

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2438/2003

New Delhi this the 1st day of November, 2004.

Hon'ble Shri Shanker Raju, Member(J)

Sh. H.R. Bashal,
Retired Director,
Department of Telecom,
R/o H.No. 90/37A,
First Floor,
Malviya Nagar,
New Delhi-17.

..... () Applicant

(through Sh. VSR Krishna with Sh. S.N. Anand, Advocate)

Versus

1. Union of India through
Secretary,
Department of Telecom,
Ministry of Communications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-1.

2. Asstt. Director General(Pension),
Department of Telecom,
Sanchar Bhawan, 20,
Ashoka Road, New Delhi-1.

..... Respondents

(through Sh. B.S. Jain, Advocate)

O R D E R

Applicant who had retired on superannuation on 31.3.1994 has sought the following reliefs:-

"a) Direct Respondents to release Commutation,
Gratuity, Leave Encashment, CGEIS, revision of pension

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w.e.f. 1-1-1996 and provisional pension stopped from 1-1-2003 and arrears thereof and full pay and allowances for suspension period i.e. 30-3-1994 and 31-3-1994 forthwith;

- b) Direct Respondents to pay interest at the rate of 18% p.a. for delayed payment of Commutation, Gratuity, Leave Encashment, CGEIS, revision of pension w.e.f. 1-1-1996 and arrears thereof and full pay and allowances for suspension period i.e. 30-3-1994 and 31-3-1994 till the date of payment;
- c) Direct Respondents to fix responsibility upon the erring official(s) responsible for causing delay in releasing the aforesaid benefits as per Rule 68 of CCS(Pension) Rules, 1972;
- d) Direct respondents to pay costs of the application; and
- e) Pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The factual matrix is that the applicant was placed under suspension a day before his retirement on 30.3.1994 which was set aside in OA-1173/1994 by this court on 28.7.1999. The period of suspension was treated as spent on duty for all purposes but he has been denied full pay and allowances for 30th and 31st of March 1994. A charge sheet dated 30.11.1994 was issued to the applicant which was received by him on 7.12.1994. However, the same was culminated into dropping of the charges by the President under Rule of CCS (Pension) Rules, 1972 but a displeasure was conveyed.

3. FIR No.226/7 of 1997 when challenged before the High Court of Himachal Pradesh in Cr. Rev. No.55-62 of 2000 after framing of charge, the charge was set

aside on 11.10.2001 and the applicant was discharged as no case is made out under Prevention of Corruption Act.

4. Prior to the retirement, applicant had as per the requirement of CCS(Pension) Rules, 1972 completed the pension papers and also applied for commutation. However, on account of pending cases he was accorded only provisional pension which was stopped from 1.1.2003.

5. Later on, the applicant had been staying at New Zealand and on directions by the respondents to furnish fresh pension papers he submitted it on 6.10.2003. Orders have been issued on 7.11.2003 and 17.11.2003 regarding commutation of gratuity, pension and PPO respectively. Applicant was paid GPF on 13.1.1995, leave encashment on 27.2.2004, CGEIS is yet to be paid for want of pre-receipt bill. DCRG was paid on 7.11.2003 and the commutation in the same month.

6. Learned counsel of the applicant states that displeasure is fully exonerated and on which gratuity cannot be withheld and as per Rule 68 of the CCS (Pension) Rules, 1972 ibid he is entitled for interest not only on pension but other retiral benefits also. Learned counsel relies upon the decision of Bombay Bench of the Tribunal in OA-53/93 (R.L. Shegaje Vs. U.O.I. & Ors.) (ATJ 1994(2)602) to contend that withholding of retiral benefits 10% interest is to be levied. Learned counsel further stated that in the light of the following decisions, applicant is entitled for interest:-

1. State of Kerala Vs. M. Padmanabhan Nair (1985(1)SCC 429
2. O.P. Gupta Vs. U.O.I. (1987(4)SCC 328
3. R.P. Kapur Vs. U.O.I. (1999(8)SCC 110 and
4. Dr. Uma Agarwal Vs. State of UP (1999(3)SCC 438
5. *Vijay. L. Mehrotra Vs State of UP* 2002 SCC (LSC) 248

7. On the other hand respondents' counsel Shri Jain vehemently opposed the contention and stated that as per Rule 68 as displeasure does not fully exonerate the applicant in disciplinary proceedings, the applicant is not entitled for the interest. Moreover, it is stated that when the pension papers were completed on 6.10.2003, immediately thereafter the benefits have been accorded. It is also stated that the applicant commutation would not entail any interest as per Rule 13 of the Commutation of Pension Rules, an application is to be made after one year of retirement and on his request subsequently the pension was commuted on 3.3.2004 and there is no delay on the part of respondents rather on account of pending criminal case and disciplinary proceedings and for non-completion of the pension papers, the delay in release of retiral benefits is solely attributable to the applicant.

8. At the outset, I am of the view supported by the decision of the Apex court in H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd. (2003 SCC(L&S) 257) that interest on delayed payment not on account of delay attributable to the applicant entails interest.

9. Moreover, in Bal Kishore Modi Vs. Arun Kumar Singh & Ors. (2002 SCC (L&S) 1041) held that after submission of pension papers delay in release of retiral benefits, an interest of 15% p.a. has been levied on the government.

10. We find from the reply of the respondents that they have asked for the fresh pension papers from the applicant to confirm the details as 8 years had elapsed. This clearly establishes that the applicant had already submitted the pension papers including that of commutation of pension.

11. As regards interest on gratuity is concerned which is due after retirement i.e. 3 months from that date cannot be withheld and an interest is to be levied for delayed payment as per DoP&T O.N. dated 10.1.1983. This provision is to mitigate hardship to the government servant who is involved in disciplinary proceedings where he is fully exonerated.

12. As regards full exoneration is concerned in the criminal case on challenge of the charge framed by the Special Judge of Hon'ble High Court of Himachal Pradesh, discharged the applicant as no offence was established against the applicant. This is complete exoneration from the criminal charges.

13. It is also well settled that the displeasure is not an enlisted penalty whether minor or major under CCS(CCA) Rules, 1965. Gratuity cannot be withheld only because one has been conveyed displeasure. While dealing with the aforesaid issue, Ahmedabad Bench of the Tribunal in Nikunjrai P. Patel Vs. U.O.I. & Ors (2004(2)_ATJ CAT 116) Ruled that the gratuity cannot be withheld for displeasure and in that event one is entitled to interest.

14. From the perusal of displeasure conveyed to the applicant, we find that the charges against the applicant have been dropped. Accordingly, this is a full exoneration for want of infliction of penalty under Rule 9 of the Rules ibid. Having regard to the decision of Apex Court in Vijay L. Mehta's case (supra) where not only interest on other retiral benefits has been accorded but also on commutation of pension, as in the instant case the applicant had already at the time of his superannuation on 31.3.1994 had applied for the commutation and completed the pension papers, he cannot be deprived of interest on the aforesaid amount.

15. One is not entitled to interest after release of retiral benefits if the delay thereof is attributable to the government servant. We do not find any delay on the part of the applicant who has timely completed his papers but for the proceedings the retiral benefits were not released on his complete exoneration, he is duly entitled for the interest.

16. In the result, ^h allow this OA in terms of Para-8 and direct the respondents to pay interest @ 9% to the applicant from the date due i.e. 3 months from the date of his retirement till the date actual payment. This shall be done within a period of 3 months from the date of receipt of a copy of this order. Respondents are also directed to release two days full pay and allowances to the applicant from 30.3.1994 to 31.3.1994. If the provisional pension has been stopped from 1.1.2003 he had to be paid total commutation with adjustments thereof. No costs.

S. Raju
(Shanker Raju)
Member(J)

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