

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH.**

Original Application No. 485/2017
Ahmedabad, the 31st July, 2019

CORAM :

Hon'ble Sh. M.C.Verma, Judicial Member

Dilip Wagheshwari S/o Shri Danabhai Wagheshwari, Aged 60 years, occupation-retired, residing at D-1/4, Akashdarshan Colony, AIR & Doordarshan Colony, Behind Bhaikaka Nagar, Thaltej, Ahmedabad 380 059. **Applicant**

[By Advocate : Shri Joy Mathew]

Versus

- 1- Union of India, notice through its Secretary to the Government of India Ministry of Information and Broadcasting, Room No. 655, "A" Wing, Shastri Bhavan, New Delhi – 11001.
- 2- Prasar Bharati notice through its Chief Executive Officer, Prasar Bharati Secretariat, 2nd Floor, PTI Building, Sansad Marg, New Delhi – 110 001.
- 3- The Director General (DD), Doordarshan, Prasar Bharati (Broadcasting Corporation of India), Directorate General, Doordarshan Bhavan, Copernicus Marg, New Delhi – 110 001.
- 4- The Director (AIR), Prasar Bharati, Directorate General, All India Radio, S-I(B) Section, Parliament Street, New Delhi – 110 011.
- 5- The Deputy Director, Regional Academy of Broadcasting & Multimedia (Programme), [Formerly known as Regional Training Institute(P)], All India & Doordarshan Prasar Bharati, Navrangpura, Ahmedabad – 380 009.
- 6- The Deputy Director General (E) / HoD, All India Radio, Prasar Bharati, Navrangpura, Ahmedabad – 380 009. **Respondents**

[By Advocate : Shri Ketan A. Dave]

ORDER (ORAL)
[M.C.Verma, Judicial Member]

1. The back-drop facts of the case are that applicant, on attaining age of superannuation, retired on 30th June, 2017. At the time of retirement or thereafter, his retiral dues, viz., Leave Encashment and CGEGIS applicant has not been paid and hence he filed the O.A. for direction to release the amount of leave encashment and of CGEGIS with 12% Interest.
2. Respondents have filed their reply stating that applicant retired on 30.06.2017 but at the time of his superannuation two cases of corruption had been instituted against him. That the amount of leave encashment was withheld due to pendency of disciplinary/judicial

proceedings under Rule 39(3) of the CCS (Leave) Rules, 1972 against him. That respondents after examination of all aspects arrived on conclusion that 10% amount of Leave Encashment have to be withheld and therefore 90% of amount of Leave Encashment was directed to be released on 05.12.2017. That decision about release of CGEGIS was taken on 17.01.2018. That there is no provision of interest under CCS Rules for interest on delayed payment of amount of Leave Encashment and further there is no delay much less undue delay, on the part of the respondents in making payment, so no interest should be allowed to the applicant and O.A. be accordingly dismissed.

3. Applicant has filed rejoinder pleading that respondents ought to have taken decision prior to his retirement and the Department took six months time in coming to the conclusion that 10% amount from applicant's Leave Encashment be retained. He categorically submitted that even the 90% amount of leave encashment was credited in his account on 28.12.2017 after a period of six months and the amount of CGEGIS was credited after lapse of 7 months of his superannuation, so respondents may be directed to give interest, as prayed in the OA.

4. Heard the learned counsel for both the parties and perused the paper-book. Learned counsel for applicant Shri Joy Mathew while pressing the O.A. submits that till filing of the O.A. applicant has not been paid the amount of leave encashment and of CGEGIS and that is why prayer has made in the O.A. for direction to release this amount with 12% interest but during pendency of the O.A. respondents have paid 90% amount of leave salary and entire amount of CGEGIS has been paid and that respondents have retained 10% amount on the grounds that a criminal case is going on. That 90% of Leave encashment amount has been paid by the respondents vide order dated 15.12.2017, Annex.R/3 and, that amount of CGEGIS has been paid on 17.01.2018, that these payments were delayed to harass the applicant and has been paid

without any interest, and therefore, interest needs to be directed to be paid on both the amount. Learned counsel Mr. Joy Mathew concluded his submission stating that the applicant is aggrieved by the conduct of respondents because they unnecessarily have harassed him which compelled him to move this Tribunal several times and in present case also they released the amount after filing of the O.A. and that the applicant would be satisfied even if he is granted token interest on delayed payment of CGEGIS amount. He, to fortify his submission for interest placed reliance on decision dated 21.02.2008 of Principal Bench delivered in *K.C. Utteja Vs. The State of Government of NCT* passed in OA No. 1709/2007 and decision of Hon'ble Supreme Court in case titled *S.K. Dua Vs. State of Haryana and Anr.* (2008) 3 SCC 44.

5. Learned counsel Sh. Ketan A. Dave, appearing for respondents, vehemently opposed the submissions for grant of interest and submitted that applicant superannuated on 30th June, 2017. That Rule 39 (3) of CCS (Leave) Rules 1972 empowers the authority competent to grant leave to withhold whole or part of cash equivalent of earned leave in the case of a 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 on conclusion of the proceedings against him so invoking power under this Rule the amount was withhold. It is contended by him that case of the applicant is having a chequered history, therefore, respondent authority were needed time to calculate amount and admissibility of the payment under the head of Leave Encashment and C.G.E.G.I.S. He explained further that at the time of superannuation of applicant, two cases of corruption had been instituted against him and in first case, though he has been acquitted but, in another case, he was under trial. He added that after superannuation of the applicant, conviction was announced in that case which was going

on. That more than 10 persons were arrayed as accused in criminal trial and therefore, the proportion attributable to the applicant could not be worked out. It is further submitted that in first criminal case which was pending against applicant, department had suffered a loss of Rs. 1,46000 and in second case, the loss occurred was Rs. 1,05,000. He also submitted that applicant has instituted several cases before this Tribunal qua departmental proceedings and that some interim relief order was passed by the Tribunal were in force and one of the O.A. was also pending at the time of his superannuation. That respondents after examination of all these aspects arrived on conclusion that 10% amount of Leave Encashment have to be withheld and therefore 90% amount was directed to be released on 05.12.2017 and the amount was deposited in Bank account of the applicant on 28.12.2017. He also submitted that decision about release of CGEGIS was taken and the amount was credited to the account of applicant on 30.01.2018. That Rules does not provide for interest on the amount of Leave Encashment and CGEGIS and, that taking note of facts of the case, there is no delay much less undue delay, on the part of the respondents in making payment, so no interest should be allowed to the applicant and O.A. Accordingly be disposed of.

6. Have considered the submissions made at Bar. In *K.C. Uttreja's case (cited supra)*, relied upon by the applicant the Principal Bench of this Tribunal has held that, "*it is pertinent to note that in Vijay L. Mehrotra (supra) the Apex Court not only accorded interest on GIS but also on encashment of leave, gratuity, commuted pension etc., which would on all fours be a binding precedent and would apply to the instant case*" and in *S.K. Dua's case (cited supra)*, relied upon by the applicant Hon'ble Supreme Court in Para 11 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 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. For sake of brevity Para 11 is reproduced herein below:-

“11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also un-disputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge- sheets/ show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of mal-practices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. 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.”

7. Having considered the submissions and taking note of record, it is apparent that applicant was retired on 30.06.2017 and decision for release of payment of leave encashment was taken by the Department only on 05.12.2017 whereas decision for release of CGEGIS was taken only on 30.01.2018. Even if it is presumed, as has been submitted by learned counsel for respondents, that the case of applicant was having a chequered history and time was needed to calculate and to ascertain how much amount towards Leave Encashment etc. has to be released, inspite of that when

respondents took decision to make payment of Leave Encashment on 05.12.2017 what precluded them not to release the amount of CGEGIS also on that day. It is evident that O.A. was filed, on 26.10.2017, claiming for release of both the amount then why the respondents could not have taken decision about payment of CGEGIS on the same date is a matter of grave concern. Prima facie, I am of the view that the grievance voiced by the applicant appears to be well-founded that he would be entitled to interest on such benefits.

8. It appears that the delay in release of amount of CGEGIS, at least after 05.12.2017 can be attributed solely on the part of respondent-department. Learned counsel for applicant has made submission that the applicant is aggrieved by the conduct of respondents, they unnecessarily have harassed him and compelled him to move this Tribunal several times and in present case also they released the amount only after filing of the OA. While concluding learned counsel has expressed the wish of the applicant submitting that applicant would be satisfied if he is granted only token interest on delayed payment of CGEGIS amount.

9. In view of factual and legal scenario of the case discussed above, I considered it fit and appropriate to dispose of this O.A. giving direction to the respondents to pay Interest @ 5% p.a. for delayed payment of CGEGIS, w.e.f. 05.12.2017 to till it was actually paid i.e. on 29.01.2018. The respondents thus are directed to pay the interest to the applicant, @ 5% p.a. of period from 05.12.2017 to till 29.01.2018 upon amount of CGEGIS only and this interest has to be paid within a period of three months from the date of receipt of copy of this order.

10. With the above, direction, O.A. stands disposed of. MA, if any, pending as on date, is also stands disposed of. No order as to costs.

[M.C.Verma]
Member (Judl.)

