension and leave encashment amount was deposited by Army with EPFO, who are respondent no.2 here.

2. As his services were required permanently by EPFO, a proposal was made to absorb him in EPFO on the post of Chief Engineer on 20.02.2004. Relevant extracts of this proposal are reproduced below:

“A proposal for absorption of Lt. Col Chaturvedi, Chief Engineer was sent to the Chairman, Central Board of Trustees, Employees’ Provident Fund for approval vide note dated 5th May 2003. The proposal was received back from Hon’ble Chairman, Central Board of Trustees and Employees’ Provident Fund granting three months extension to Lt. Col. Chaturvedi as Chief Engineer in the third year.

2. However, it is brought to the notice of Hon’ble Chairman, Central Board of Trustees that the services of Lt. Col Chaturvedi are required permanently keeping the administrative needs of the Physical Facilities Division (PFD) in view.

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6. It may also be pertinent to mention that the process of selection of new incumbents for the post of Chief Engineer in EPFO, has been experienced that very few competent and willing officers are available for appointment of deputation. Over the years, the applicants for the post of Chief Engineers used to be from the Government Department, CPWD. The nature of civil works in EPFO being different from the other Government departments, very few persons have been willing to come to Employees Provident Fund Organisation. In some cases the incumbents have not even completed their full tenure in EPFO.

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8. We have made a reference to the Ministry of Defence, Government of India, i.e., the Cadre Controlling Authority of the Officer with a request to issue their no objection for his selection on absorption basis in Employees Provident Fund Organisation. Ministry of Defence vide letter dated 6th June, 2003 had requested to forward the appointment letter for absorption of Lt. Col. P.K. Chaturvedi alongwith an application

by the officer requesting for Pre-mature retirement. Further Ministry of Defence vide their letter dated 11th February, 2004 permitted to retain Lt. Col. P.K. Chaturvedi till absorption or 30th September, 04, whichever is earlier.

9. It was conveyed by the Ministry of Labour that Chairman, CBT had not agreed to the proposal of Sh. Chaturvedi's permanent absorption in EPFO and has directed to relieve him as soon as his extension period is over. In view of para 3, Chairman CBT had already approved deputation of Lt. Col. P.K. Chaturvedi upto 8.4.2005 and on willingness of the officer the absorption of the officer in EPFO.

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12. In view of the above considerations and confirmation from army authorities for relieving of Lt. Col. P.K. Chaturvedi on permanent absorption in EPFO, the proposal of absorption of Lt. Col. Chaturvedi in EPFO as Chief Engineer as per the Rules & Instructions issued by Department of Personnel & Training, Govt. of India is for reconsideration of Hon'ble Member of CBT, EPF."

3. In follow up, a proposal was made by EPFO on 23.07.2004 and was put up to Regional P.F. Commissioner (HRM) (RPFC in short). The recommendation dated 20.07.2004 by RPFC, Gr. II (HRM-I) and the orders dated 23.07.2004 thereupon by RPFC (HRM) on the noting sheet, read as under:

"5. As such the above note and the line of action is for approval of the CPFC. A draft letter addressed to the Ministry of Defence is also placed below for approval. Lt. Col. P.K. Chaturvedi has already submitted his PMR Papers in anticipation of the proposal of his permanent absorption in EPFO.

Sd
20.07.2004
RPFC, Gr II (HRM-I)

Having regard to the facts mentioned in Para 4, CPFC may kindly approve the line of the action suggested above.

Sd
23.07.2004
RPFC (HRM)"

4. The applicant pleads that in this context, as a prelude to permanent absorption in EPFO, he had also sought premature retirement from Army, as seen from a letter issued by Army to EPFO on 24.08.2004 for his permanent absorption in EPFO.

Relevant part of this letter dated 24.08.2004 reads as under:

“1. Reference MS-3B Note No. A/12080/37452/2003/MS-3B dated 26 Jul 2004.

2. The request of IC-37452 Lt. Col. Chaturvedi, Engrs., for premature retirement from the Army service has been approved by the competent authority.

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8. The officer has sought premature retirement from Army for his permanent absorption in Employees' Provident Fund Organisation.”

5. EPFO vide their letter dated 17.11.2004 formally approved absorption of applicant however this was on re-employment basis. The relevant part of this letter reads as under:

“The Chairman, Central Board of Trustees, Employees' Provident Fund has approved the permanent absorption of Lt. Col. P.K. Chaturvedi as Chief Engineer in the pay scale of Rs. 14,300-400-18,300/- in Employees' Provident Fund Organisation on re-employment basis on expiry of deputation terms of employment.

2. The appointment of Lt. Col. P.K. Chaturvedi as Chief Engineer in EPFO in the scale of pay of Rs. 14,300-400-18,300 on re-employment basis will be subject to the following terms and conditions:

(i) Date of permanent absorption: The date of permanent absorption of the officer in EPFO will be 19th November, 2004 (F/N) and accordingly the appointment on deputation terms will stand terminated with effect from 18th Nov, 2004 (A/N). On appointment the service conditions will be governed by the EPF (Staff and conditions of service) Regulations 1962.

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(iv) Pension/Gratuity :- The Ministry of Defence will pay retirement pension, gratuity and other retirement benefits admissible upto the date prior to the date of absorption/re-employment in EPFO. The officer will be entitled to Civil Service benefits of Pension/Gratuity in EPFO from the date of permanent absorption/re-employment as admissible under the rules applicable to employees of the Central Board of Trustees, Employees' Provident Fund.

(v) Family Pension:- On his permanent absorption/re-employment in EPFO, the family of Lt. Col. P.K. Chaturvedi will be eligible for Family pension as admissible and sanctioned by the Ministry of Defence.

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(vii) Benefits after permanent absorption/re-employment:- Benefits such as insurance, medical, housing etc., for the period of service rendered by Lt. Col. P.K. Chaturvedi in Employees' Provident Fund Organisation, he will be entitled to the benefits admissible to the corresponding category of employee of the EPFO and continue to be governed by its rules in all respects.

(viii) Provident Fund :- The amount of subscription together with interest thereon standing to the credit of Lt. Col. P.K. Chaturvedi in the GPF Account will be transferred to his new SPF Account in the EPFO. Once such a transfer of Provident Fund balance has taken place, Lt. Col. P.K. Chaturvedi will be subject to the Provident Fund Rules of the EPFO.

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6. Thereafter balance PF from Army was taken over by EPFO and kept in SPF account in January 2005.

7. By that time even though the New Pension Scheme (NPS) was announced by the Government and it was to take effect for all those who joined on or after 01.01.2004, the orders to implement the NPS in EPFO were still not issued. The implementation of NPS in EPFO was approved by Central Board of Trustee of EPFO in its 190th meeting on 15.10.2010. However, it was only after the Act for the executing agency for

NPS, namely PFRDA was passed by Parliament on 19.09.2013 and it was notified on 01.02.2014, that the orders to implement NPS in EPFO could be issued, even though these were made applicable for all those who joined EPFO on or after 01.01.2004. Thereafter, applicant retired on 30.04.2015 i.e. within about one year after this notification.

8. The applicant pleads that while to start with, he has given his consent for absorption in EPFO, and it was processed as such, EPFO absorbed him on re-employment basis and started to deduct an amount of Rs.12,225/- per month, on account of pension being paid by the Army, from his monthly salary being paid by EPFO. Thereafter another letter was issued by EPFO on 04.08.2011 enhancing this deduction to Rs.21,700/- per month w.e.f. 1.1.2006 after 6th CPC came into being.

9. Feeling aggrieved at this deduction, applicant filed OA No.2509/2012 wherein it was pleaded that the applicant be declared to have been permanently absorbed in EPFO and that he was not re-employed therein and to declare and direct that the applicant is entitled for full pay and allowances admissible for the post held by him in the office of EPFO without any deduction being made from his salary, on account of pension received by the applicant from Army. This OA was dismissed vide order dated 16.04.2014.

10. This dismissal was challenged by the applicant by filing WP (C) No.4266/2014 before Hon'ble High Court of Delhi. During prosecution of this writ in the Hon'ble High Court, DOP&T who were also one of the respondents, gave following averment:

“.... As he has been deemed to have prematurely retired with effect from the date of his absorption in the EPFO, his case cannot be treated as that of reemployment. This will be particularly so in view of the assurance held out to him. If nothing else, the action of EPFO is also hit by the law of estoppels which bars EPFO from going back from its promise on the basis of which the office has changed his position.”

10.1. In keeping with this, interim relief granted by Tribunal and continued by High Court, was continued and the matter was remitted back by Hon'ble High Court to CAT for adjudication vide orders dated 08.10.2015. The relevant parts of the order passed by Hon'ble High Court reads as follows:

“2. It is not necessary to notice detailed facts of this matter as during the course of hearing a short affidavit has been filed by DoPT, which is being represented through Union of India (respondent no.4 herein), which admittedly was not placed on record before the Tribunal.

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5. As agreed, interim order, which was granted by the Tribunal and continued by this Court, shall continue. We grant leave to the parties to place additional documents on record within two weeks. The matter would be decided by the Tribunal on the basis of additional documents filed and the existing pleadings on record.

6. It would be open for the petitioner to seek his pensionary benefits and the said request of the petitioner shall be considered by the Tribunal in accordance with law and expeditiously.”

(Emphasis supplied)

11. The OA No.2509/2012 was, therefore, re-adjudicated by the Tribunal and was dismissed again vide orders dated 24.01.2017.

The relevant part of the order reads as follows:

“24. On the question whether it is ‘absorption’ or ‘reemployment’, from the facts and evidence, it is quite clear that this was a case of ‘reemployment’.

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26. Thus on both counts, the finding goes against the applicant and the OA does not succeed. It is, therefore, dismissed. There shall be no order as to costs.”

12. This dismissal has again been challenged by the applicant in Hon’ble High Court of Delhi in WP (C) No.10660/2018 which is still pending. This writ was last heard on 16.7.2019 and the next date of hearing is scheduled on 18.02.2020. Following reliefs have been sought in this WP (C):

- “(i) Issue a writ of certiorari or any other writ or order or direction quashing Order dated 04.01.2017 (sic) in OA No. 2509/2012 (ANNEXURE P-1).
- (ii) Allow the OA No.2509/2012 with all consequential benefits.
- (iii) Any other relief which this Hon’ble High Court may be pleased to grant under the facts and circumstances of the case.”

Therefore, as per adjudication by Tribunal, applicant was treated as re-employed (para 11 supra), whereas he is continuously seeking to be treated as absorbed and this is yet to be decided by Hon’ble High Court in WP (C) No.10660/2018.

However, the directions of Tribunal in OA No.2509/2012 have not been stayed so far.

13. In terms of para 6 of order by Hon'ble High Court in WP (C) No.4266/2014 (para 10.1 supra), the applicant was also granted liberty to agitate the matter in respect of his pension before Tribunal. Accordingly, the applicant filed OA No.632/2016 before the Tribunal. During prosecution of this OA, certain interim directions were given on 26.04.2017, which read as follows:

“Learned counsel for respondents submits that the gratuity and leave encashment amounting to Rs.2,17,063/- and Rs.3,54,833/- has been calculated as due to the applicant. The amount already paid to the applicant is Rs.4,86,797/-. The amount due to be paid to the applicant after deduction of the above is Rs.85,099/-.

On the request of the learned counsel for the applicant, the learned counsel for respondents submits that an appointment has been set up for the applicant to meet Shri Rajeshwar Rajesh, Regional Provident Fund Commissioner-II (ASD) on 28.04.2017 at 11.00 a.m. The applicant would carry documents relating to Office Order dated 25.04.2017 granting the benefits of gratuity and leave encashment. The applicant shall discuss his other benefits, which have not been released so far and admissibility of the Old Pension Scheme to him. It is informed that the applicant had filed OA No.2509/2012 which has been dismissed vide order dated 16.04.2014. The applicant's status has been decided in that OA. Therefore, the benefits accruing to the applicant are to be decided pursuant to the decision in the above OA and he would be informed in the meeting of the benefits which would be admissible on account of his retirement. The final outcome of the meeting be recorded and a copy be given to the applicant in the form of an order for implementation within two weeks from the date of the meeting and the applicant is at liberty to challenge the same, if so aggrieved.

List on 09.05.2017.”

14. In compliance thereof, a meeting was held by the applicant with EPFO authorities and they passed a reasoned and speaking order dated 04.05.2017. Since direction in OA No.632/2016 were complied with, the OA was dismissed as withdrawn vide orders dated 03.10.2017, with liberty to applicant to approach Tribunal again, if any grievance still remains. These orders read as under:

“Learned counsel for the applicant states that in compliance to the order dated 26.04.2017 of the Tribunal, the respondents have filed a speaking order dated 04.05.2017. He, therefore, seeks permission to withdraw the OA, which is allowed. Accordingly, the OA is dismissed as withdrawn. However, the applicant is at liberty to approach the Tribunal again, if any grievance still remains.”

15. In accordance with liberty granted to the applicant, instant OA has been filed by the applicant with a limited prayer as under:

- “i. Quash and set aside the impugned order dated 04.05.2017 to the extent it has not granted the full retiral benefits as applicable to be Applicant (ANNEXURE A-1)
- ii. Direct the respondents to release the retirement civil pension on last pay drawn as Rs. 63450 plus GP Rs. 8900 (EPFO order dated 26.12.2016 and note 8 of FR rule 9(21)(a)(i) without any restriction on military pension following GOI DOPT 28/7/99-P&PW(B)(Vol.II) dated 11.04.2001 and **benefit of the applicant as mentioned at Para 4.24 above with arrears thereon and** grant the Applicant interest on the delayed payments of gratuity, PF and leave encashment as mentioned at Para 4.24.

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- v. Any other relief which this Hon’ble Tribunal may be pleased to issue.”

16. The applicant has now pleaded that in reference to the speaking order dated 04.05.2017 passed by EPFO, the subsisting

grievance pertains to Clause-I & IV thereof and Clause VIII in respect of pension. Reply to Clause VIII refers to Clause VII also. The issue raised by the applicant before EPFO and the reply given by the EPFO for these four clauses, as recorded in order dated 04.05.2017, is reproduced below:

Sl. No.	Issues Raised	Action Taken
I.	On account of PF release dated 16.08.2016 while actual dues were 30.04.2015 and amount intimated to CAT was on calculations of 7/2016, the interest on delay period is still pending.	A sum of Rs. 10,48,660/- on account of SPF accumulation along with interest @ 8.7% for the period upto 04/2016 has been paid vide cheque No. 439303 dated 12.08.2016 as per directions/order dated 14.07.2016 of Hon'ble CAT, Principal Bench, New Delhi.
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IV	Further interest on delay release from 30.04.2015 to 18.10.16 on Rs. 478069 and from 30.04.15 to 25.04.17 on Rs. 217063 and further dues till date of release to be paid to me.	Interest on gratuity and leave encashment not payable.
	Xxx	Xxx
VII	EPFO kept GPF account till date of retirement and demanded pension contribution for my deputation period from Delhi Govt. vide EPFO letter dated 05.06.2015 as per old pension rule and Delhi govt. refer letter no. F/EE/C-3/2017-18/D-225 dated 07.03.2017 and confirmation of receipt if vide EPFO letter no. I/4(1508)01/3405 dated 25.04.2017. Pension to be released as per CCs pension rule immediately. And till actual pension is paid provision pension may please be released as per old pension rule.	Since the case of Lt. Col. P.K.Chaturvedi was the case of re-employment and since he failed to fill up and submit the Form no. SI, generation of PRAN under NPS was not possible and so an amount of Rs.5.50 Lacs was refunded to him on 23.12.2014. Further a sum of Rs.10,48,660/- on account of SPF accumulations along with interest upto 30.04.2016 has already been released vide cheque date 12.08.2016. Hence, the question of pension does not arise.
VIII	PPO may please be issued	Same as at point VII.

17. The payments at clause I in para 16 above, pertained to payment of PF which was applicant's own contribution and was taken over from Army and was put into SPF by EPFO, and as per the reply of EPFO itself, certain delays have occurred in this regard, i.e., upto what date was the interest accounted for and when it was actually paid to applicant. The subsisting claim is in respect of interest for such delays.

The payments at clause IV in para 16 above, pertain to payment of gratuity and leave encashment and because certain delays have occurred in this payment by EPFO, the subsisting claim is in respect of interest for such delays.

18. As regards the payment of pension at Clause VIII in para 16 above, the applicant has pleaded that he has first joined the EPFO on 15.10.2004 on deputation and thereafter he gave consent for absorption and proposal was processed accordingly but eventually the absorption orders were issued by EPFO on 17.11.2004 where it was mentioned to be on re-employment basis.

Thereafter, as brought out above, the applicant has been continuously agitating the matter for treating him as absorbed in EPFO before the Tribunal as well as before the Hon'ble High Court of Delhi. However, even though Tribunal has decided his case to be that of re-employment but applicant is aggrieved and

has approached Hon'ble High Court seeking to be treated as absorbed, and the matter has not reached finality as yet (para 12 supra). Meanwhile, he had retired from service on 30.04.2015 after attaining the age of superannuation.

19. It is true that applicant has been making efforts to be treated as absorbed which will entitle him to be covered under Old Pension Scheme. However, even though EPFO treated him under re-employment basis and which was upheld by Tribunal also, and which entitles him for NPS, EPFO has now denied even the NPS also on the plea that while he was serving in EPFO he was only pleading to be treated as absorbed and as such he did not take PRAN number at that time, which is essential for depositing the employee's contribution and equal amount of employer's contribution to enable an employee to be covered under NPS. Therefore, applicant is being denied any kind of pension in his old age.

20. In this context, the applicant is aggrieved that even by the status as adjudicated by Tribunal i.e. of being re-employed (para 11 supra) which entitles him for NPS and he having completed a period of more than 10 years service in EPFO w.e.f. 17.11.2004 to 30.04.2015 when he retired and which by itself entitles him for pension under Old Pension Scheme also, he has been denied both new pension as well as old pension. Denial of pension

under either of the two schemes has been pleaded to be total injustice. Applicant also pleaded that he has now taken a PRAN number also which is needed for depositing the contributions under NPS.

21. Respondents opposed the OA pleading that the matter had been *sub judice* since long and they had released all the payments which were otherwise due to the applicant.

In regard to coverage of the applicant under pension scheme, the respondents pleaded that the very subject matter whether the applicant is to be covered under Old Pension Scheme or under NPS, has to be decided now in terms of WP (C) No.10660/2018 which has been filed by applicant only and which is still pending before Hon'ble High Court of Delhi. Therefore, any decision at this stage may need revision of all calculations and refunds etc. at a later stage and may lead to complications and this needs to be avoided.

22. There had been certain confusion about what payments were released and under what head were they released. Accordingly, during the course of hearing of the instant OA, the respondents were directed on 28.11.2018 to give a clear picture regarding these payments. Respondents submitted an additional affidavit on 19.02.2019 in regard to the due payment of PF, gratuity and leave encashment. Following averment has been

made in this additional affidavit in regard to payments pertaining to PF, gratuity and leave encashment:

“That this Honorable Tribunal asked the Respondent to link due dates of retirement benefit releases with actual release dates but in present reply under reference, again amount of release is given with date of release **but not shown due dates**. The date of superannuation was known in advance and PF, Gratuity and leave encashment was due in all circumstances on date of superannuation, therefore delay attracts interest as well as compensation for financial hardship and harassment. Due date with amount due vs released amount with release date is placed in tabular form as **Annexure – A/24**. No dues were released till Honorable Tribunal order dated 26.04.17, while retirement dues were due on 30.04.2015.”

And thereafter, actual amounts due and date of payment along with amounts in each such instalments in respect of PF, gratuity and leave encashment, were also annexed.

23. In regard to coverage under pension scheme, the respondents brought out that the applicant had all along being pleading and approaching judicial forum with a prayer that he is to be covered under Old Pension Scheme. Accordingly, he never even applied for PRAN number, and therefore, neither the employee's share could be deducted from his monthly salary nor could an equal amount of EPFO's share, be drawn and deposited under NPS and thus there has been no subscription towards NPS. Accordingly, the claim of the applicant under NPS is not admissible now.

24. Matter has been heard at length. Sh. Padma Kumar S., learned counsel represented the applicant and Sh. Keshav

Mohan with Sh. Rishi Awasthi, learned counsel represented the respondents.

25. Factual matrix of this case is not in doubt. In regard to due payments for PF, gratuity and leave encashment following position emerges from the additional affidavit filed by respondents on 19.02.2019:

S. No.	Head	Amount due and due date of payment	Details of payment
1.	Provident Fund	Rs.9,64,729/- due on the date of retirement, i.e. 30.04.2015	Rs.10,48,660/- which includes Rs.9,64,729/- towards principal and Rs.83,931/-towards interest @ 8.7% p.a. for the period from 01.05.2015 to 30.04.2016, and it was paid vide cheque dated 12.08.2016, received by applicant on 16.08.2016.
2.	Gratuity	Rs.8,09,057/- due on the date of retirement, i.e. 30.04.2015	This amount has been paid in two instalments without any interest. Rs.4,78,069/- on 06.10.2016 and Rs.3,30,988/- on 08.05.2017.
3.	Leave Encashment	Rs.4,28,928/- due on the date of retirement, i.e. 30.04.2015	This amount has been paid in two instalments without any interest. Rs.85,099/- on 25.04.2017 and Rs.3,43,829/- on 08.05.2017.

26. The date of retirement of any employee is known in all cases and accordingly, the due payments are required to be processed in advance and released on or very near to the date of retirement. The release of money in these three heads PF, gratuity, and leave encashment had nothing to do with respect to applicant's claim for coverage under NPS or Old Pension Scheme. Therefore,

delays in respect of these three amounts cannot be accepted on the plea of matter of status/pension being subjudice.

It is obvious that there was delay in releasing the payment of PF (which was paid on 12.08.2016 along with interest upto 30.04.2016 only), from 30.04.2016 to 12.08.2016. For gratuity and leave encashment also, there had been delays and no interest was paid for such delays.

In the instant case, retirement took place on 30.04.2015. Accordingly, it is obvious that for no fault of his, applicant has been denied use of money which legitimately belongs to him. The clause 68 of CCS (Pension) Rules provides for compensating an employee for such delays. The relevant clause reads as under:

“68. Interest on delayed payment of gratuity

^[(1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to General Provident Fund amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.]”

There are directions by Hon’ble Apex Court also that in such cases Courts can award compensation by way of interest.

In **S.K.Dua vs. State of Haryana and anr.** (Civil Appeal No.184

of 2008), Hon'ble Apex Court passed a judgment on 09.01.2008.

Following observations were made:

"8. It is well settled law, submitted the counsel, that retiral benefits are not in the nature of bounty and an employee is entitled as of right to get those benefits immediately after superannuation unless they are withdrawn or withheld as a matter of punishment. According to the appellant, he had always acted in the interest of the Government and saved public exchequer by inviting the attention to mal- practices committed by high ranking officers. As a measure of revenge against the appellant, charge-sheets were issued, but after considering the explanation submitted by the appellant, all proceedings against him were dropped. In view of exoneration of the appellant, the **Government ought to have paid interest on retiral benefits which were given to him after long time. As per the Guidelines and Administrative Instructions issued by the Government, the appellant was entitled to such benefit with interest. The High Court ought to have allowed the writ petition of the appellant and ought to have awarded those benefits.** It was, therefore, submitted that the appeal deserves to be allowed by directing the respondents to pay interest on the retiral dues payable to the appellant which were actually paid to him after considerable delay.

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11. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But **it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. 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 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. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

12. To us, the plea of the learned counsel for the appellant that the High Court ought to have entered into the merits of the matter which is based on documentary evidence is well-taken. In our considered view, the writ petition ought to have been admitted by issuing Rule nisi and ought to have been decided

on merits. The High Court, however, dismissed the petition by a cryptic order which reads thus:

“The petitioner seeks only payment of interest on the delayed payment of retiral benefits. We, however, relegate the petitioner to avail of his remedies before the Civil Court, if so advised.

Dismissed with the above observations.”

13. The order passed by the High Court, therefore, must be quashed and set aside.”

(Emphasis supplied)

Thus, grant of interest as a compensation for delays, where the employee was not at fault, was upheld. This ratio is attracted in the instant case.

The plea of applicant for payment of interest in this regard is, therefore, upheld both on merit, rules on the subject as well as in keeping with ratios given by Hon’ble Apex Court.

27. The factual admitted proposition in the instant case is that applicant had given consent for absorption and it was processed also accordingly. However, admittedly EPFO absorbed him on re-employment basis w.e.f. 17.11.2004.

A question arises as to whether applicant had the option of going back to Army at that stage. However, for the purpose of instant OA, which is in follow up of liberty given by Hon’ble High Court of Delhi in WP (C) No.4266/2014, that he could agitate the matter for pension before this Tribunal (para 10.1 sub para 6

supra) and the position as it developed in sequence thereafter (para 11,13,14, 15 & 16 supra), it is sufficient enough to note that the applicant has agitated to be treated as absorbed all through, however Tribunal adjudicated it to be a case of re-employment (para 11 supra) which entitles him for NPS. This decision stands as of now, even though applicant has challenged it in Hon'ble High Court where it is pending (para 12 supra).

Moreover, he has already retired after serving EPFO for a period of more than 10 years. The applicant is a retired person and in his old age the need for pension is continuing since he retired and every moment counts. Any delay in this regard may lead to a situation when any relief may lose its very meaning.

In keeping with above, matter in respect of pension, has been carefully considered by the Tribunal.

28. It is true that the end result of adjudication in WP (C) No.10660/2018, which is pending before Hon'ble High Court of Delhi (para 12 supra), will have a bearing upon the status of the applicant as to whether he is to be treated as absorbed and thus covered under Old Pension Scheme or treated as re-employed and thus covered under the NPS. Therefore, it cannot be a situation that he is neither covered under NPS nor under the Old Pension Scheme.

Further, in regard to pension, Hon'ble Apex Court in **State of Jharkhand and ors. vs. Jitendra Kumar Srivastava and anr.** (Civil Appeal No. 6770 of 2013 decided on 14.08.2013), have observed:

"7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

"The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

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What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to

pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab and Anr. V. Iqbal Singh* (1976) ILLJ 377 SC”.

8. It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.”

(Emphasis supplied)

Pension has thus been held to be a hard earned benefit and is in the nature of property, which cannot be denied without the due process.

In view of above, this Tribunal is of the view that denial of even NPS, is not justifiable in the facts and circumstances of this case. Therefore, for the time being, till the issue is decided otherwise by Hon’ble High Court in WP (C) No.10660/2018, the applicant is required to be treated as re-employed as was already adjudicated (para 11 supra) and therefore he is to be covered under NPS which was applicable to all those who joined EPFO organisation on or after 01.01.2004. Denial of the same to the applicant, on the plea that he did not take PRAN number at relevant point of time, is not taken to be a justifiable reason as matter has remained subjudice and more so as it is violative of substantive justice and especially so in the light of Apex Court judgment as above.

This is to be noted here that those covered under Old Pension Scheme, do not need PRAN number or employee's contribution to pension. For such employees, it is only the employer who internally makes contribution towards pension and arranges to release the same on monthly basis.

Accordingly, the respondents are directed to treat the applicant as covered under NPS and fulfil their part of obligation, which has not been done so far, till it is adjudicated otherwise by Hon'ble High Court in WP (C) No.10660/2018.

There is no reason to deny the applicant the benefits that are already adjudicated, even if the said adjudication is not to his satisfaction. NPS necessitates that the applicant as well as EPFO, both fulfil their part of obligations. Accordingly, both have to comply with same and especially so as pension is a right that cannot be denied as observed by Hon'ble Apex Court (para 28 supra).

29. However, it goes without saying that in case Hon'ble High Court of Delhi decides that applicant would be treated as absorbed and thus covered under Old Pension Scheme, the calculations shall need to be redone. Certain refunds will also be necessitated. But let it be so. Merely to avoid this recalculation work and to avoid refunds, as was pleaded by respondents (para 21 supra) and deny to the applicant benefit of any pension in the meanwhile, despite his old age, is not considered appropriate

even in the least and especially so in the given circumstances of this case.

30. One MA No.1354/2019 was also filed by applicant wherein the papers in connection with relief sought in WP (C) No.10660/2018, were submitted with request to take those on record. This MA is allowed.

31. In view of the foregoing, the OA is disposed of with following directions:

(a) The payable amount of PF, including interest for the period from 01.05.2015 to 12.08.2016 (Say A), shall be worked out at the interest rate already given by EPFO, i.e. @ 8.7% p.a. The amount of Rs.10,48,660/- already paid on 12.08.2016, shall be subtracted from the total amount so worked out. The net amount payable (Say B) where B is equal to (A-1048660) is taken to be due to the applicant as of 12.08.2016. This net amount (B), along with further interest @ 8.7% p.a. on the same, for the period 12.08.2016 to the date of these orders, shall be paid within a period of one month by the respondents no.2. If it is not paid in this time, it will continue to carry interest @ 8.7% p.a. till it is finally paid.

(b) The principal amount of gratuity Rs.8,09,057/- has been paid in two instalments without any interest. Accordingly,

interest needs to be calculated @ 8.7% p.a. on the amount of Rs.4,78,069/- for the period from 01.05.2015 to 06.10.2016 when this part of the gratuity amount was paid. This amount of interest so calculated, along with further interest on the same, @ 8.7% p.a. for the period from 06.10.2016 to the date of these orders shall be paid within one month by respondent no.2.

Similarly, interest shall be calculated at the same rate on the remaining part of gratuity i.e. Rs.3,30,988/- for the period from 01.05.2015 to 08.05.2017 when this part of the gratuity amount was paid. This amount of interest so calculated, along with a further interest on the same, @ 8.7% p.a. for the period 08.05.2017 till date of these orders shall be paid to the applicant within a period of one month by respondent no.2.

If the above amounts are not paid in this time, they will continue to carry interest @ 8.7% p.a. till they are actually paid.

(c) The amount of leave encashment Rs.4,28,928/- has been paid in two instalments without any interest. Accordingly, interest needs to be calculated @ 8.7% p.a. on the amount of Rs.85,099/- for the period from 01.05.2015 to 25.04.2017, when this part of the leave encashment amount was paid. This amount of interest so calculated, along with further interest on the same, @ 8.7% p.a. for the period from 25.04.2017 to the date

of these orders, shall be paid within one month by respondent no.2.

Similarly, interest needs to be calculated on the remaining part of leave encashment i.e. Rs.3,43,829/- for the period from 01.05.2015 to 08.05.2017 when this part of the leave encashment amount was paid. This amount of interest so calculated, along with a further interest on the same for the period 08.05.2017 to the date of these orders, shall be paid to the applicant within a period of one month by respondent no.2.

If these amounts are not paid in this time, they will continue to carry interest @ 8.7% p.a. till they are actually paid.

(d) In respect of NPS, the applicant had already taken PRAN number now. The respondent No.2 shall advise to the applicant within a period of one month of receipt of certified copy of this order, the amount which was required to be contributed by the applicant towards NPS, during the time from 17.11.2004 to 30.04.2015 while he was serving under EPFO. The respondent no.2 shall also advise the applicant to deposit the same with EPFO within a period of three months thereafter along with an undertaking as per (g) below.

(e) The applicant has liberty that any contribution made by him to NPS on or after 01.05.2015 till the date of these orders, can also be counted as his contribution for this purpose if

supporting documents for such deposit are supplied. In such an event, applicant needs to contribute only the balance part now.

(f) In case such a proof of deposit and balance deposit needed now as per direction at (e) above, along with an undertaking, as per (g) below, are received by the respondent No.2 within the time allowed, the respondents shall also make their part of contribution to NPS, which shall be of equal amount, as was advised to applicant at (d) above, and deposit both these components with NPS, in the PRAN so advised by applicant, within a period of one week of receipt from applicant to enable the applicant to start drawing benefits under NPS.

(g) While making a deposit for employee's contribution as per directions at (d) above, the applicant shall also be required to give an undertaking, that in the event he is held to be covered under Old Pension Scheme at a later stage and if for compliance of same, EPFO advises him that the component of EPFO contribution as per direction at (f) above, is required to be refunded first by the applicant to the EPFO, the applicant shall refund the same within a time period of three months of the date of receipt of such an advice from EPFO, along with interest on the same at GPF rate currently applicable as on the date of these orders by Tribunal, for the period between date of deposit to NPS

by EPFO as per directions at (f) above and actual date of refund to EPFO.

(h) In case applicant is not willing to give an undertaking as per directions at (g) above, he shall not be required to send his contribution to EPFO, as part of this adjudication, when he receives advice from EPFO as per direction at (d) above. In this case also, applicant shall advise his decision to EPFO within the time allowed. In such an event, EPFO will not be required to make any deposit to NPS at this stage.

No costs.

(Pradeep Kumar)
Member (A)

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