
(1994) 12 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 1907 of 1993

N.L. Abhyankar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

All India Services Act, 1951 — Section 3
Constitution of India, 1950 — Article 16, 226, 32
High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 17, 17A, 2, 24

Citation : (1995) 1 MhLj 503

Hon'ble Judges : L Manoharan, J; Dhabe, J

Bench : Division Bench

Judgement

H.W. Dhabe, J.—The petitioner claims that a writ in the nature of mandamus should be issued directing the respondents to compute and determine the Death-Cum-Retirement-Gratuity (for short "D. C. R. G.") payable to the petitioner as per the relevant rules applicable to him in that regard at the time of his retirement on 30-11-1969 and commands that the respondents should be directed to pay the said amount of D. C. R. G. forthwith with interest at the rate of 12% p.a. from the date of his retirement till realisation.

2. The facts are that the petitioner was appointed as a Judge of this Court on 6-10-1960 and was confirmed as a puisne Judge on 6-10-1962. He retired as a Judge of this Court on 30-11-1969 after attaining the age of 62 years. The grievance of the petitioner is that he is not paid D. C. R. G. up-till-now although he is entitled to the same as per the relevant rules in that regard.

3. The conditions of service of the Judges of the High Court are regulated by the High Court Judges (Conditions of Service) Act, 1954 (for short "the Act"). In exercise of the powers conferred upon it u/s 24 of the Act, the Central Government has framed rules as per its notification dated 24-1-1956 to carry out the purposes of the Act known as the High Court Judges Rules, 1956 (for short

"the 1956 Rules"). Rule 2 of the said 1956 Rules as it existed at the time of retirement of the petitioner is reproduced below :

"2. Conditions of service in certain cases - The conditions of service of a Judge of a High Court for which no express provisions has been made in the High Court Judges (Conditions of Service) Act, 1954, shall be, and shall from the commencement of the Constitution be deemed to have been, determined by the rules for the time being applicable to a member of the Indian Administrative Service holding the rank of Secretary to the Government of the States in which the principal seat of the High Court is situated.

Provided that, in respect of facilities for medical treatment and accommodation hospitals, the provisions of the All India Services (Medical Attendance) Rules, 1954 in their application to a Judge, shall be deemed to have taken effect from the 25th January, 1950".

3A) It is clear from the above Rule 2 of 1956 Rules that where no express provisions is made in the Act to regulate any particular condition of service of a High Court Judge, then such conditions of service is regulated by the rules for the time being applicable in that regard to a member of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated. Perusal of the provisions of the Act as they were in force at the time of retirement of the petitioner on 30-11-1969 would show that there was no provisions therein at that time to regulate the conditions of service of the High Court Judge regarding payment to him of the benefit of the D. C. R. G. However, the said benefit was conferred upon the member of the Administrative Service by the All India Services (Delhi-Cum-Retirement-Benefits) Rules, 1958 (short for "the 1958 Rules") framed by the Central Government in the exercise of power conferred upon it u/s 3(1) of the All India Services Act, 1951. The submission on behalf of the petitioner, therefore, is that since on the date of the retirement of the petitioner there was no express provisions conferring the benefit of D. C. R. G. upon him under the Act or any rule framed thereunder he was entitled to the said benefit in accordance with the provisions of Rule 19(1) read with Rule 16 of the 1958 Rules.

4. To appreciate the above submission made on behalf of the petitioner, it is necessary to see the provisions of the Act as amended from time to time which are relevant for the purpose of the instant writ petition. In the original Act there was no provision for grant of extra ordinary pension and gratuities except as provided in Section 17 of the Act in relation to a Judge who might suffer injury or die as a result of violence. The original Act was amended by the High Court Judges (Conditions of Service) Act, 1961 by which Clause (gg) was introduced in Section 2 of the Act to define the expression "Pension" to mean the pension of any kind whatsoever payable to or in respect of a Judge including any gratuity or other sum or sums so payable by way of death or retirement benefits. It is clear from the said definition that D. C. R. G. was included in the definition of the expression "Pension" by the above amending Act. The said Amending Act also

introduced Section 17A according to which the family of a Judge was made entitled to extra ordinary pension and gratuity on his death.

5. It is, however, by the High Court Judges (Conditions of Service) Amendment Act, 1976 that the relevant provision for D. C. R. G. was introduced in the Act. By the said Amending Act, the existing Section 17A was numbered as sub-section (1) and sub-section (2) and (3) were introduced in the said Section 17A of the Act. By sub-section (2) of the said Section 17A, the benefit of gratuity was extended to those Judges who were not covered by Section 17 of the Act. However, the material provision so far as D. C. R. G. was concerned was sub-section (3) thereof by which with retrospective effect from 1-10-1974 the benefit of D. C. R. G. was granted to the Judge of the High Court as it was permissible in relation to an Officer of the Central Civil Services Class I.

6. The express provision to grant the above benefit of D. C. R. G. is thus enacted by the above Amending Act of 1976 with retrospective effect from 1-10-1974. However, in regard to the Judges who retired prior to the said amendment made effective from 1-10-1974, there is no such express provision in the Act because of which reliance is placed by the petitioner upon the aforesaid 1958 Rules read with Rule of 1956 Rules for grant of benefit of D. C. R. G. to the Judges including the petitioner who retired prior to 1-10-1974. As already pointed out, when there is no express provision in the Act regarding the conditions of service of a Judge of the High Court, then Rule 2 of 1956 Rules framed thereunder provides that such conditions of service for which there is no express provision in the Act would be regulated by the Rules for the time being applicable to a Member of the Indian Administrative Service holding the rank of Secretary to the Government of the State in which the principal seat of the High Court is situated. It is in view of the above Rule 2 of the 1958 Rules that the petitioner has rightly pressed into service Rule 19(1) read with Rule 16 of the 1958 Rules applicable to the member of the Indian Administrative Service.

7. The said question has been directly considered by the Allahabad High Court in the case of M.C. Desai and Others Vs. Union of India (UOI) and Others, . The Allahabad High Court has held in the said case that Rules 19(1) and 17 of the 1985 Rules read with Rule 2 of 1956 Rules enables the High Court Judges to get D. C. R. G. if they have retired prior to 1-10-1974. There is no manner of doubt that the above judgment clearly supports the petitioner. The learned Counsel for the Union of India has, however, brought to our notice that the above judgment is under challenge before the Supreme Court in regard to which the learned Counsel for the petitioner has urged before us that there is no stay of the said judgment granted by the Supreme Court. It is not, therefore, necessary to stay the proceedings in the instant case to await the judgment of the Supreme Court in this regard, more particularly so when the petitioner has become pretty old and is about 87 years of age because of which it is necessary to decide his writ petition expeditiously so that he can avail of the benefit of D. C. R. G. during his life time.

8. In this regard, it is also necessary to see that Rule 2 of 1956 Rules has been interpreted by the Supreme Court in a number of cases relating to the question of encashment of Earned Leave for which there is no provision in the Act. (See Union of India (UOI) Vs. Gurnam Singh, , Shiv Dayal Shrivastava Vs. Union of India(UOI), and its recent judgment in the case of Union of India Vs. Justice S.S. Sandhawalia (Retd.) and others, . In view of all these judgments, we are in agreement with the view taken by the Allahabad High Court in the case of M. C. Desai v. Union of India cited supra that the Judges of the High Court who have retired prior to 1-10-1974 are entitled to D. C. R. G. in accordance with the provisions of the 1958 Rules applicable to the members of the All India Services. The petitioner is, therefore, entitled to D. C. R. G. in accordance with the provisions of Rule 19(1) read with Rule 17 of the 1958 Rules.

9. What is, whoever, strenuously urged before us is that there is an inordinate delay in making claim of D. C. R. G. in this Court by the petitioner who has filed the instant writ petition on or about 19-7-1993 although he has retired on 30-11-69. The submission is that at any rate within reasonable time from the date of judgment of the Allahabad High Court cited supra upon which reliance is placed, the petitioner should have moved this Court for the necessary relief. It is urged that when the period of limitation is 3 years for recovery of a monetary claim or benefit from the date of its accrual the petitioner should have moved this Court at least within 3 years from the date of judgment of Allahabad High Court if not from the date of his retirement Reliance is placed in this regard upon the judgment of the Supreme Court in the case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, and its judgment of the Supreme Court in the case of Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, . On the other hand, the learned Counsel for the petitioner who has opposed the above condition raised on behalf of the respondent No. 1 has relied on the question of delay upon the judgment of this Court in the case of Parle Beverages Pvt. Ltd. Vs. Union of India, .

10. In appreciating the rival submissions on the question of delay in filing the writ petition under Article 226 of the Constitution of India, it is first necessary to see that no such contention is raised by the respondent No. 1 in the reply filed on its behalf in the instant writ petition. The respondent No. 1 is not therefore entitled to raise the same orally during the course of his arguments. Even otherwise, it must be borne in mind that there is no period of limitation as such provided for moving the High Court for relief under Article 226 of the Constitution. The question of delay has, therefore, to be considered in the facts and circumstances of each case in the sound exercise of its discretion by the High Court. As far back as in 1967, the Supreme Court has observed in the case of Moon Mills v. Industrial Court, Bom AIR 1967 S. C. 1450 that the issue of a writ of certiorari is largely a matter of sound discretion. It has then observed that the writ will not be granted if there is sub negligence or omission on the part of the petitioner to assert his right as taken in conjunction with the lapse of time and other circumstances causes prejudice to the adverse party. The principle,

according to it, is similar though not identical to the exercise of discretion by the Court of Chancery. It has then quoted with approval the following passage from the Judgment of Sir Barnes Peacock in *Lindsay Petroleum Co. v. Prosper Armstrong Hurdm Abram Farewell and John Kemp* (1874) 5 PC 221 :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or were by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in situation in which it would not be reasonable to place him if the remedies were afterwards to be asserted, in either of these cases, laps of time and delay are most material. But in every case, if an argument against relief which otherwise would be just, is founded upon mere delay, that delay of course no amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other so far as relates to the remedy."

12. It is clear from the above passage quoted with approval by the Constitution Bench of the Supreme Court then in every case if the plea is raised on the ground of mere delay to defeat the relief claimed by the petitioner which is otherwise just, the validity of such a plea will have to be examined upon principles which are substantially equitable unless there is a bar of limitation created by any statute to claim such a relief. The two material circumstances which have to be taken into consideration while examining the plea of delay are the length of delay and the nature of acts done during the period of delay which may affect either party or cause a balance of justice or injustice in deciding the question whether the remedy should be allowed to the petitioner or not. As regards the remedy of a writ petition under Article 226 of the Constitution, there is no period of limitation provided for invoking the jurisdiction of the High Court under Article 226 of the Constitution. The question then to be considered is whether there have been such acts done by either party during the period of delay by which it can be said whether this Court should or should not exercise its discretion in granting relief to the Petitioner claimed by him in instant Writ Petition. In other words what has to be seen in the absence of bar of limitation is whether the relief asked for has become so stale that it is deemed to be given up by the Petitioner or whether in the meanwhile the rights of third parties have come into existence so that it would not be proper for the High Court to exercise its discretion in favour of the petitioner.

13. It is true that in the case of *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, relied upon on behalf of the respondent No. 1 it is held by the Supreme Court that although the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226 of the Constitution of India, the maximum

period fixed by the legislature as the time in which the relief by suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. It is also further observed in the said case that the Court may consider the delay unreasonable, even if, it is less than the period of limitation prescribed for a civil action for the remedy, but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.

14. However, in the case of Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , relied upon on behalf of the respondent No. 1, although it is observed by Hidayatullah C. J. (as he then was) in para 7 of his judgment that the Supreme Court will not inquire into the belated and stale claim or take note of neglect of one's own rights for a long time, it is not laid down by him as an inflexible rule that the delay for more than the period of limitation prescribed for a civil action would always be treated as unreasonable delay. He has observed in para 11 of his judgment as follows :-

"Therefore, the question is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit". A case may be brought within Limitation Act by reason of some Article, but this Court did not necessarily give the total time to the litigant to move this Court under Article 32. Similarly, in a suitable case, this Court may entertain such a petition, even after a lapse of time. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose."

He has observed in para 7 as follows :-

"The party claiming fundamental rights must move the Court before other rights come into existence. The action of Courts can not harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court".....

15. Referring to the above observations of Hidayatullah C. J. in Tilokchand's case, cited supra, the Supreme Court has observed in para 9 of its judgment in the case of Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, that the rule which says that the Court may to inquire into the belated and stale claim is not a rule of law, but rule of practice, based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed in the facts of each case. It is then observed in the said judgment that the principle on which the Court proceeds to refuse relief to the petitioners on the ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. It is material so see that as shown in para 9 of the said judgment, there was delay of about 12 years in filing the petition in the said case since the date of accrual of cause of complaint in that case, viz., the challenge on the ground of Art. 16 of the Constitution to the promotions to the State wise

cadre of Dy. Collectors from the Divisional Cadre of Mamlatdars Tahsildars on the basis of their Divisional Select lists.

16. We may usefully point out that the following are some of the cases in which the Writ Petitions were entertained after a long delay of more than 10 years.

P.C. Sethi and Others Vs. Union of India (UOI) and Others, .

G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, .

Arunkumar Chatterji v. South Eastern Railway and others 1985 2 CLR 35.

17. That the period of limitation of three years for moving the High Court under Article 226 of the Constitution of India is not an inflexible rule is also held by the Supreme Court, vide Judgment of Sabyasachi Mukherji J. (as he then was) in the case of Salonah Tea Company Limited v. The Supdt. of Taxes Nowgong : 1988(33)ELT249(SC) . He has considered in his judgment in the said case all the previous decision of the Supreme Court on the question of inordinate delay and laches including its decision in Tilokchand Motichand"s case and Bhailal Bhai"s case cited supra relied upon on behalf of the respondent No. 1. In para 14 of his Judgment, he has observed as follows :

Para 14 : We agree that normally in a case where tax or money has been realised without the authority of law, the same should be refunded and in an application under Article 226 of the Constitution the Court has power to direct the refund unless there has been avoidable laches on the part of the petitioner which indicate either the abandonment of his claim or which is of such nature for which there is no probable explanation or which will cause any injury either to respondent or any third party. It is true that in some cases the period of three years is normally taken as a period beyond which the Court should not grant relief but that is not an inflexible rule. It depends upon the facts of each case."

18. In this recent decision in the case of M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, , the Supreme Court has again reiterated the principle relating to inordinate delay and laches in preferring the Writ Petition under Article 226 of the Constitution of India. In para 13 of its judgment, the Supreme Court has observed :

"The rule which says that the Court may not enquire into the belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on which the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the right which have accrued to others by reason of the delay in filing the Petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine the delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not

attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches."

The Supreme Court has been then distinguished its Judgment in Tilochand's case cited supra on facts.

19. The following principle emerge in the light of the Judgments of the Supreme Court cited supra on the question as to in what circumstances the relief should be refused in a writ petition under Article 226 of the Constitution of India on the ground of inordinate delay and laches. It is not an inflexible rule that the petition which is filed after a period of three years, which is normally a period of limitation for a suit, should be dismissed on the ground of inordinate delay and laches. The Rule which says that the Court may not inquire into the belated and stale claims is not rule of law, but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed in the facts and circumstances of each case. The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such, but the test is whether by reason of delay there is such negligence on the part of the petitioner, so as to infer that he has given up his claim or whether before the petitioner has moved the Writ Court, the right of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.

20. It appears that since there was no express provision in the Act conferring the benefit of D. C. R. G. upon the Judges of the High Court prior to the Amending Act of 1976 which conferred the said benefit upon the Judges of the High Court who retired after 1-10-1974, neither the Union of India nor the petitioner realised that the D. C. R. G. is payable to the Judges of the High Court who retired prior to 1-10-1974 under the 1958 Rules in view of Rule 2 of the 1956 Rules. In fact the said question came to the fore when some of the Judges of the Allahabad High Court who had, like the petitioner retired prior to 1-10-1974, filed a Writ Petition in the Allahabad High Court claiming the benefit of D. C. R. G. in view of Rule 2 of the 1956 Rules according to which if there was no express provision in the Act regarding any condition of service of a Judge of the High Court, the said condition of service was to be determined as per the rules for the time being applicable to a member of the India administrative Service holding the rank of the Secretary to the Government of the State in which situated. The D. C. R. G. was, therefore claimed in the said cases in accordance with the 1958 Rules hereinbefore referred to which were applicable to the members of the India Administrative Service. As already stated, the said writ petition was allowed by the Allahabad High Court by its judgment rendered on 13-5-1988. (See M.C. Desai and Others Vs. Union of India (UOI) and Others,) cited supra.

21. However, what is strenuously urged before us by the learned counsel for the Union of India is that even after the judgment of the Allahabad High Court

referred to above, the petitioner has not moved this Court with expedition and has preferred the instant writ petition and has preferred the instant writ petition as late as on 19-7-1993. In appreciating the above submission made on behalf of the Union of India, it is necessary to see that in para 7 of the writ petition the petitioner has pointed out that against the above judgment of the Allahabad High Court, the Union of India has filed an appeal by special leave which, as it appears from the reply filed on behalf of the Union of India in the instant Writ Petition, was admitted by grant of special leave some time in 1990 since the SLPs in question viz. S. L. P. Nos. 11050 of 1988 and 10417 of 1988 are registered as Civil Appeal Nos. 3716 of 1990 and 3715 of 1990 when the said appeals are pending in the Supreme court on the same question, the question of delay in filing the instant writ petition after the judgment of the Allahabad High Court cited supra is not really relevant.

22. As we have pointed out hereinbefore the petitioner was constrained to file the instant writ petition because of his advance age although he could have waited for the decision of the Supreme Court in the above Allahabad case. It is thus when the Supreme Court did not grant stay to the above judgment of the Allahabad High Court to be Union of India and in fact as pointed out in para 7 of the writ petition, when the petitioner in the above writ petition before the Allahabad High Court enforced their claim of D. C. R. G. by filing contempt petition before the Allahabad High Court that the petitioner has preferred the instant writ petition in this Court.

23. It is material to see that when there is authoritative pronouncement declaring the right of particular persons, then the benefit of the said judgment should be given to all other persons similarly situated i.e. belonging to the same class without the State being allowed to raise the ground of delay. It is only because the Union of India failed to implement the said obligation uniformly in respect of all other person similarly situated including the petitioner, that the petitioner had to file the instant writ petition. It is true that the above question was referred to the larger Bench by the Supreme Court in the case of Prahalad Singh Vs. Union of India (UOI) and Another, but then the said question was not answered by the larger Bench of the Supreme Court since it reversed the view taken by the High Court of Himachal Pradesh in T. R. Thakur's case on the basis of which similar benefit was claimed by the petitioner in Pralhad Singh's case cited supra. See Jaghnath Vs. Union of India and another, . It is material to see that where there is no delay on the part of the petitioners in approaching the Court, it is well settled that the benefit of the earlier decision of the Court should be extended to the persons similarly situated who were not parties to the earlier writ petitions. See Doordarshan Cameramen's Welfare Association (Regd.) Vs. Union of India and another, which has distinguished Pralhad Singh's case cited supra. If in view of the pendency of the same question before the Supreme Court in the appeal preferred against the judgment of the Allahabad High Court cited supra the question of delay is not really relevant. In the instant case, there is no reason why the benefit of D. C. R. G. allowed by the Allahabad High Court to its

Judge who retired prior to 1.10.1974 cannot be extended to the Judges of this Court who retired prior to 1.10.1974.

24. It is then material to see that it is obligatory upon the Union of India to see that its own employees of the constitutional functionaries like the judges of the High Court are granted within a reasonable time after their retirement all the retirement benefits to which they are entitled under law and which they earn by reason of their long service under it. The Allahabad High Court has rightly pointed out in this regard in para 10 of its Judgment cited supra that there is an obligation upon the Union of India Under the Act to pay pension and gratuity to the retiring Judge and there is no provision in the Act or the 1956 Rules framed thereunder requiring the retiring Judge to apply for pensionary benefits including gratuity. In such matters, propriety requires that the Union of India should not raise technical objections like delay and laches in opposing the writ petitions which its employees or such constitutional functionaries are unfortunately required to file to enforce their rights relating to the retirement benefits to which they are entitled under law. See in this regard the observations of the Supreme Court in the case of Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, , in which the Supreme Court has observed :

"It is high time that the Governments and Public Authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

In fact no such plea is rightly raised in the return filed on behalf of the Union of India, although during the course of the hearing, the learned Counsel for the Union of India has raised the above question. We thus reject the contention raised on behalf of the Union of India that the claim of D. C. R. G. made by the petitioner should be rejected on the ground of inordinate delay.

25. The next question which needs consideration is whether the petitioner is entitled to interest upon the amount of gratuity payable to him at the rate of 12% P. A. from the date of his retirement till realisation. In this regard it has to be noticed that by amendment of the 1958 Rules by notification dated 1617/83 Rule 19A providing for statutory interest is introduced in the said 1958 Rules which regulate D. C. R. G. payable to the members of the Indian Administrative Service. According to the said Rule 19A the interest "5% P. A. is made statutorily payable if the payment of D. C. R. G. is not made within 3 months from the date when it becomes due.

26. The Allahabad High Court has, in para 11 of its Judgment cited supra, considered the question of grant of interest upon the DCRG payable to the petitioners in the writ petition before it. Since it was of the view that the Union of India was at fault in not granting the benefit of D. C. R. G. to the petitioners in the said writ petition for such a long time, it held that in the interest of justice the petitioners in the writ petition before it were entitled to penal interest "12% P. A. upon the sum due to them on account of the benefit of D. C. R. G. to

which they were entitled. In the light of the above judgment of the Allahabad High Court, the interest at the above rate of 12% P. A. is also claimed by the petitioner in the instant Writ Petition.

26. As regards the question of grant of penal interest to the petitioner upon the amount of D. C. R. G. payable to him, we think that although the long delay in moving this Court could not be a ground to refuse him the main relief regarding the payment of D. C. R. G. to him along with the statutory interest made payable under Rule 19 A of the 1958 Rules, on equitable considerations the said question of long delay would be relevant in considering the question of awarding penal interest to him upon the amount of D. C. R. G. payable to him. In our view balancing the equities between the parties, the ends of justice would be met, if the petitioner is paid statutory interest at the rate of 5% P. A. as per Rule 19A of the 1958 Rules from the date 3 months after the date of his retirement as provided therein and the penal interest "12% interest instead of 5% P. A. is awarded to him upon the amount of his D. C. R. G. from the date of 3 years prior to the date of the instant Writ Petition till realisation.

27. However, if we adopt the said course, the petitioner would be discriminated because in the Allahabad case cited supra, the interest is granted to the petitioners therein "12% P. A. for the whole period from the date of retirement till the date the payment of D. C. R. G. is made to them. There is no stay in the appeals preferred before the Supreme Court by the Union of India against the said Judgment as regards the payment of interest also. The proper course in the circumstance therefore, would be to direct that, if the Judgment of the Allahabad High Court cited supra is upheld by the Supreme Court also on the question of penal interest awarded by it at the rate of 12% P. A. from the date of retirement till the date of payment of DCRG to the petitioners therein, the petitioner should also be held entitled to and should be paid interest "12% P. A. on the amount of D. C. R. G. from the date of his retirement till realisation as directed in the said Allahabad case, instead of only for three years as directed by us. The Union of India would thus be required to make the payment to him of the balance amount of interest after the judgment of the Supreme Court in the above Allahabad case.

28. In the result, the instant Writ Petition is allowed. The respondent No. 1 is directed to compute and determine the DCRG payable to the petitioner in accordance with the relevant Rules applicable to the members of the Administrative Service i.e. All India Services (Death-Cum-Retirement Benefits) Rules, 1958 referred to in the Judgment as the 1958 Rules and pay the same to the petitioner with statutory interest of 5% P. A. as provided in Rule 19A of the said 1958 Rules till the date 3 years prior to the date of the filing of the instant Writ Petition in this Court by the petitioner. However, from the said date onwards it shall pay interest "12% P. A. upon the amount of D. C. R. G. payable to the petitioner till realisation. The amount of D. C. R. G. with interest awarded as above shall be paid to the petitioner within six months from the date of this order. If the Judgment of the Allahabad High Court in M.C. Desai and Others Vs.

Union of India (UOI) and Others, as regards the payment of interest is affirmed by the Supreme Court, the petitioner shall be paid interest "12% P. A. from the date of retirement till realisation upon the amount of D. C. R. G. payable to him instead of the interest at the said rate from the date three years prior to the date of the filing of the petition in this Court as directed by us above. The payment of the balance of interest thus calculated shall be made within six months from the date of judgment of the Supreme Court in the above Allahabad case. Rule in the above terms. No costs.