

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Original Application No. 436/2018
Ahmedabad, this the 19th day of September, 2019**

CORAM :

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

Shri Anilkumar Arora, S/o Karanraj Arora, Male, aged about 64 years,
Residing at A/2/14 Goyal Intercity, Drive in Road, Ahmedabad – 380 054.

Applicant

[Advocate : Shri P.H.Pathak]

Versus

1- Union of India notice to be served through the General Manager
(WR) Church Gate, Mumbai 400 020.

2- Division Railway Manager (WR), Kalupur Railway Station,
Ahmedabad-380002.

Respondents

[Advocate : Shri A.L.Sharma]

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

Applicant, Anil Kumar Arora, in instant Original Application has challenged order at Annex. A/1 dated 06.06.2018 whereby he has been informed, pursuant to his representation dated 19.04.2018 that in CAT-ADI's order passed in O.A. No. 288/2011 has been complied in totality and in compliance thereof he has been paid settlement dues as per extent Railway Rules. Grievances of the applicant is that that as per Railway Board's order No. F(E)III/2002/PN1/17 dated 6th November, 2008 Compounded Interest has to be paid on delayed payment of Arrears of his retiral benefits viz. Pension and Gratuity but he was not paid any interest. Prayer has been made to quash the impugned order, Annexure A/1 and to direct the respondents to pay him Interest @ 12% per annum on the delayed payment and, to allow the O.A. with cost.

2. Present one is second round of litigation. Previously when applicant was denied the benefits of Fixation of Pay as per last pay drawn and denied Running Allowance which had consequential affect on his pay fixation, pension and gratuity as well, he preferred O.A. No. 288/2011 and this Tribunal while allowing O.A. No. 288/2011, on 17.10.2012, observed and gave direction to the respondent-department, which verbatim is:- ***“In view thereof, the applicant is entitled to running allowance as per the rates provided in the rules for the post that he held on the date of retirement. The respondents are directed to regular applicant’s consequential benefits accordingly. This exercise be completed within a period of three months from the date of receipt of a copy of this order.”***

The respondents’ challenged the said order of the Tribunal on the file of Hon’ble High Court at Gujarat in MCA No. 269/2014 but failed and then matter was taken to by respondents, before Hon’ble the Apex Court in C.C. No. 076568 but there also it was summarily dismissed.

3. It has been pleaded by applicant that he was belonging to running staff and retired w.e.f. 28.04.2010. That his pension was required to be fixed according to last pay drawn + 55% in pay to be added as Element of KMPA Allowances while fixing settlement dues of running staff. That amount of Gratuity as 1st instalment was released on 28.12.2010 but without adding 55% running allowances and Rs. 4,68,585/- was paid after a delay of 7 months without any interest. That he preferred O.A. No. 288/2011, which was allowed and as per direction of the Tribunal the respondents ought to have re-fix

his retirement dues promptly but it was not carried-out within reasonable time and was delayed without any justification and delayed payment is there, he also gave the details of amount, with date when it was paid and contended that respondents did not pay the interest and have ignored the Railway Board's Circular dated 06.11.2008 and did not pay the benefits flowing out of it, to the Running Staff of Railways. That the delay caused in releasing retiral dues 'due to wrong calculation', was exclusively on the part of the respondents, thus, Interest on arrears of all payments viz. Gratuity and Pension etc. should be ordered.

4. Respondents have filed their reply taking a preliminary objection of principles of res judicata and delay. It has been pleaded that order passed by the Tribunal in O.A. is silent on interest part though it was claimed. That when any relief is claimed but is not granted, it should be deemed to be rejected. That the payment was made in time after finalization of lis and that otherwise also for pensionary benefits, principle governing delay might not apply rigorously. That from averment of O.A. it appears that applicant is seeking interest on payment, allegedly paid with delay prior to filing of OA no. 288/2011 and also on payment, allegedly paid with delay after decision in O.A. No. 288/2011. That so far the claim of interest on payment paid prior to filing of O.A. No. 288/11 relates, it is covered by res judicata and the claim of interest on payment paid after decision in the O.A., is time barred and no delay condonation application has been filed and therefore, OA is not maintainable.

5. Rejoinder to reply has also been filed narrating the facts that O.A. is absolutely beyond the term 'res judicata' and even it is not barred by Limitation, as alleged, because, payment of interest on arrears accumulated on account of wrong calculation of applicant's retiral dues, is a continuing cause of action. As regards the res judicata, it is contended that the Tribunal has not rejected interest to the applicant and the Department has, at his discretion challenged the order up to the Hon'ble Apex Court, and at least soon after the dismissal of respective case, respondents' were duty bound to pay interest on the arrears accumulated due to re-fixation of his pay. That even after decision in applicant's favour and there was no interim injunction from the superior Courts, respondent-department had no authority to withhold arrear amount of Gratuity and Pension for inordinate period.

6. After admission matter was fixed for final hearing and argument advanced by counsel for parties to lis were heard. Learned counsel Shri P.H. Pathak appearing for applicant and submitting that interest calculated for delayed payment comes to the tune of about Rs.55,766/- and he urged that as per rules due and payable interest has to be paid by the respondents. He argued that it is not in dispute that the due amount, even after order by this Tribunal in OA No.288/2011, was paid after long time so legally the applicant is entitled for interest. He also urged that applicant run from pillar to post for getting the pension, several times he approached the department but neither he was heard nor any heed was paid to his request by the representations and hence, he knocked the doors of

Pension Adalat by giving representations dated 19.04.2018 which was disposed of on 06.06.2008 informing that he has been paid all the dues as per decision in OA No.288/2011 of CAT, Ahmedabad and order of the Tribunal has been complied in totality. He submitted that in totality of facts and circumstances of the matter limitation of three years as has been ascertained by the respondents in their reply would not come in the way.

7. Learned counsel Shri P.H.Pathak also urged that there was directions in the O.A. for the payment, so limitations would not come in the way for getting the order implemented even after three years. He also added that even if this Tribunal is of the view that there is some delay, same may be condoned in interest of justice as the applicant is a retired Senior Citizen and he has earlier approached the Tribunal and the Department. He invited attention of the undersigned towards Annexure A/4, of the O.A. which is the circular of the Railway Board and contended that as per this also applicant is entitled to interest on delayed payments. He also submits that order passed by the Tribunal in OA No.288/2011 was challenged by the respondent in Hon'ble High Court but Hon'ble High Court pleased to dismiss the same, the respondent then took up the matter on the file of Hon'ble Supreme Court by preferring SLP but that was also dismissed on 08.08.2014.

8. Learned counsel for respondent, Shri A.L.Sharma contending that as per applicant last payment was made in the year 2014 and no recovery older than three years can be affected under Limitation Act and hence O.A. is barred by limitation and therefore deserves

dismissal. He also submits that in previous OA No.288/2011 prayer for grant of interest was there and the order dated 17.10.2012 passed in said OA evidently shows that no directions for interest was passed and hence, it can be deemed that interest was not allowed so also the applicant cannot legally claim interest.

9. Considered the submissions and perused the record. It transpires from material on record that this Tribunal vide order dated 17.10.2012 passed in OA No.288/2011 hold that applicant is entitled to Running Allowance as per rates provided in the Rules for the post and directed the respondents to regulate applicant's consequential benefits. The further direction of the Tribunal to the respondents was that entire exercise be complied within a period of three months from the date of receipt of copy of that order. Respondents challenged the order on the file of Hon'ble High Court and upon dismissal of the case of respondents by Hon'ble High Court, Department went to knock at the door of Hon'ble Supreme Court in SCA No.10085/2014 and that was also dismissed. Applicant gave representations for interest but no reply thereto was given. Applicant also gave representation on 19.04.2018 for referring his matter to Lok Adalat but that was also dismissed by order dated 06.06.2018 Annexure A/1. Instant O.A. was preferred on 31.08.2018. It also reveals that applicant was pursuing his matter vigorously.

10. Taking note of the entirety, especially the backdrop facts of the matters, Circular of the Railway Board, the order passed by the Tribunal in OA No. 288/11 which was confirmed by Hon'ble High

Court and Hon'ble Supreme Court, it cannot be said that limitation would come in the way to agitate this issue of interest at belated stage, particularly when the O.A. has been admitted on 03.04.2019 and said order of admission is silent about the issue of limitations and therefore it can only be construed at this stage that the issue of limitations or of delay, even if there was any, has been condoned at the time of admission. It cannot be said that the issue of limitations was kept open. The Order of admission has also not been challenged by the respondents so the plea of learned counsel for respondents that O.A. is barred by limitation deserves dismissal on ground of limitation cannot be entertained.

11. The Principal Bench of this Tribunal in its decision dated 21.02.2008 delivered in case titled *K.C. Uttreja Vs. The State of Government of NCT of Delhi and Ors.*, had 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.*"

12. Hon'ble Supreme Court in case titled *S.K. Dua Vs. State of Haryana and Anr.* (2008) 3 SCC 44 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 shake 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.”

13. It will be fruitful to reproduce the relevant operative portion of Railway Board's letter dated 6th November, 2008 also in verbatim and the same is as under :-

“1. Instructions were issued vide Board's letter No. F(E)III/94/PN1/28 dated 01.11.1994 inter-alia providing that where the payment of DCRG has been delayed beyond 3 months from the date of retirement, interest at the rate applicable to SRPF deposits (then 12 per cent per annum, compounded annually) will

be paid to retired / dependents of deceased Railway servant. Subsequently, instruction were issued on supersession of earlier instruction dated 01.11.1994, vide Board's letter of even number dated 27.06.2002 wherein the provision for payment of interest on delayed payment of DCRG was simply reiterated without mentioning therein the words "compound annually".

2. In this regard, a point has been raised under RTI Act, 2005 as to whether the manner of calculation of interest on delayed payment of gratuity has been changed from 'compound' to 'simple interest' consequent upon issue of Board's letter dated 27.06.2002. Since Board's aforementioned instruction were based on the corresponding instructions issued by the Department of Pension and Pensioner's welfare, the matter has been examined in consultation with that department and it is Clarified that there is no change in the manner of calculation of interest on delayed payment of gratuity i.e. interest should be calculated at the rate applicable to SRPF Deposits compound annually.

3. The Zonal Railway etc. are advised that past cases, where simple interest has been paid, may be re-opened and the difference between simple interest and compound interest may be paid.

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14. Above said Circular of the Railway Board also allowed Interest on delayed payment. According to applicant's O.A., he was paid Rs. 1,90,905/- on 02.08.2013, difference of pension of Rs. 3,99,417/- as was due, was released on 02.08.2013 and last instalment of Rs. 39,900/- was paid to him on 26.04.2014. Learned counsel for applicant has urged that as per Circular of the Railway Board, 12% interest per annum can be granted but applicant would be satisfied if he is granted interest @ 10% and that interest may be allowed from date after expiry of three months of order passed in OA No.288/2011.

15. It is not in dispute that payment has not been made promptly, it was made at belated stage even after expiry of time granted by the Tribunal in OA No.288/2011. This Tribunal while allowing O.A. No. 288/2011, on 17.10.2012 did hold that the applicant is entitled to running allowance as per the rates provided in the rules for the post

that he held on the date of retirement directed to regular applicant's consequential benefits accordingly and also directed to complete whole exercise within a period of three months from the date of receipt of the copy of the order.

16. I feel it would be appropriate to direct the respondents to make payment of interest only for amount, which respondent had to pay, to comply the order passed in OA No. 288/2011 and interest shall be payable for the period commencing after expiry of three months from the date of receipt of the copy of the order to till date of payment. It is not known that when respondents have received the copy of the order passed in OA No.288/2011. For presumption purpose it can be said that copy might have been received at least within two weeks time after passing of the order and so, in absence of any material positive or negative, it is presumed that copy must have been received by respondents on or before 1st November, 2012. The Order passed in OA No.288/2011 obviously show that the payment had to be made within three months after receipt of copy of order and when the date of receipt of copy has been assumed as 1st November 2012 then adding three months thereafter, the date from which interest have to be given comes to be 1st February, 2013. Hence the crucial date from which interest shall be payable would be 1st February 2013 to till date of payment. This interest should be payable at the rate of 10% per annum only on the amount which was due on the date of passing of the order in OA No. 288/11.

17. In view of legal and factual scenario, as has been discussed above, O.A. is disposed of with following directions:-

- i) Respondents shall calculate the total amount, which could be said to be due on 1st February, 2013 and to calculate the Interest at the rate of 10% per annum on said amount with effect from 1st February, 2013 to the date of payment of the amount.
- ii) All above said exercise shall be completed as expeditiously as possible and interest, so calculated shall be paid to the applicant, in any case within three months' from the date of receipt of a copy of this order.

18. The O.A. accordingly stand disposed of and the parties are left to bear their own costs.

(M.C. VERMA)
Member (J)

mehta.