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O.A.350/317/2019

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

DETAILES OF THE APPLICATION

Particulars of the applicant

Prasanta Kumar Ray Mukherjee, son of Late Nabagopal Ray Mukherjee, residing at 26/2, P. G. M. Shah Road, Kolkata - 700 033.

...Applicant

-Versus-

Particulars of the respondents [thirteen in nos.]

1. Union of India, through the Principal Secretary, Department of Ministry of Personnel, Public Grievances and Pensions, Ministry of Home, having office at North Block, Cabinet Secretariat, Raisina Hill, New Delhi - 110001.
2. The Principal Secretary, Department of Ministry of Personnel, Public Grievances and Pensions, Ministry of Home, having office at North Block, Cabinet Secretariat, Raisina Hill, New Delhi - 110001.
3. The Principal Secretary, Ministry of Finance, North Block, Cabinet Secretariat, Raisina Hill, New Delhi - 110001.
4. The Senior Accounts Officer [AIS Pension], Central Pension Accounting Office, Ministry of Finance, Department of Expenditure, Trikoot - II, Cama Place, New Delhi - 110 066.

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5. The State of West Bengal, through the Principal Secretary, Home and Hill Affairs Department, Nabanna, 325, Sarat Chatterjee Road, Howrah – 711 102.
6. The Principal Secretary, Home and Hill Affairs Department, Government of West Bengal, Nabanna, 325, Sarat Chatterjee Road, Howrah – 711 102.
7. Officer on Special Duty & E.O. Joint Secretary, Home and Hill Affairs Department, Government of West Bengal, Police Service Cell, Block – III, 3<sup>rd</sup> Floor, Writers Buildings, Kolkata – 700 001.
8. Officer on Special Duty & Controller of Accounts, AIS Pension & Service Records & Ex-officio Joint Secretary to the Government of West Bengal, Department of Personnel & Administrative Reforms & e-Governance, AIS Pension Cell, Block – IV, 2<sup>nd</sup> Floor, Writers Buildings, Kolkata – 700 001.
9. The Principal Accountant General, West Bengal, Treasury Building, Kolkata – 700 001.
10. Pay and Accounts Officer, Kolkata Pay and Accounts Office – II, Jowhar Building, P-I, Hyde Lane, Kolkata – 700 073.
11. The Joint Director [Accounts], West Bengal Police Directorate, Bhabani Bhawan, South 24 Parganas – 700027.
12. Special Officer [IPS Cell], West Bengal Police Directorate, Nabanna, 325, Sarat Chatterjee Road, Howrah – 711 102.

13. The Director General & Inspector General of Police, West Bengal, West Bengal Police Directorate, Nabanna, 325, Sarat Chatterjee Road, Howrah - 711 102.

... Respondents

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CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O A.350/317/2019

Date of order : 18. 7.19.

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. N. Neihsial, Administrative Member

PRASANTA KUMAR RAY MUKHERJEE

VS.  
UNION OF INDIA & OTHERS  
(M/O Personnel, Public Grievances & Pension)

For the applicant

: Mr. A.R. Mukherjee, counsel

For the respondents

: Mr. S. Bhattacharya, counsel

Bidisha Banerjee, Judicial Member

Heard Id. counsels for the parties.

2. The applicant who served under Indian Police Service and superannuated from his service on 30.04.1998 is still aggrieved as in view of pendency of a criminal proceeding no retiring gratuity was released in his favour subsequent to his superannuation and although granted belatedly no interest on delayed payment was allowed. To show that the delay was not attributable to him he has pleaded that on several occasions, he approached the Hon'ble High Court at Calcutta for speedy disposal of the said proceeding but in spite of specific directions passed by the Hon'ble High Court to conclude the proceeding within a time frame, it continued for more than nineteen years for no fault on his part. The applicant in 2014, once again approached the Hon'ble High Court at Calcutta

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and moved a Revisional Application being C.R.R. No.1098 of 2014 when by a judgment and order dated 07.10.2015, Hon'ble High Court was pleased to quash the proceeding in respect of the applicant.

After a lapse of more than two and a half years from the date of judgment, by a forwarding letter dated 29.03.2018 the respondent no.8 forwarded a letter dated 14.03.2018 issued by the respondent no.8 whereby the respondent no.7 was informed that a sum of Rs.3,31,122/- had been sanctioned in favour of the applicant towards retiring gratuity. Subsequently, on 23.04.2018 a sum of Rs.3,31,122/- towards retiring gratuity was credited to his bank account. However, no interest on delayed payment of gratuity was paid. The applicant made a representation to the respondent nos.7,8 and 13 for release of the interest amount on Rs.3,31,122/- from 01.05.1998 till the date of disbursement i.e. 23.04.2018. He was even compelled to file an original application, being OA1335 of 2018, before this Hon'ble Tribunal. This Tribunal was pleased to direct the respondent no.13 to examine his claims as made in his representation dated 02.05.2018 and to dispose it of with a reasoned and speaking order, in accordance with law and in terms of Rules governing the field, within a period of six weeks from the date of receipt of a copy of its order. The respondent no.13 by an order dated 05.12.2018 observed that in absence of rules he had not been empowered to pass any order allowing interest as claimed by the applicant. Aggrieved by such decision the applicant moves this original application.

3. At hearing Id. counsel for the applicant would strenuously urge that in absence of rules, Payment of Gratuity Act shall hold the field and on that score he would reply upon the decision of Hon'ble Supreme Court in Y.K. Singla vs. Punjab National Bank and Others reported in (2013)3 Supreme Court Cases 472.

4. Per contra, vehemently opposing the claim Id. counsel for the respondents would submit that there is no provision for grant of interest on delayed payment of gratuity. However, despite opportunity he has failed to bring on record or cite the provisions that permit withholding of gratuity for so long due to pending criminal proceeding.

5. Therefore, the short point involved in this O.A. is whether the applicant would be entitled to interest on delayed payment of gratuity.

6. Hon'ble Apex Court in **Y.K. Singla vs. Punjab National Bank and Others** reported in **(2013)3 Supreme Court Cases 472** would observe as under :-

*"In view of Section 4(5) of the Gratuity Act, an employee has the right to make a choice of being governed by some alternative provision/instrument other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the employee concerned would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act."*

*Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude that the provisions of the Gratuity Act would have overriding effect with reference to any inconsistency therewith in any other provision or instrument. Insofar as the entitlement of an employee to gratuity is concerned, in cases where gratuity of an employee is not regulated under the Gratuity Act, Section 14 thereof having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the applicant.*

*Therefore, even if the provisions of the 1995 Regulations had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential.*

*Xxx even though the 1995 Regulations are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3-A) of the Gratuity Act. If such benefit is not extended to the appellant, the protection contemplated under Section 4(5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in Section 14 of the Gratuity Act would stand negated.*

*Accordingly, the conclusion is that the least the appellant would be entitled to terms equal to the benefits envisaged under the Gratuity Act. Since under the Gratuity Act, the appellant would be entitled to interest on account of delayed payment of gratuity (as has already been concluded), the appellant is entitled to interest on account of delayed payment, in consonance with Section 7(3-A) of the Gratuity Act."*

In a case of "Withholding of gratuity in view of continuation of criminal proceedings against employee and consequent delay in payment of gratuity"

Hon'ble Court held as under :-

*"the same would be due to employee's fault if criminal proceedings conclude in the conviction, but would not be due to his fault if proceedings conclude in his acquittal – in present case applicant was acquitted – Hence he was not at "fault" and thus was entitled to interest on withheld gratuity – In present case @8% p.a."*

The aforesaid extract would amply demonstrate and exemplify how an employee ought to be treated when the delay in payment of gratuity is the result of pending of criminal proceeding which ultimately results in his acquittal and in absence of any provision in his pension rules in regard to payment of interest on delayed payment of gratuity

7. In the aforesaid backdrop, we allow the O.A. and direct the authorities to apply provisions of Payment of Gratuity Act, 1972 to calculate interest on gratuity at prevailing banking rates and release arrears of interest for the period it remained unpaid, i.e. the date it fell due till it was released, within two months from the date of receipt of a copy of this order.

8. No order as to costs.

  
(N. Neihsial)  
Administrative Member

  
(Bidisha Banerjee)  
Judicial Member