**(2005) 11 DEL CK 0022**

**In the Delhi High Court**

**Case No :** Civil Writ No. 5601 of 2003

Ranvir Singh APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 28-11-2005

**Acts Referred:**

Central Civil Services (Pension) Rules, 1972 — Rule 68

**Citation :** (2006) 86 DRJ 289

**Hon'ble Judges :** Sanjiv Khanna, J;Dr. M.K. Sharma, J

**Bench :** Division Bench

**Advocate :** Party in Perso, for the Appellant; Suresh Kait, for the Respondent

## Judgement

Sanjiv Khanna, J.—The present Writ Petition is directed against the Order dated 4th August, 2003 of the Central Administrative Tribunal, Principal Bench in O.A. No. 478/2003. By the impugned Order, the learned Tribunal dismissed the Original Application filed by the petitioner herein for grant of interest on alleged delayed payment of gratuity, commuted amount of pension and retirement pension.

2. Learned Tribunal rejected the prayers made before it by the petitioner herein on the ground that the respondents were not to be blamed for the so called delay in payment of retiral benefits as the petitioner was himself responsible for the delay in compliance with various formalities.

3. We heard the petitioner who appeared in person and the learned counsel for the respondents. The petitioner submitted that he is entitled to interest on the retiral benefits w.e.f. his retirement on 31st January, 2001 or atleast with effect from 28th June, 2002, when the departmental proceedings initiated against him ended with a penalty of 5% reduction in his pension for a period of five years. It was also submitted that the respondents did not send him the papers for completing the formalities at his correct address for which he had written letter dated 20th September, 2002 and the papers were sent to an incorrect address.

Petitioner submitted that the pro rata pension was received by him only on 9th July, 2003, when the amounts were credited in his bank account and thus there was a delay of 375 days. It was further submitted that an amount of Rs. 1000/- was deducted illegally from his gratuity and the said amount has not been paid till date. He accordingly submitted that the respondents should be directed to pay Rs. 1000/- with interest.

4. Learned counsel for the respondents, however, submitted that there was no delay on the part of the respondents in issuing the authorisation/sanction order in respect of the pension papers. The delay in making payment had taken place as the petitioner had gone abroad. It was further submitted that Rs. 1000/- was deducted from gratuity due to petitioner''s failure to produce ''No Dues Certificate'' in respect of the government accommodation occupied by him and ''disconnection certificate'' from NDMC.

5. The petitioner retired as Chief General Manager, Northern Telecom Projects, New Delhi on 31st January, 2002 after 36 years of service in the Department of Telecommunication. At the time of his retirement, departmental proceedings were pending against him and accordingly provisional pension was sanctioned to him on 9th April, 2002. Thus there was a delay of about 68 days in sanctioning of the provisional pension as the petitioner had retired on 31st January, 2002.

6. The petitioner was paid provisional pension till the departmental proceedings ended with the passing of the Order dated 28th June, 2002, whereby penalty of reduction of pension by 5% for a period of five years was imposed on the petitioner. As per the papers filed by the respondents, order sanctioning retiral benefits was made on 7th October, 2002.

7. First question, Therefore, is whether there was any delay in sanctioning/issue of authorisation dated 7th October, 2002.

8. Learned counsel for the respondents, however, submitted that there is no statutory provision fixing time for sanction of pension or requirement to pay interest under CCS (Pension) Rules, 1972 (hereinafter referred to as the Rules, for short) in cases where the departmental proceedings/ enquiries are pending. He referred to Rule 68 of the Rules. However, we find that as per O.M. No. F.7/1/93-P.&P.W(F), dated 25th August, 1994, guidelines have been framed for payment of gratuity where the departmental proceedings are pending at the time of retirement but on conclusion thereof the retiring employee becomes entitled to payment of gratuity. For the sake of convenience, the relevant portion of the said O.M. Dated 25th August, 1994 is reproduced below:-

Guidelines for determining delay in payment of gratuity in cases other than superannuation and payment of interest therefore.

Payment of interest on delayed payment of gratuity is, at present, regulated under Rule 68 of the CCS (Pension) Rules, 1972.

2. ... It has been decided that if the payment of gratuity has been delayed due to

 

administrative lapses for no fault of the retiring employee in cases of retirement other than superannuation, the payment of interest may be regulated in the following manner:-

(i) In case of Government servants against whom disciplinary/judicial proceedings are pending on the date of retirement and in which gratuity is withheld till the conclusion of the proceedings:-

(a) In such cases, if the Government servant is exonerated of all charges and where the gratuity is paid on the conclusion of such proceedings, the payment of gratuity will be deemed to have fallen due on the date following the date of retirement vide O.M. No. 1(4)/Pen. Unit/82, dated the 10th January, 1983 [Para. 3 of Decision (1) above]. If the payment of gratuity has been authorised after three months from the date of his retirement interest may be allowed beyond the period of three months from the date of retirement.

(b) In cases where the disciplinary/judicial proceedings are dropped on account of the death of the Government servant during the pendency of disciplinary/ judicial proceedings, the payment of gratuity will be deemed to have fallen due on the date following the date of death and if he payment of gratuity has been delayed, interest may be allowed for the period of delay beyond three months from the date of death.

(c) In cases where the Government servant is not fully exonerated on the conclusion of disciplinary/judicial proceedings and where the Competent Authority decides to allow payment of gratuity, in such cases, the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the Competent Authority for payment of gratuity vide O.M. No. 7 (1) PU/79, dated 11-7-1979 [Para. 2 of the Decision (1) above]. If the payment of gratuity is delayed in such cases, interest will be payable for the period of delay beyond three months from the date of issue of the above-mentioned orders by the Competent Authority.

9. Though the aforesaid O.M. Dated 25th August, 1994, deals with payment of gratuity and does not prescribe any period for issue of sanction/authorisation by the competent authority on conclusion of disciplinary proceedings when an officer is not fully exonerated, we feel that the competent authority should normally pass an order of authorisation/sanction in respect of gratuity and commuted portion of pension within a period of three months from the date of conclusion of the disciplinary proceedings. The said period of three months is specifically prescribed in other cases where a government servant is fully exonerated or in cases of death and Therefore can also be treated and regarded as a reasonable period to process and clear papers relating to retiral benefits in cases where an officer is not fully exonerated in the departmental proceedings but pension and/ or gratuity is payable. Therefore, we are of the opinion that the petitioner is not entitled to any interest for the period of three months from 28th June, 2002, when the departmental proceedings ended, i.e. till 28th September, 2002. Order/

 

sanction for payment of retiral benefits was passed on 7th October, 2002, there is Therefore a delay of about eight days. This delay being extremely short, we are not inclined to grant any interest to the petitioner for this period.

10. The other question which remains to be answered is whether the petitioner is entitled to interest after 29th September, 2002 till the payments were received. i.e. till 11th December, 2002 when gratuity and commuted pension was received and till 9th July, 2003 when pro rata pension was received.

11. The respondents have pleaded that there was default and delay on the part of the petitioner in submitting ''No Dues Certificate'' in respect of the official accommodation occupied by him. We feel this is not correct, as the petitioner had admittedly deposited the entire rental arrears on 3rd July, 2002. We also find that the petitioner had written letter dated 20th September, 2002 informing the respondents that he had changed his address and shifted to D-II/2209, DDA Flats, Vasant Kunj, New Delhi. In fact, the respondents themselves had released and sanctioned a sum of Rs. 3000/- towards arrears of pay at his new address on 13th September, 2002. Strangely, the respondents did not send the pension papers to the petitioner at the new address but the same were sent at the old address on 1st November, 2002 i.e. the place from where he had already shifted. The letters were sent at an incorrect address and Therefore obviously came back undelivered but no one bothered to examine the file and send letters again at the correct address of the petitioner, which it is admitted was available with the respondents in view of the petitioner''s letter dated 20th September, 2002. To the extent indicated above, we find that the respondents were negligent and careless in not dispatching the letters for completion of the formalities at the correct/new address given by the petitioner. The respondents also took time to prepare their papers after 29th September, 2002 till pro rata pension was actually received by the petitioner on 3rd June, 2003 and gratuity and commuted pension was received on 11th December, 2002. Similarly, we find that the respondents had delayed sanctioning of provisional pension by about 68 days. It appears that respondents took considerable time to rectify and clear the paper work and ultimately the pension was deposited in the petitioner''s bank account only on 9th July, 2003 even though sanction/authorisation was made on 7th October, 2002.

12. However, it cannot be said that the petitioner was in no way responsible for the delay in receiving gratuity and commuted pension on 11th December, 2002. The petitioner went abroad in the month of November 2002, and the cheques relating to the commuted portion of his pension were handed over to him, as per the respondents, on 11th December, 2002 on his return.

13. Keeping in view the above facts, we feel that interest of justice and equity require that the respondents should pay interest @ 8% from 29th September, 2002 till 1st November, 2002 on gratuity and commuted portion of pension of Rs. 9,13,468/-.

 

14. The petitioner will not be entitled to any interest for the period w.e.f. 1st November, 2002 when he went abroad and till he received the cheque of Rs,9,13,468/- after he came back on 11th December, 2002.

15. With regard to the regular pro rata pension, the respondents are entirely to be blamed after 29th September, 2002. It is not understood why they did not make the payment of pension till July 2003. They also erred in sending the papers to an incorrect address and not to the new address given by the petitioner. The petitioner is, Therefore, entitled to interest on the amount of arrears of pension @ 8% at pro-rata basis w.e.f. 29th September, 2002 till 9th July, 2003.

16. The last issue pertains to deduction of Rs. 1000/- made from gratuity on account of non-furnishing of '' No Due Certificate'' by the petitioner. Learned Tribunal while deciding the Original Application vide the impugned Order, asked the petitioner to furnish ''No Due Certificate'' and has directed release of the said amount thereafter. It is admitted that the petitioner has paid the rental dues relating to the official residential accommodation and he was only required to furnish disconnection certificate from NDMC. It is not the case of the respondents that NDMC has raised any demand in respect of any pending electricity/water dues. The respondents may verify from the records whether any demand is due and pending against the petitioner on this account and thereafter release the payment.

17. Accordingly, the Writ Petition is disposed of with the following directions:-

(i) The respondents will pay interest @ 8% on the amount of Rs. 9,13,468/- from 29th September, 2002 till 1st November, 2002.

(ii) The respondents will pay interest @ 8% on the regular pension, which had become payable and not paid, on pro-rata basis w.e.f. 29th September, 2002 till 9th July, 2003.

(iii) The respondents shall verify and examine whether any dues are payable by the petitioner to NDMC and thereafter make adjustments and release Rs. 1000/- or the balance amount due.

18. Keeping in view the facts and circumstances of the present case, we make no orders as to costs.

 