

(2006) 03 KAR CK 0089
In the Karnataka High Court
Case No : Writ Petition No. 41215 of 2004

Sri. Y.M. Anandvardhana

APPELLANT

Vs

The Director, Electronics and Radar Development
Establishment (LRDE) Defence Research and Development
Organisation (DRDO), Ministry of Defence, Government of
India and Minister of Defence, Government of India

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 32, 38, 39, 40, 48

Citation : (2007) 4 KarLJ 499 : (2007) 2 KCCR 1475

Hon'ble Judges : Cyriac Joseph, C.J.;K.L. Manjunath, J

Bench : Division Bench

Advocate : M.R. Shailendra, for the Appellant; Arvinda Kumar, ASG, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The petitioner was a Scientific Officer in the Electronics and Radar Development Establishment. He voluntarily retired from service with effect from 31-10-1994. The Commuted value of pension was paid to him on 24-4-1995. The amount of Gratuity was paid on 24-4-1995. P.P. amount was paid on 7-7-1995. E.L. Encashment was paid on 7-7-1995. After receiving the said amounts, the petitioner sent a legal notice on 20-7-1995 demanding interest at 18% on the amounts paid belatedly. The respondents vide letter dated 25-9-1995 informed the petitioner that there was no delay or inaction on their part and that the amounts were paid within time as per O.M. No 7/20/89-P & PW(F) dated 22-1-1991 and hence he was not entitled to any interest. Thereupon the petitioner filed an application before Central Government Industrial Tribunal cum Labour Court, Bangalore claiming interest on delayed payment. The said application was numbered as CGA 2/1998. But it was dismissed by the Tribunal on 31-12-2002 with an observation that the applicant should approach the Competent Authority and not the Industrial Tribunal. More

than 17 months thereafter the petitioner filed O.A. No. 463/2004 before the Central Administrative Tribunal, Bangalore Bench praying for a direction to the respondents to pay various amounts towards interest. Along with the O.A. the petitioner filed M.A.No. 235/2004 praying for condoning the delay in filing the O.A. The Tribunal as per the order dated 12-7-2004 dismissed both O.A.No.463/2004 and M.A.235/2004. According to the Tribunal adequate reasons were not shown for condoning the delay in filing the O.A. The Tribunal also held that the O.A was liable to be dismissed on merits also.

2. Aggrieved by the order dated 12-7-2004 passed by the Central Administrative Tribunal the petitioner has filed this writ petition praying to quash the said order of the Tribunal.

3. Having heard the learned Counsel for the petitioner and the learned Assistant Solicitor General, we do not find any valid reason to interfere with the order of the Tribunal, Either in the O.A or in the writ petition it is not pleaded under which statutory provision the petitioner is entitled to the amounts of interest claimed in the O.A. However, the learned Counsel for the petitioner submitted that the claim was based on Rule 68 of the Central Civil Services Pension Rules 1972. Rule 68 of the Central Civil Services Pension Rules 1972 provides that if the payment of gratuity has been authorised later than the date when his payment became due and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers. For convenience Sub-Rule (1) of Rule 68 is extracted herein under:

68. Interest on delayed payment of gratuity: (1) If the payment of gratuity has been authorised later than the date when its payment become due, and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.

4. It is clear from the above quoted provision that Rule 68 is applicable only to delayed payment of gratuity and not in respect of other retiral benefits. Even in the case of gratuity, interest shall be payable only if the payment of gratuity has been authorised later than the date when its payment became due and it is clearly established that the delay in payment is attributable to administrative lapse. In the present case the petitioner voluntarily retired with effect from 31-10-1994. He was paid the gratuity on 24-4-1995. Learned Counsel for the petitioner is not in a position to state with reference to the Rules the date when

the payment of gratuity became due. However, learned Assistant Solicitor General relied on OM No.7/20/89-P & PW(F) dated 22-1-1991 to contend that the petitioner is entitled to claim interest only if the gratuity is not paid within six months from the date of retirement. It is contended that since the petitioner was paid the gratuity within six months from the date of his retirement, he is not entitled to any interest on the amount of gratuity. The relevant portion in O.M.No.7/20/89-P&PW(F) dated 22-1-1991 is extracted hereunder:

(ii) On retirement other than on superannuation:

Such cases of retirement will be either under Clause (j) or Clause (k) of FR 56 or Rules 38, 39, 40, 48 or 48-A of the CCS (Pension) Rules, 1972. In such cases, the pension sanctioning authority does not get adequate time for processing pension papers, as is available to it in the case of retirement on superannuation. Instructions have already been issued from time to time that the work relating to verification of service should be done on year-to-year basis and should not be kept in arrears. Provisions also exist that on completion of 25 years qualifying service or on one being left with five years' service before the date of retirement, whichever is earlier, the Head of Office should verify the service rendered by such Government servant and communicate to him the period of qualifying service as determined vide Rule 32 of the CCS (Pension) Rules, 1972. It is, therefore, expected that even in cases of retirement other than on superannuation, it should not take unduly long time for all Heads of Offices to prepare pension papers of retiring employees. It has, therefore, been decided that where the payment of gratuity in such cases is delayed beyond six months from the date of retirement, interest should be paid for the period of delay beyond six months from the date of retirement.

In view of the Provisions contained in Rule 68 of the Central Civil Services Pension Rules 1972 and the above mentioned O.M. No. 7/20/89-P&PW(F) dated 22-1-1991 the petitioner is not entitled to any interest on the ground of delayed payment.

5. Learned Counsel for the petitioner submitted that the petitioner is entitled to be paid the amount of gratuity immediately on retirement from service and the said right cannot be denied through the above mentioned O.M. issued by the Government of India. However, there is no challenge against the said O.M. in the writ petition. Even otherwise respondents can be compelled to pay interest on the amount of gratuity on other retiral benefits only if there is any unreasonable and unjustifiable delay in making payment. In the present case the petitioner did not retire from service on Superannuation in which case the date of retirement is known in advance. This is a case where the petitioner took voluntary retirement and therefore the situation cannot be compared with the situation in cases of retirement on superannuation. As already mentioned the amount of commuted pension and gratuity were paid on 24-4-1995 and the PF amount and E.L. encashment were paid on 7-7-1995. It cannot be said that there was unreasonable delay in making the payment.

6. We are also in agreement with the Tribunal that the petitioner could not show sufficient cause for condoning the delay in approaching the Tribunal. In our view the Tribunal was right and justified in dismissing M.A. No. 235/2004.

7. In the above circumstances, there is no merit in the writ petition. Writ petition is dismissed.