

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/141/2019 Date of decision: 10.12.2019

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

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Kishore Kumar Bharat, aged 62 years, S/o Sh. RR Bharat, Ex-CoSP, CSIR-CSIO, R/o House No.57/4, Sector 'C' Exit Defence Colony, Behind Guga Madi, Kalarhedi Road, Ambala Cantt. Haryana-133001. Group B.

... APPLICANT

VERSUS

1. Council of Scientific & Industrial Research, Anusandhan Bhawan, 2, Rafi Marg, New Delhi-110001 through its Director General.
2. Director, CSIR-Central Scientific Instruments Organization, Sector 30-C, Chandigarh-160030.
3. Administrative Officer, CSIR-Central Scientific Instruments Organization, Sector 30-C, Chandigarh-160030.

...RESPONDENTS

PRESENT: Sh. Sandeep Siwatch, counsel for the applicant.
Sh. Sanjay Goyal, counsel for the respondents.



ORDER (Oral)**SANJEEV KAUSHIK, MEMBER (J):-**

1. The applicant assails order dated 12.2.2018, copy attached as Annexure A-1, whereby his claim for grant of interest @18% on delayed payment of leave encashment, commutation value of pension and gratuity has been rejected.
2. At the very outset, Sh. Sandeep Siwatch, learned counsel for the applicant submitted that notwithstanding the prayer clause, his claim for award of interest may be considered against amount of commutation value of pension only.
3. Undisputed facts which, led to filing of the O.A. are that the applicant retired on attaining the age of superannuation on 30.11.2016. After retirement, he submitted representation for retention of Govt. accommodation i.e. H. No.A-16 Type-V, for four months and the same was acceded to on 31.11.2016 and he was allowed to retain the accommodation from 01.12.2016 to 31.3.2017 and subsequently on his request, it was extended from 1.4.2017 to 31.7.2017. At the time of granting extension, applicant was informed vide letter dated 23.11.2016 (Annexure A-3) that respondents will



withhold the amount of gratuity and leave encashment till he vacates Govt. accommodation, which he accepted.

4. Applicant was paid amount of leave encashment in the month of March 2017, gratuity and commutation value of pension on 01.3.2017 without any interest. Therefore, he is before this Court for award of interest.
5. Respondents have filed reply submitting that there is no delay on their part since they did not receive vigilance clearance certificate therefore, amount could not be released at the time of retirement.
6. Learned counsel for the respondents submitted that since matter is under investigation for loss of Rs.10,38,019/- to CSIR-CSIO, thus, applicant is not entitled to award of interest.
7. Sh. Sandeep Siwatch, learned counsel for the applicant vehemently argued that plea raised by the respondents that they had not received vigilance clearance is irrelevant as on 17.11.2016 itself respondent no.2 had asked for issuance of vigilance clearance from respondent no.1 indicating therein that as on that date no departmental or criminal proceedings were pending against the applicant, therefore, vigilance certificate be issued so that pensionary and other retiral benefits could be released to him.



Subsequently, letters dated 05.6.2017 and 24.8.2017 (Annexure MA A-18 colly) were also issued wherein it has categorically been stated by respondent no.2 that there was no vigilance case pending against applicant. Thus, he submitted that plea raised by the respondents that amount was withheld due to non-clearance of vigilance cannot to be believed because there is no fault either of the applicant or respondent no.2.

8. I have given my thoughtful consideration to the matter.
9. The solitary issue which came up for consideration is for award of interest on commutation value of pension.
10. It is by now well settled that if an employee is deprived of to use his dues for no fault of his and amount has been withheld by the department without there being any rule, then they are liable to pay interest on the said amount. This has been so held in the case of **Union of India Vs. Justice S.S. Sandhawalia**, (1994) 2 SCC 240, **A.S. Randhawa vs. State of Punjab & others**, 1997 (3) SCT 468 and **J.S. Cheema vs. State of Haryana**, 2014 (1) SCT 782. It is not out of context to refer to decision by the Constitution bench in the case of **Secretary, Irrigation Department, Govt. of Orissa & Ors. Vs. G.C. Roay**, AIR 1992 SC 732, wherein it has been held 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. This view has consistently been followed in the cases of **S.K. Dua Vs. State of Haryana**, 2008 (3) SCC 44, **H.R. Bangar Vs. Union of India & Ors.**(O.A No. 060/00870/2014), decided on 13.03.2015.

11. In the present case, admittedly, at the time of retirement, neither departmental nor criminal proceedings were pending against applicant. The amount of gratuity and commutation value of pension was withheld by the respondents for the reason that he was given extension for retaining Govt. accommodation from 01.12.2016 to 31.1.2017. It is not in dispute that applicant was paid provisional pension and ultimately full pension was given on 01.9.2017. It is clear from indicated facts that despite repeated requests by respondent no.2 to respondent no.1 to issue vigilance clearance certificate as there was no case pending against the applicant, respondent no.1 has not issued vigilance clearance certificate and for that applicant cannot be penalized for non-release of payment



at the relevant time. Thus, applicant is held entitled to award of interest on the amount of commutation value of pension from the date when it became due till the date it was released @ applicable to GPF amount.

12. The O.A. is allowed in the above terms. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 10.12.2019.
Place: Chandigarh.

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