BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

CLAIM PETITION NO. 69/SB/2023

Munendera Singh Rawat, s/o Late Sri Pratap Singh, r/o 60 Vidya Vihar, 1-Kargi Road, Dehradun, District Dehradun, Uttarakhand.

……Petitioner

vs.

1. State of Uttarakhand through its Secretary, Forest Department, Govt. of Uttarakhand, Dehradun.
2. Director, Forest Conservation, Rajaji Tiger Reserve Dehradun, 5/1 Ansari Road, Dehradun, Govt. of Uttarakhand.
3. Directorate of Treasury Pension and Entitlement, Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun, Uttarakhand.

...…….Respondents

Present: Sri Inder Dutt, Advocate, for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondent No. 1 (virtually)

JUDGMENT

DATED: APRIL 10, 2023.

Justice U.C. Dhyani (Oral)

By means of present claim petition, the petitioner seeks the following reliefs:

> "(a) To quash and set aside impugned order dated 16.02.2023, passed by respondent no.2, being illegal, arbitrary and against the well settled proposition of law. .
>
> (b) To direct pay interest @ 18 % per annum on retirement benefits up to date i.e. interest on payments of earned leave for six months and six days, interest on payment of gratuity for seven months, eight days and interest on payment of group insurance for six years, six months and 24 days.

(c) Any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Instead of narrating the whole facts of the case, it will be appropriate to reproduce the judgment dated 02.12.2022, passed by this Tribunal in Claim Petition No. 179/SB/2022, Munendera Singh Rawat vs. State & others, hereinbelow for convenience:

"By means of present claim petition, the petitioner seeks following reliefs:

"(a) To direct the respondent to decide the representation dated 08.09.2022 by speaking order, or.

(b) To direct pay interest @ 18 % per annum on retirement benefits up to date i.e. interest on payments of earned leave for six months and six days, interest on payment of gratuity for seven months, eight days and interest on payment of group insurance for six years, six months and 24 days.

(c) Any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case."

It is the submission of Ld. Counsel for the petitioner that the petitioner, who has since retired, received the retiral dues belatedly. He has moved a representation to the respondent department for payment of interest on delayed payment of such retiral dues.

3. Ld. A.P.O. submitted that such representation shall be decided by the respondent department at an earliest possible, in accordance with law.

4. Ld. Counsel for the petitioner submitted that the petitioner shall feel satisfied if his representation is decided by the respondents by a reasoned and speaking order at an earliest possible, in accordance with law. He has confined his prayer, at this juncture, only to this extent.

5. The claim petition is disposed of, at the admission stage, by directing Respondent No.2 to decide pending representation dated 08.09.2022 (Annexure: 1) of the petitioner by a reasoned and speaking order, without unreasonable delay, in accordance with law, on presentation of certified copy of this order along with a copy of representation. Whenever such representation is decided, it will be the responsibility of the respondent department to communicate the same to the petitioner.

6. The respondent department should bear it in mind, while deciding the representation of the petitioner, that the retiral dues are not bounty and preparation for releasing the same should be done by the respondent department well ahead of retirement of its employee. In case of delay in payment of retiral dues, there is a Govt. Order also that the delay in payment of retiral dues shall be met with interest. The same is the verdict of Hon'ble Supreme Court in a catena of decisions including the one in S.K.Dua vs. State of Haryana and Another (2008)1 Supreme Court Cases (L&S) 563.

7. No notice is required for Respondents No. 2 & 3.

8. No order as to costs."

3. The petitioner, who is present in person along with his Counsel, submitted that he is claiming interest on delayed payment of (i) Leave Encashment (ii) Gratuity (iii) Groupe Insurance only. The respondent department has rejected petitioner's representation *vide* Office Order No. 2570/ 1-9 Dehradun, dated 16.02.2023 (Annexure: A-1)

4. No useful purpose will be served by giving opportunity to the respondents to file W.S., as prayed for by Ld. A.P.O., inasmuch as while disposing of the representation of the petitioner *vide* Office Order dated 16.02.2023 (Annexure: A-1), respondent department has admitted delay in payment of retiral dues. It has been indicated in the order impugned dated 16.02.2023 that Sri Dinesh Chand Joshi, dealing Assistant, has tendered apology for delayed payment of amount of General Insurance. In different sub-paras of para 2 of the impugned order dated 16.02.2023, the delay is attributed to other offices of the respondent department. Respondent Department's version has come on record in order dated 16.02.2023(Annexure: A-1). The subject matter of present claim petition is covered by the decision of Hon'ble Supreme Court in State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750 (*infra*)

5. Hon'ble Apex Court, in catena of decisions, has settled the controversy on payment of retiral dues and interest on delayed payment of such dues. Some of the decisions are as below:

(i) Hon'ble Apex Court has held in the decision of **State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750,** that:

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment .

2. **Usually the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (No Liability Certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed atleast a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month**. The necessity for prompt payment

of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

3. **The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent** who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i e., more than two years and 3 months after his retirement and hence after serving lawyer's notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite L.P.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. **The claim for interest was, therefore, rightly, decreed in respondent's favour**.

4. Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.

5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C. but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public."

[*Emphasis supplied*]

(ii). Hon'ble Apex Court, in the decision of **S.K.Dua vs. State of Haryana and Another (2008)1 Supreme Court Cases (L&S) 563,** has observed as below:

"…..

……. The replies submitted by the appellant were accepted by the authorities and the appellant was exonerated of all the charges. All retiral benefits were thereafter given to him between June 11 and July 18, 2002. **Thus, according to the appellant though he retired in June, 1998, retiral benefits to which he was otherwise entitled, were given to him after four years of his superannuation**.

5. **The appellant has stated that, in the aforesaid circumstances, he was entitled to interest on the amount which had been withheld by the respondents and paid to him after considerable delay. He, therefore, made several representations**. He also issued legal notice on June 3, 2005 claiming interest at the rate of 18% per annum for delayed payment. **He had invited the attention of the Government to Administrative Instructions issued by the Government under which an employee is entitled to claim interest. Even otherwise, the action of non-payment of interest was arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution**. There was, however, no reply whatsoever from the Government. The appellant as a senior citizen of 65 years of age then approached the High Court of Punjab & Haryana by filing a writ petition under Article 226 of the Constitution. But the High Court summarily dismissed the writ petition without even issuing notice to the respondents. The appellant has challenged the said order in the present appeal.

6. On October 28, 2005, notice was issued by this Court. Affidavits and further affidavits were filed thereafter and the Registry was directed to place the matter for final hearing. Accordingly, the matter has been placed before us for final disposal.

7. We have heard learned counsel for the parties.

8. The learned counsel for the appellant contended that the High Court was totally unjustified in dismissing the writ petition in limine and the said order is liable to be set aside. He submitted that no questions of fact, much less, disputed questions of fact were involved in the petition and the High Court was wrong in summarily dismissing it**. It is well settled law, submitted the counsel, that retiral benefits are not in the nature of bounty and an employee is entitled as of right to get those benefits immediately after superannuation unless they are withdrawn or withheld as a matter of punishment**. According to the appellant, he had always acted in the interest of the Government and saved public exchequer by inviting the attention to mal- practices committed by high ranking officers. As a measure of revenge against the appellant, charge-sheets were issued, **but after considering the explanation submitted by the appellant, all proceedings against him were dropped. In view of exoneration of the appellant, the Government ought to have paid interest on retiral benefits which were given to him after long time. As per the Guidelines and Administrative Instructions issued by the Government, the appellant was entitled to such benefit with interest**. The High Court ought to have allowed the writ petition of the appellant and ought to have awarded those benefits. **It was,** therefore, **submitted that the appeal deserves to be allowed by directing the respondents to pay interest on the retiral dues payable to the appellant** which were actually paid to him **after considerable delay**.

9. An affidavit in reply is filed by Special Secretary, Government of Haryana, Irrigation Department. In the counter affidavit which was filed in January, 2005, the deponent has stated that the appellant was paid all his retiral dues as soon as he was exonerated of the charges levelled against him. The deponent referred to the Haryana Civil Service (Punishment and Appeal) Rules, 1987 relating to benefits to which an employee is entitled and contended that after the charge-sheets were finally dropped, the appellant was paid all retiral benefits within three months from the date of dropping of the charge-sheets. But it was further stated that certain vigilance enquiries are “still pending” against the appellant. In the circumstances, **according to the deponent, the appellant was not entitled to interest and the action taken by the Government could not be said to be illegal or otherwise unreasonable. A prayer was, therefore, made to dismiss the appeal**.

10. ……...

11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. **It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also un-disputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with la**w. True it is that certain charge- sheets/ show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of mal- practices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him**. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits**. **If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well-founded and needs no authority in support thereof**. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

12. …...”

13. The order passed by the High Court, therefore, must be quashed and set aside.

…….

Order accordingly.”

[*Emphasis supplied*]

(iii). In the decision of Civil Appeal No. 7113 of 2014, **D.D. Tiwari (D) vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, 2014 (5) SLR 721**, Hon'ble Supreme Court has held as under:-

*"*2. Heard learned counsel on behalf of the parties. The appellant (since deceased) is aggrieved by the impugned order dated 14.03.2011 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No. 1818 of 2010 in affirming the judgment of the learned single Judge passed in C.W.P. No. 1048 of 2010 **wherein he was not awarded interest for the delayed payment of pension and gratuity**

amount, for which he was legally entitled to. Therefore, the appellant approached this Court for grant of interest on the delayed payment on the retiral benefits of pension and gratuity payable to him by the respondents.

3. The appellant was appointed to the post of Line Superintendent on 30.08.1968 with the Uttar Haryana Bijli Vitran Nigam Ltd. In the year 1990, he was promoted to the post of Junior Engineer-I. During his service, the appellant remained in charge of number of transformers after getting issued them from the stores and deposited a number of damaged transformers in the stores. While depositing the damaged transformers in the stores, some shortage in transformers oil and breakages of the parts of damaged transformers were erroneously debited to the account of the appellant and later on it was held that for the shortages and breakages there is no negligence on the part of the appellant. On attaining the age of superannuation, he retired from service on 31.10.2006. **The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest at the rate of 18% on the delayed payment**s. The learned single Judge has allowed the Writ Petition vide order dated 25.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair, 1985 91) SLR 750, wherein this Court reiterated its earlier view holding that **the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but, have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned**. This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. **It has adverted to the fact that there is no order passed by the learned single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed. The correctness of the order is under challenge in this appeal before this Court urging various legal grounds**.

4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, **therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in**

denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

5. **It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972**. Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

6. For the reasons stated above, we award interest at the rate of 9% on the **delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment**. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed. ”

[*Emphasis supplied*]

6. It will also be useful to reproduce the relevant part of the judgment rendered by this Tribunal in ***Ramnarayan Singh vs. State of Uttarakhand , 2019(1) UD 698***, herein below for convenience:

“22. In the backdrop of the above noted facts, the only other question, which is left for determination of this Tribunal now is— how much interest should be awarded to the petitioner for delayed payment of gratuity?

23. In the decision of *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others, 2014 (5) SLR 721 (S.C.),* it was held by Hon’ble Supreme Court that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest. Regard may also be had to the decision of Hon’ble Apex Court in *S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563*, in this context.

24. The aforesaid decisions have been followed by this Tribunal in claim petition *No.30/DB/2013 Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016*.. The direction given in claim petition No. 30/DB/2013 has also been carried out.

25. It is pointed out that Government Order No.979/XXVII(3)Pay/2004 dated 10.08.2004 has been issued by Government of Uttarakhand to regulate interest on delayed payment of gratuity etc. Respondents are, therefore, directed to pay the difference of gratuity, as admissible, and the

amount of gratuity which has already been paid, to the petitioner, as per G.O. dated 10.08.2004. The rate of interest of gratuity shall be simple rate of interest payable on General Provident Fund till the date of actual payment.

26. Respondents are directed to pay the difference in the amount of gratuity along with admissible interest, as per G.O. dated 10.08.2004, on or before 30.06.2019."

[*Emphasis supplied*]

7. The petitioner has been able to make out a case for interest on delayed payment of retiral dues. The respondent department should, therefore, be directed to pay interest on delayed payment of retiral dues.

8. The claim petition is disposed of at the admission stage, by directing the Respondent Department to release admissible interest on delayed payment of retiral dues to the petitioner, at the earliest, without unreasonable delay, on presentation of certified copy of this order. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 10, 2023.
DEHRADUN

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