

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00935/2017

Orders pronounced on:05.09.2019
(Orders reserved on: 29.08.2019)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Ms. Richa Dewan,

age 52 years,

widow of Late Sh. Arun Dewan,

Addl. Commissioner of Income Tax,

C/o Shri Rajat Aggarwal

R/o 67/7, Patel Bazar,

Near Gandhi Park, Kaithal (Group A).

.....

Applicant

Versus

1. Union of India through its Secretary,
Ministry of Finance, Department of Revenue, 134, North Block,
New Delhi.
2. Chief Commissioner of Income Tax, C.G.O. Building, 2nd Floor, A
wing, White Church Road, Indore, M.P-542001.

....

Respondents

**Present: MR. RUPAM AGGARWAL, ADVOCATE, FOR APPLICANT.
MR. K.K. THAKUR, ADVOCATE, FOR RESPONDENTS.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)):

The applicant is aggrieved by the impugned order dated 27.6.2017 (Annexure A-1), whereby her request for release of arrears of pay and allowances, Death-cum-Retirement Gratuity (DCRG) on retirement of her husband and other retiral dues has been rejected. She, being widow and legal heir of deceased employee, has also sought for issuance of a direction to the respondents to grant her retiral dues like family pension and other service related benefits, w.e.f. 11.6.2012, along with interest pendent lite and future interest @ 18% per annum on the amounts.

2. Even though the respondents filed reply opposing the claim of the applicant on various grounds including there being no nomination in favour of applicant, but during the pendency of the O.A., they have themselves released an amount of Rs.55,60,647/-, as per detail given below :-

Particular	Amount	Date of payment
DCRG	10,00,000	29.06.2018
Encashment of leave	9,30,930	13.07.2018
Arrears of 6 th CPC	18,24,596	28.08.2018
Arrears of 7 th CPC	18,05,121	20.11.2018

Some other payments have also been made and as per statement given by the respondents, the amount comes to Rs.63,17,739/-. In view of this, the very objection and impugned order, Annexure A-1, has become nonest in the eyes of law.

3. The solitary, surviving issue, which remains to be adjudicated now in this O.A. is award of interest to the applicant, which the applicant has claimed @ 18% per annum from the date the amount became due to the actual date of payment.

4. Heard the learned counsel for the parties at length. Learned counsel appearing on behalf of the applicant vehemently argued that despite taking initial objections, once the respondents have themselves accepted the plea of the applicant and released indicated amounts / retiral dues to the applicant, then she is legally entitled to grant of interest on these amounts, as there was no lawful reason with the respondents to withhold amounts for such a long time and having caused wrongful loss to the applicant and having been in wrongful gain of amount belonging to applicant, they have to compensate the applicant by grant of interest at market rate. It is argued that respondents have made certain averments against the applicant in the written statement against which she has already moved a defamation case against them. It is argued that the applicant became entitled to payment of aforesaid amounts, including DCRG and family pension on the demise of her husband, who was murdered, while he was posted at Indore. She submits that her claim was kept pending, without there being any legal hurdle. In any case, once the respondents have withheld lawful amount belonging to the applicant, they have to compensate the applicant, for the loss caused to her due to non-use of such amount for such a long time.

5. On the other hand, learned counsel for the respondents submits that the respondents themselves have released the amount, during the pendency of the case, so no interest is liable to be paid to the applicant. It is argued that since there was a dispute with regard to eligibility of applicant for release of benefit in favour of the applicant, for want of nomination in her favour and certain other formalities, as such delay was caused, which is for bonafide reasons and it was beyond their control.

6. I have given my thoughtful consideration to the entire matter and have gone through the pleadings on record.

7. The learned counsel for the applicant has raised a valid argument that even if it is accepted for sake of argument only that there is any marital discord, even then the widow becomes entitled to the payment of family pension and it cannot be withheld only because there is no nomination. In fact, this issue stands settled a long time back.

8. In the case of G.L. **BHATIA VS. UNION OF INDIA & OTHERS**, 1999 (5) SCC 237, there was an estranged relationship between the spouses. Nomination of the wife, Central Government servant was not in favour of the husband. He was also staying away from his wife. After the demise of the Government servant, when the husband made a claim for disbursement of family pension under the provisions of the Central Civil Services (Pension) Rules, agreeing with the authorities that since the nomination was not in favour of the husband, he would not be entitled to family pension, the Court declined his request,. Testing the correctness of same, the apex Court, at para 2 of the judgement held as follows:-

"The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short 'the rules') notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the rules. It is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate."

Similar view was taken in the case of **SMT. VIOLET ISSAC AND OTHERS VS. UNION OF INDIA & OTHERS**, 1991 (1) SCC 725. The Court had also referred to the decision in the case of **JODH SINGH VS. UNION OF INDIA**, 1980 (4) SCC 306. Thus, Court has no hesitation in holding that even if the relationship between spouses is not cordial and there is nomination in terms of the rules and instructions for grant of service related benefit to the wife or husband, even then the spouse is entitled to benefit of

family pension. In the present case, the respondents, without any lawful reason have withheld the indicated amount and then released it during the pendency of the O.A. and as such they cannot escape from the liability of granting interest to the applicant to compensate for the loss caused to her due to non use of such a huge amount for a long time, which became due to her on demise of her husband in 2012 and these were paid to her only in 2018.

9. It is settled proposition of law that interest is compensatory in character and can be recovered for withholding the payment of any amount when it is due and payable. It is different from penalty and tantamount to compensation as the person entitled for recovery has been deprived of the right to use the said amount, as held by the Constitution Bench of the Hon'ble Supreme Court in the case of **SECRETARY, IRRIGATION DEPARTMENT, GOVERNMENT OF ORISSA & ORS. V. G.C. ROY**, AIR 1992 SC 732, which has been subsequently followed in the case of **UNION OF INDIA V. JUSTICE S.S. SANDHAWALIA**, (1994) 2 SCC 240, where their Lordships of the Hon'ble Supreme Court have held as under:

"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year."

10. Similar view was taken in **UMA AGRAWAL (DR.) VS. STATE OF U.P.** (1999) 3 SCC 438, in the following words :-

"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 ever 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."

11. In **BAL KISHORE MODY V. ARUN KUMAR SINGH**, (2001) 10 SCC 174, the Hon'ble Apex Court has stated as under:-

"At the time of the hearing of the matter, considering the delay in making payment of retiral benefits, learned Counsel appearing on behalf of the respondent State submitted that this Court may pass appropriate orders giving direction to pay interest on the said amount and the State Government would pay the same within one month from the date of the order. He further submitted that appropriate action would be taken against the officer(s) concerned who delayed the payment of retiral benefits. In this view of the matter, we do not propose to take any further action in these contempt proceedings.

Hence it is directed that the respondents shall pay interest on the retiral benefits from January 15, 1996 till the date of payment at the rate of 15 per cent per annum."

12. In **GHAZIABAD DEVELOPMENT AUTHORITY VS. BALBIR SINGH**, (2004) 5 SCC 65, the Hon'ble Apex Court as held as under:-

"A Division Bench of the High Court of Punjab speaking through Tek Chand, J. In CIT v. Dr. Sham Lal Narula [AIR 1963 Punj 411:(1963) 50 ITR 513] thus articulated the concept of interest: (AIR p. 414, para 8)

"8. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money. ... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable.""

13. In the case of **S.K. DUA V. STATE OF HARYANA**, (2008) 3 SCC 44, their Lordships have held as under:

"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."

14. Even this very Bench of the Tribunal in O.A.No.1033-CH-2012 (**RAJINDER SINGH VS. UNION OF INDIA & OTHERS**), has held the similar view that if amount belonging to employee/pensioner is released with delay, he becomes entitled to interest as a compensation.

15. In the wake of aforesaid discussion, this Original Application is allowed. The applicant is held entitled to interest, at the rate as applicable to GPF, from the date the amount became due to the actual date of payment. The respondents are directed to release the same in favour of the applicant within a period of one month from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH
DATED: 05.09.2019

HC*