

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/01405/2018****Dated 4th ,the day of October, 2019****PRESENT****Hon'ble Mr. T. Jacob, Member(A)**

A.Chandrasekaran
S/o late Shri K P Arunachala Sundaram
@ K P Arunachalam
E-1, Sapphire Apartments,
G K S Nagar,
Main Road Extn
Sravanampatti
Coimbatore- 641 035.

....Applicant

By Advocate M/s Ayyar & Iyer

Vs

1. The Union of India
Rep by the Secretary to the Govt of India and
Chairman, Governing Body of PIIC,
Ministry of Health & Family Welfare
Room No.156, A-Wing, Nirman Bhawan,
New Delhi 110 011.

2. The Director,
Pasteur Institute of India,
Coonoor- 643 103,
The Nilgiris

....Respondents

By Advocate Mr.M.Kishore Kumar

ORDER**(Pronounced by Hon'ble Mr.T.Jacob, Member(A))**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"I. To call for all connected records pursuant to impugned order Nos.(I) PII/ACCTS/PU/98/454/2018, (II) PII/ACCTS/PU/98/455/2018 (III) PII/ACCTS/PU/98/456/2018 dated 18.05.2018 and (ii) PII/ACCTS/PENSION/98/1724/2018 dated 19.09.2018 from the 2nd respondent read with applicant's representation dated 14.07.2018 and quash the impugned orders being arbitrary, unjust and unsupported or rules and direct the respondents to release forthwith unlawfully deducted commuted value of pension of Rs. 7,02,456/- (Rupees Seven lakh two thousand four hundred fifty six only) together with interest of Rs.6,19,741/- (Rupees Six lakh nineteen thousand seven hundred forty one only) totalling to Rs. 13,22,197/-(Rupees Thirteen lakh twenty two thousand one hundred ninety seven only) after adjusting the above Rs. 4,07,765/- (Rupees Four lakh seven thousand seven hundred sixty five only) already credited into bank account on 18.05.2018 and release forthwith Rs. 9,14,432/- (Rupees Nine lakh fourteen thousand four hundred thirty two only) and thereafter regulate monthly deduction of commutation be made only from pension payable in June 2018 till 17.05.2033 for 180 months @ Rs.7144/- and further direct the respondents to pay interest on the wrongfully deducted amount of Rs.9,14,432/- at GPF interest rates from 01.05.2018 till the actual date of its settlement and also direct the 2nd respondent to pay interest on accrued interest on gratuity and leave salary for the period from 01.09.2015 to 18.05.2018 (till date) as no interest was paid on the accrued interest of Rs. 4,28,445/- and Rs. 16,879/- within the time schedule stipulated by this Hon'ble tribunal in the substantial interest of equity, fairness and or pass any such orders or directions that this Hon'ble Tribunal may be pleased to do so, as deem fit in the facts and circumstances of the case and thus render justice."

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant was appointed as a Stores Officer (Group 'B') under the second respondent on 19.08.1979 and was promoted as Procurement Officer (Group 'A') on 24.01.1996 and superannuated from service on 31.08.2007 in the scale of pay of Rs.15600-39100 with Grade Pay Rs.6600/-. Barely two days before his retirement, he was issued with Rule 14 Charge Memo by the 1st

respondent under CCS (CCA) Rules, 1965 on the allegation of disproportionate assets. After completion of the enquiry even the inquiry report was not given. The applicant filed OA.1224/2004, in which the 2nd respondent informed that the applicant was exonerated by the order dated 13.05.2015 of 1st respondent. Based on the above, the OA was concluded in his favour. During August 2015 he was paid terminal benefits of gratuity and leave salary without any interest. No commutation was paid. Aggrieved by the above, he filed OA.1737/2016 to extend the benefits of interest envisaged under Rule 68 of CCS (Pension) Rules, 1972 together with admissible penal interest for the belated settlement of gratuity and leave salary encashment and also to settle commutation of pension under rules within time. This Tribunal by order dated 09.02.2018 allowed the OA in favour of the applicant. On 18.05.2018, the second respondent sanctioned interest towards gratuity and leave salary of Rs.4,28,445/- and Rs.16,879/- respectively after a lapse of 8 years, which should have been paid with interest till the date of actual payment i.e., from 01.09.2015 to 18.05.2018. The applicant submits that the amount of commutation of pension of Rs. 7,02,456/- was sanctioned as per 2nd respondent's order dated 18.05.2018. Interest for delayed payment to the tune of Rs. 6,19,741/- for the period from 01.09.2007 to 30.04.2018 was added with commutation amount totaling to Rs. 1322197/-. It was ordered that simultaneous deduction of Rs. 914432/- on the date of payment i.e. 18.05.2018 was made on the pretext of adjusting of arrears of recovery of commutation for 128 months @ Rs 7144/- (Rs. 7144 x 128 months = Rs 914432/-) at one stroke for the period from 01.09.2007 to 30.04.2018. Thereafter, only the balance amount of Rs. 407765/- was paid instead of 40% of commuted value of pension of Rs. 702456/-. The applicant submitted

representations dated 07.06.2018 and 14.07.2018 to the 2nd respondent and 1st respondent respectively for payment of interest on the delayed settlement whereafter an order was issued on 13.08.2018 by the 1st respondent directing the 2nd respondent to settle the issue as per pension rules. However, the second respondent by order dated 19.09.2018 rejected the request of the applicant. Hence the applicant has filed this OA seeking the above reliefs inter alia on the following grounds:-

- i. The impugned proceedings dated 18.05.2018 and dated 19.09.2018 of the second respondent are liable to be quashed being contrary to law established and unsupported by rules and order of CCS (Commutation of Pension) Rules, 1981;
- ii. The respondent cannot short circuit the due process of law. They ought to have known that the applicant never sought commutation of 7 CPC basic pension of Rs.,46,900/- which would have increased the burden of payment of the 2nd respondent.
- iii. Interest of Rs. 16879/- for leave salary, Rs. 4,28,445/- for gratuity for 01.09.2007 to 31.08.2015 was paid. No interest on accrued interest was paid from 01.09.2015 to 18.05.2018. Arbitrary deduction of commutation for 128 months for Rs. 9,14,432/- was made. Left out commutation of Rs. 4,07,765/- (without break up details) alone was paid instead of commutation of Rs.7,02,456/- plus interest of Rs. 6,19,741/- totalling to Rs.13,22,197/-.
- iv. The 2nd respondent has diluted the letter and spirit of both CCS (Commutation of Pension) Rules, 1981 and also the Order dated 09.02.2018 in OA.1737/2018.
- v. The applicant is entitled for the commuted amount of Rs.7,02,456/- in full along with interest of Rs.6,19,741/-. After its disbursement only the monthly deduction should have commenced @ Rs. 7144/- p.m for 180 months for 15 years from June 2018.
- vi. The 2nd respondent wrongfully recovered a sum of Rs.9,14,432/- at one stroke for the period from 01.09.2007 to 30.04.2018 (i.e Rs. 7144/- per month for 128 months) stating it was adjusted from the above

payment. There is no provision in CCS (Commutation of Pension) Rules, 1981 to deduct such unlawful and arbitrary recovery for 'adjusting' 128 monthly recoveries in one stroke.

vii. Wrongfull deduction of a sum of Rs.9,14,432/- at one stroke for the period from 01.09.2007 to 30.04.2018 (I.e, Rs 7144/- per month for 128 months), is unknown to Rule 6 of CCS (Commutation of Pension) Rules, 1981.

3. The respondents have filed reply. Respondent would submit that the Pastuer Institute of India, Coonoor the office of 2nd respondent herein is a body registered under the Societies Registration Act of 1860. It is an Autonomous Institute and though wholly controlled and governed by the Ministry of Health & Family Welfare, Government of India, the rules and orders of Government of India, is not made applicable in toto. It is stated that the departmental proceedings against the applicant were completed and the applicant was exonerated by the Ministry. After completion of the disciplinary proceedings the retirement gratuity and encashment of Leave Salary due to the applicant was drawn and paid to him on 01.09.2015 as per the rules and regulations in vogue. The applicant then requested for payment of 15% interest for retirement gratuity and leave salary benefits paid. Further clarification was sought from the Ministry for payment of commutation and the claim made by applicant for 15% interest. In the meantime, the applicant filed an OA.1737/ 2016 wherein this Tribunal by order dated 09.02.2018 directed respondents the pay interest on the delayed payment from the date of retirement till the date of actual payment on gratuity at the rate applicable to GPF in the relevant year. However, the mere fact that the rules do not provide for the payment of interest on delayed payments of leave encashment and commutation of pension does not mean that money would have no time value.

As the amounts were due on the day following the retirement of the applicant and the applicant was under departmental proceedings for no fault of his which fact is established by his exoneration, the applicant shall be entitled to interest on the delayed payment of leave encashment and commutation of pension as well. Accordingly the interest on retirement gratuity of Rs. 6,42,428/- which was paid on 01.09.2015 has been worked out to Rs. 4,28,445/- for the period from 01.09.2007 to 31.08.2015 (i.e from the day following the date of retirement of the applicant up to the day prior to the date of actual payment) and paid to the applicant on 18.05.2018. Similarly, the interest on leave salary of Rs.25,307/- which was paid on 01.09.2015 has been worked out to Rs.16879/- for the same period from 01.09.2007 to 31.08.2015 and paid to the applicant on 18.05.2018. The contention of the applicant is that the interest on accrued interest of Rs.4,28,445/- (interest on gratuity) and Rs. 16,879/- (interest on leave salary) are payable to him for the period from 01.09.2015 to 18.05.2018. This Tribunal has clearly ordered to pay interest on the delayed payment from the date of retirement till the date of actual payment of gratuity. Hence, the interest has been worked out from the day following the date of retirement and up to the day prior to the date of actual payment of gratuity as well as leave salary. Therefore, the question of payment of interest for the period from 01.09.2015 to 18.05.2018 as demanded by the applicant will not arise. The above fact has been communicated to the applicant in response to his representation dated 07.06.2018 vide this office letter no. PII/ACCTS/PENSION/98/1724/2018 dated 19.09.2018. Since the interest of Rs. 6,19,741/- for the delayed payment of commuted value of Rs.7,02,456/- has been allowed from the date of following the date of retirement ie, from 01.09.2007, the commutation of pension became absolute

on 31.08.2007. Hence, the commuted portion of pension of Rs.7144/- (ie 40% of Rs. 17860/-) should have been reduced from pension from September 2007 onwards and the residual pension of Rs.10716/- only should have been paid to the applicant from September 2007. Whereas the applicant was paid full pension of Rs. 17860/- from 01.09.2007 to 30.04.2018 and Rs. 9,14,432/- (Rs. 7144/- X 128 months) has been adjusted from the total payable amount of Rs. 13,22,197/- and the net amount of Rs. 4,07,765/- has been authorized for payment on 18.05.2015. This fact has been duly communicated to the applicant vide this institute letter No. PII/ACCTS/PU/98/454/2018 dated 18.05.2018. Hence the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder stating that the respondents cannot order recovery of monthly commutation of pension with retrospective effect, as there is no provision for the same in the commutation of pension rules. Further, the commutation of pension of Rs. 7,02,456/- is recoverable for 120 months towards principal and again for 60 months towards interest, in all totaling to 180 months @ Rs. 7,144/- w.e.f pension of June 2018 onwards till May 2033, as the commutation became absolute only after its disbursement.

5. The respondents have filed reply to the rejoinder of the applicant more or less reiterating the averments made in the reply statement.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. Admittedly the applicant while working as Procurement Officer was proceeded against departmentally under Rule 14 of the CCS (CCA) Rules, 1965 on 21.08.2007 for violation of Rule 3(1)(i) & (iii) and Rule 18(2) and 18(3) of the CCS (Conduct) Rules, 1964. During pendency, the applicant retired from service on superannuation on 31.08.2007. Provisional pension equivalent to full

monthly pension was sanctioned to him at the time of retirement and retirement gratuity and encashment of leave salary was withheld until the conclusion of departmental proceedings. Even before initiating enquiry under Rule 14, the case of the applicant was investigated by the CBI and the CBI had subsequently referred the case back to the 2nd respondent on 10.04.2007 for regular departmental action for major penalty. After conclusion of the enquiry, the Inquiry Report dated 15.12.2012 was forwarded to the 1st respondent for decision whereafter the applicant was exonerated of the charges vide order dated 13.05.2015. Based on his exoneration the amount of the Retirement Gratuity of Rs.6,42,428 and Encashment of Leave Salary of Rs.25,307/- due to the applicant (except commutation value of pension) was drawn and paid to the applicant on 01.09.2015. The applicant sought for payment of 15% interest on the delayed payment of Retirement Gratuity and Leave Salary benefits. When the matter was pending with the Ministry for clarification, the applicant filed OA.1737/2016 wherein this Tribunal by order dated 09.02.2018 issued the following directions:-

"...to pay interest on the delayed payment from the date of retirement till the date of actual payment on gratuity at the rate applicable to GPF in the relevant year. However, the mere fact that the rules do not provide for payment of interest on delayed payment of leave encashment and commutation of pension does not mean that money would have no time limit. As the amounts were due on the day following the retirement of the applicant and the applicant was under departmental proceedings for no fault of his which fact is established by his exoneration, the applicant shall be entitled to interest on the delayed payment of leave encashment and commutation of pension as well. The respondents are directed to process his claim accordingly and pay interest at the same rate on the delayed payment of those dues.

8. Pursuant to the directions of this Tribunal, the respondents have paid interest as per the details given below:-

Details of the amount for which interest paid	Period for which interest paid	Amount of Interest Paid	Date of payment of interest
Gratuity Rs.6.42.428/- paid on 01.09.2015	01.09.2007 to 31.08.2015	Rs.4,28,445/-	05/18/18
Encashment of Leave Salary Rs.25,307/- paid on 01.09.2015	01.09.2007 to 31.08.2015	Rs.16,879/-	05/18/18
Commutation Value of Pension Rs.7,02,456/- paid on 18.05.2018	01.09.2007 to 30.04.2018	Rs.6.19,741/-	05/18/18

9. As per the Hon'ble CAT order, the interest on Retirement Gratuity & Leave Salary has to be paid from the date of retirement up to the date of actual payment. Accordingly, the interest for the period from 01-09-2007 to 31-08-2015 on Retirement Gratuity amount of Rs. 6,42,428/- paid on 01-09-2015 was worked out to Rs.4,28,445/- at the rate applicable to GPF and paid on 18.05.2018. Similarly, the interest for the period from 01-09-2007 to 31-08-2015 on Leave Salary amount of Rs. 25,307/- paid on 01-09-2015 was worked out to Rs.16,879/- at the rate applicable to GPF and paid on 18-05-2018.

10. As per the Hon'ble CAT order, a sum of Rs. 13,22,197/- was sanctioned to Sri. A.Chandrasekaran being the Commuted Value of Pension of Rs. 7,02,456/- along with interest Rs. 6,19,741/- on the above Commuted Value of Pension at the rate applicable to GPF for the period from 01-09-2007 to 30-04-2018. A sum of Rs. 9,14,432/- being the excess paid pension amount due to non reduction of commutation period of Pension of Rs. 7144/- for the period from 01-09-2007 to 30-04-2018 (i.e., Rs.7144/- x 128 months) was adjusted from the above amount of Rs.13,22,197/- and the net amount of Rs. 4,07,765/- (Rupees Four lakhs seven thousand seven hundred and sixty five only) was paid to the applicant on 18-05-2018.

11. As per the proviso (c) below sub-rule 1 of rule 6 of CCS (Commutation of

Pension) Rules, 1981, in the case of a Government Servant retires on superannuation of pension, the Commutation of pension shall become absolute on the date following the date of his retirement provided that the Commuted Value of pension becomes payable on the day following the date of his retirement, the reduction in the amount of pension on account of commutation shall be operative from its inception.

12. In this case, since the interest was paid on Commutation value of Pension, as per the CAT's judgement the Commutation of Pension should be treated as simultaneous with retirement. Hence, the commutation has become absolute on 31.08.2007 and the reduction in the amount of pension on account of commutation should be operative from its inception i.e from 01.09.2007. Therefore, the excess payment of pension at Rs.7,144/- from 01.09.2007 to 30.04.2018 of Rs. 9,14,432/- adjusted from the commutation value and interest thereon of Rs. 13,22,197/- is in order. Infact, no interest has been charged from the applicant for the excess paid amount of pension of Rs. 914432 at the rate of Rs. 7144/- from September 2007 to April 2018.

13. The provisional pension granted to the applicant pending finalisation of the disciplinary proceedings pending on the date of superannuation was full pension. When the commutation of pension became final w.e.f. 01.09.2007 on his superannuation w.e.f. 31.08.2007, the commuted value of pension which was paid to him on the basis of provisional pension became excess payment of pension and the respondent has recovered the excess payment made to him. The delay in payment of commuted value of pension due to pendency of disciplinary proceedings was procedural and technical in nature and he has been paid the interest for the delayed payment. There is no dispute on the amount of commuted value of pension. Further the full pension will be restored

to him in 2022 after completion of 15 years. Therefore this Tribunal is unable to see any injustice caused to the applicant.

14. An argument had been raised with some extent of vociferousness that at the time of payment of commuted value of pension reckoned from the date following the date of superannuation in 2007, the respondents have deducted the corresponding amounts for a period of 128 months from the provisional pension paid and this recovery is without any prior notice. This argument has absolutely no substance. When commutation has been made available from the date following the date of superannuation, the applicant becomes entitled to reduced pension after commutation where as he had been paid provisional pension which is full in extent. The claim for commutation from the date following the date of retirement and the corresponding recovery of the excess amount of the provisional pension paid to the applicant are integral part of the same transaction. Axiomatically, when the claim is made and the claim involves recovery, the concern for such recovery is innate and the applicant need not be put to separate notice. Thus, the argument of the council for the applicant is rejected.

15. As regards the prayer of the applicant for payment of interest over the accrued interest on gratuity and leave salary for the period from 01.09.2015 to 18.05.2018 (till date) as no interest was paid on the accrued interest of Rs. 4,28,445/- and Rs. 16,879/- within the time schedule, it is well settled legal position that if there is administrative delay on the part of the pension sanctioning authority to the applicant then for such belated payment, interest would be admissible. But in the instant case, the disciplinary case has been continuing till he was exonerated by order dated 13.05.2015. Moreover, within three months of the said order, the respondents released the pensionary dues

like gratuity and arrears due to him. Therefore, departmental disciplinary proceedings for all practical and legal purposes continued till 13.05.2015. The respondents have paid the gratuity and leave encashment etc. in August 2015 which is within the shortest possible period. Any reasonable authority would have taken the same period as in the present case. This in my considered opinion is not delay on the part of the administrative process by the respondents, and therefore, no interest over the accrued interest would be admissible to the applicant. There is no concept of interest on accrued interest. The respondent has worked out and got finalised through the appropriate channels the retirement benefits to the applicant within reasonable time after the disciplinary case was finalised. In view of this the applicant cannot claim any further interest on the interest accrued and already paid to him. As such, I do not see any illegality or irregularity in the impugned order dated 19.09.2018 passed by the respondents.

16. In the result, the OA is liable to be dismissed and is accordingly dismissed. No costs.

(T. JACOB)
MEMBER(A)
-10-2019

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