

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00200/2018

Friday, this the 28th day of June, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

M.S. Rajamohanan Nair, S/o. P.R. Sivasankaran Pillai,
 aged 67 years, Postal Assistant (Retd.), Moolayil House,
 Peroor PO, Kottayam Dist.-686637.

..... **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary,
 Department of Posts, Dak Bhavan, New Delhi – 110 001.
2. Director (SR & Legal & VP), Department of Posts,
 Dak Bhavan, New Delhi – 110 001.
3. Chief Postmaster General, Kerala Circle,
 Trivandrum – 695 033.
4. Post Master General, Central Region, Cochin – 682 020.
5. Senior Superintendent of Post Offices,
 Kottayam Postal Division, Kottayam - 686 001.

6. Director of Accounts (Postal), Kerala Circle,
 Trivandrum – 695 001.
- **Respondents**

(By Advocate : Mr. Sreenath Sasidharan, ACGSC)

This application having been heard on 21.06.2019 the Tribunal on
 28.06.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “(i) To declare that the applicant is entitled for interest for the delay

payment of gratuity.

- (ii) To direct the respondents to pay the interest on the delayed payment of gratuity amounting to Rs. 2,11,008/- from 1.4.2016 to 18.1.2018.
- (iii) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstance of the case.
- (iv) To grant cost of this OA.”

2. The brief facts of the case are that the applicant was issued with a charge sheet on 23.7.2010 under Rule 14 of CCS (CCA) Rules, 1965 while working as RD Counter Assistant, Kottayam HO for his failure to verify specimen signatures resulting in fraudulent payment of Rs. 4,500/- to Smt. M.K. Leelamony, MPKBY agent on 11.11.2005. In the inquiry he admitted the charge unconditionally. The inquiry officer held the charge as proved vide his report dated 7.9.2010. As he retired on 31.7.2010 as Postal Assistant from Kottayam Head Office, the Rule 14 inquiry became Rule 9 inquiry as per CCS (Pension) Rules, 1972. Due to the delay in finalizing the inquiry he approached this Tribunal in OA No. 129 of 2011. It was disposed of on 18.3.2011 with a direction to complete the proceedings in three months. The disciplinary authority dropped the charge against the applicant on 15.6.2011. The Director of Accounts (Postal) objected to it stating that the disciplinary authority has no power to drop the charge under Rule 9. OA No. 978 of 2011 filed by the applicant was disposed of on 3.2.2012 by directing the respondents to release 50% of gratuity on or before 15.3.2012 and the balance amount with held would be subject to final orders to be passed by the President. In compliance 50% of gratuity was paid to the applicant on 14.3.2012. While so the Presidential order dated 16.3.2012 was

received according to which 25% of the pension of the applicant is to be withheld for three years and his gratuity is to be forfeited. The applicant challenged the said order by filing OA No. 355 of 2012 claiming interest for the delay in disbursing the gratuity. The OA was disposed of ordering 10% cut in pension for a period of one year and ordering the payment of the balance of the gratuity within one month (Annexure A1). The respondents challenged Annexure A1 order before the Hon'ble High Court of Kerala by filing OP (CAT) No. 791 of 2013. The OP (CAT) was dismissed vide judgment dated 21.3.2016. In compliance of the order of this Tribunal in OA No. 355 of 2012 the President issued Annexure A3 order after 19 months of the judgment of the Hon'ble High Court in OP (CAT) No. 791 of 2013. Pursuant to Annexure A3 the 6th respondent had issued order dated 12.1.2018 (Annexure A4) sanctioning the total gratuity amount of Rs. 4,15,520/- and ordering payment of Rs. 2,11,008/- after deducting Rs. 2,04,512/- already paid to the applicant on 14.3.2012. The applicant's pension was fixed at Rs. 8,955/- and PPO dated 12.1.2018 was issued (Annexure A5). The commuted value of pension amounting to Rs. 3,52,211/- was also ordered to be paid. The applicant submitted that as per Rule 68 of the CCS (Pension) Rules, 1972 interest is to be paid for the delayed payment of gratuity. The applicant has cited the decision of the apex court in *Union of India v. S.S. Sandhawalia* - (1994) 2 SCC 240 wherein the apex court held as under:

“.....Once it is established and amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest considered reasonable by the court.....”

The applicant submitted a representation for payment of interest. However, the respondents did not give any reply. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. They entered appearance through Shri Sreenath Sasidharan, ACGSC who filed a reply statement contending that the pension and pensionary benefits were sanctioned to the applicant vide letter dated 12.1.2018. The balance amount of DCRG and commuted value of pension were paid to the applicant on 18.1.2018. Recording the above position the contempt case filed by the applicant before the Hon'ble High Court of Kerala was closed by the Hon'ble Court. The respondents further submitted that the delay in payment of pension/pensionary benefits occurred due to the cumbersome formalities involved in Rule 9 proceedings. There was no willful negligence/laches on the part of the respondents in complying with the direction of the Hon'ble High Court contained in Annexure A2. Respondents pray for dismissing the OA.

4. Heard Shri C.S.G. Nair, learned counsel appearing for the applicant and Shri Sreenath Sasidharan, ACGSC learned counsel appearing for the respondents. Perused the record.

5. Applicant filed OA No. 355 of 2012 claiming relief as under:

“(i) Call for the records leading to the issue of Annexure A7 and quash the same and direct the respondents to settle the entire retirement benefits as if the same has not been issued at all.

(ii) Direct the respondents to pay interest at the rate of 10% per annum on the applicants pension and all other retirement benefits to be calculated with effect from 1.8.2010 up to the date of full and final settlement of the same;

(iii) Award costs of and incidental to this application;

(iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

6. While considering the above OA this Tribunal passed the following order on 12.12.2012:

“10. Ordinarily Tribunals are not expected to sit in appeal or interfere with the quantum of penalty. However, the facts that the applicant has retired and that he has approached this Tribunal three times, it is not in the interest of justice to prolong the matter. Hence, the impugned order is set aside to the extent the penalty is in excess of withholding 10% of the monthly pension of the applicant for one year. The remaining gratuity should be disbursed to the applicant within one month of receipt of a copy of this order.”

The Hon'ble High Court of Kerala in OP (CAT) No. 791 of 2013 filed by the respondents aggrieved by order dated 12.12.2012 in OA No. 355 of 2012, dismissed the OP (CAT).

7. From the relief claimed in OA No. 355 of 2012 this Tribunal finds that the applicant had already claimed the relief for interest in that OA as relief No. (ii) i.e. to direct the respondents to pay interest at the rate of 10% per annum on the applicants pension and all other retirement benefits to be calculated with effect from 1.8.2010 up to the date of full and final settlement of the same. However, after considering the same only this Tribunal in the said OA directed the respondents to disburse the remaining gratuity within one month without any orders on the interest. By the present

Original Application the applicant is claiming the very same relief of paying interest on the remaining portion of gratuity from the period from 1.4.2016 to 18.1.2018. The applicant is estopped to claim such a relief in the present OA as it is hit by the principles of *res judicata*. The applicant had already claimed this relief and which was considered by this Tribunal in OA No. 355 of 2012 and passed the order for the remaining portion of gratuity within one month.

8. Therefore, in view of the above this Tribunal do not find any merit in the Original Application. Accordingly, the OA is dismissed on the principles of *res judicata*. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00200/2018**APPLICANTS' ANNEXURES**

- Annexure A1** - True copy of the order dt. 12.12.2012 in OA No. 355/2012.
- Annexure A2** - True copy of the judgment dt.21.3.2016 in OP (CAT) No. 791/2013.
- Annexure A3** - True copy of the order dt. 13.10.2017 issued by the President.
- Annexure A4** - True copy of the intimation gratuity dt. 12.1.2008 issued by the 6th respondent.
- Annexure A5** - True copy of the PPO No. 5954 Postal 2010/KE/23822/Pen 6, dt. 12.1.2018.
- Annexure A6** - True copy of the commuted value of payment authority dt. 12.1.2018 issued by the 6th respondent.
- Annexure A7** - True copy of the representation d. 20.1.2018.

RESPONDENTS' ANNEXURES

Nil

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