

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL AT DEHRADUN**

Present: Hon'ble Mr. D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 30/DB/2013

Dwarika Prasad Bhatt, S/o Late Sri Devendra Prasad Bhatt, R/o Jaspur
Baragddi, Tehsil Bhatwari, District Uttarkashi.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Department of Medical Health and Family Welfare, Civil Secretariat, Dehradun.
2. Director General, Medical Health & Family Welfare, Uttarakhand, Dehradun.
3. Chief Medical Officer, Pauri.
4. Chief Medical Officer, Uttarkashi.

.....Respondents

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner
Sri U.C.Dhaundiyal, Ld. A.P.O.
for the respondents

JUDGMENT

DATE: SEPTEMBER 22, 2016

1. The petitioner has filed this claim petition for seeking following relief:

“(i) To issue order or direction to the respondents to pay the interest @18% per annum on the arrears of salary

w.e.f. 1.7.1985 to 10.06.1998 amounting to Rs. 4,40,068, which was paid on 30.3.2009.

(ii) To issue order or direction to the respondents to pay the petitioner interest @18 % per annum on the salary for the period w.e.f. 1.1.2004 to 31.3.2007 amounting to Rs. 5,84,786/- on due date till the actual payment on 19.7.2010.

(iii) Issue order or direction to the respondents to pay the petitioner interest @18% per annum on the arrears of pension amounting to Rs. 9,45,087/- w.e.f. 1.4.2007 to 31.5.2011.

(iv) To direct the respondents to pay the petitioner interest @ 18% per annum on gratuity amounting to Rs. 2,90,000/- from 1.4.2007 to 13.8.2010 as the amount of gratuity was paid on 14.8.2010.

(v) To direct the respondents to pay interest @18% per annum on leave encashment amounting to Rs. 1,87,530/- which was due on 1.4.2007, but paid on 5.3.2011.

(vi) Any other relief which the Hon'ble Tribunal deem fit and proper in the circumstances of the case.

(vii) To award cost of this petition to the petitioner."

2.1 The petitioner has worked in clerical cadre in the Department of Medical and Health, Government of Uttarakhand from 1968 to 2007.

2.2 The petitioner was convicted in a criminal case and a fine of Rs. 750 was imposed upon him. He was removed from the service on 16.07.1985 on the ground that he has been convicted in the criminal case. The petitioner filed a claim petition before the Uttar Pradesh Public Services Tribunal, Lucknow against his termination order. The

Tribunal vide its order dated 10.07.1997 (Annexure: A4) quashed the punishment order on the ground that the petitioner's conduct which led to his conviction was not considered by the disciplinary authority while imposing the punishment. The Tribunal also held that the disciplinary authority will be at liberty to pass a proper order again according to law, if it so wishes. In pursuant to the order of the Tribunal, the petitioner was allowed to rejoin the service on 11.06.1998. The petitioner retired on 31.03.1997. The Secretary, Department of Medical and Health, Government of Uttarakhand vide letter dated 07.03.2008 passed an order that the period from 16.07.1985 to 10.06.1998, when the petitioner was out of service due to removal, will be treated as a period of service rendered by the petitioner and the salary from 01.07.1985 to 10.06.1998 was also sanctioned to him (Annexure: A3). The petitioner was paid the arrears of salary (amounting to Rs. 4,40,068) on 31.03.2009. In relief (i) in paragraph 8 of the claim petition, the petitioner has claimed interest at the rate of 18 percent per annum on this amount of the arrears of salary from 01.07.1985 to 10.06.1998 which was paid to him on 31.03.2009.

2.3 The petitioner when he was posted in Uttarkashi was promoted on 23.07.2003 and transferred to Pauri. Due to family circumstances, the petitioner wrote to the department to forgo the promotion. His representation to forgo the promotion dated 29.07.2003 was rejected by the respondents on 13.11.2003/16.01.2004. The petitioner was asked to join in Pauri on his post of promotion. The petitioner did not join in Pauri and approached the Hon'ble High Court at Nainital. The Hon'ble High Court stayed transfer of the petitioner to Pauri. The petitioner has stated in the claim petition that he was also not allowed to join in

Uttarkashi. The petitioner, therefore, could not get salary for the period from 01.01.2004 to 31.03.2007. The Hon'ble High Court, in Special Appeal (No. 05/2007) vide order dated 18.05.2007, directed to the Departmental Appellate Authority (Principal Secretary, Medical and Health, Government of Uttarakhand) to consider and decide the representation of the petitioner in which the petitioner had requested to accept his request to forgo the promotion and to pay salary from 01.01.2004 to 31.03.2007. The Principal Secretary, Medical and Health, Government of Uttarakhand decided the representation of the petitioner on 02.06.2009 (Annexure: A3). The Office Memorandum issued by the Government in this regard is reproduced below:

“उत्तराखण्ड शासन
चिकित्सा अनुभाग-3
संख्या: /XXVIII-3-2009-77/2005
देहरादून: दिनांक 02 जून, 2009
कार्यालय ज्ञाप”

मा0 उच्च न्यायालय उत्तराखण्ड नैनीताल मे योजित विशेष अपील संख्या-5/2007 द्वारिका प्रसाद भट्ट बनाम उत्तराखण्ड राज्य व अन्य में मा0 उच्च न्यायालय द्वारा दिनांक 18.05.2007 को निम्न आदेश पारित किये हैं:-

“With a view to provide reasonable scope to the departmental appellate authority to consider and decide the petitioner's grounds/objections, the impugned judgment dated 02.12.2006 is hereby set aside.”

With the above order, the Special Appeal stands disposed of.”

2. उक्त आदेशों के अनुपालन में याचिका के याची श्री द्वारिका प्रसाद भट्ट सेवानिवृत्त मुख्य सहायक द्वारा दिनांक 25.08.2007 को प्रत्यावेदन प्रस्तुत करते हुए निम्न अनुतोष मांगे गये हैं:-

(क) प्रार्थी को दिनांक 01.07.1985 से 10.06.1998 तक का अवशेष वेतन भुगतान किया जाय।

(ख) प्रार्थी को प्रोन्नति आदेश दिनांक 23.07.2003 को अस्वीकार करने की अनुमति प्रदान की जाय।

(ग) प्रार्थी के स्थानान्तरण आदेश दिनांक 23.07.2003 को मा0 उच्च न्यायालय नैनीताल द्वारा अस्थगत करने के कारण दिनांक 01.01.2004 से 31.03.2007 तक का वेतन भुगतान किया जाय।

(घ) अन्य कोई अनुतोष।

3. याची द्वारा उक्तानुसार प्रस्तुत प्रत्यावेदन के बिन्दु-क का निस्तारण शासनादेश संख्या-M-01/XXVIII-3-2008-77/2005, दिनांक 07.03.2008 द्वारा पूर्व में ही किया जा चुका है। कथित आदेश भी प्रस्तुत याचिका का भाग होगा। याची द्वारा प्रस्तुत प्रत्यावेदन के शेष बिन्दु-ख व ग के सम्बन्ध में महानिदेशालय स्तर से सम्बन्धित पत्रावनियों/अभिलेखों एवं अन्य तथ्यों का शासन स्तर पर सम्यक् परीक्षणोंपरान्त यह पाया गया है कि याची श्री भट्ट को महानिदेशालय द्वारा दी गयी प्रोन्नति के आदेश संख्या-3प/2/18/2001/11279, दिनांक 23.07.2003 के प्रस्तर-5 में की गयी व्यवस्था के अधीन ही सम्बन्धित कार्मिक (श्री द्वारिका प्रसाद भट्ट) द्वारा तत्समय दी गयी पदोन्नति के फोरगो (अस्वीकार) किये जाने हेतु प्रत्यावेदन दिनांक 29.07.2003 प्रस्तुत किया था, जिसे महानिदेशालय स्तर से सशर्त मानते हुए स्वीकार न किया जाना तर्कसंगत नहीं पाया गया तथा तदक्रम में निर्गत महानिदेशालय/मुख्य चिकित्साधिकारी, उत्तरकाशी के संगत आदेश क्रमशः दिनांक 13.11.2003 एवं 16.01.2004 का नियमानुसार कोई आधार न होने के कारण निरस्त किया जाना औचित्यपूर्ण पाया गया।

4. उक्त के अतिरिक्त विषयगत प्रकरण में श्री द्वारिका प्रसाद भट्ट, सेवानिवृत्त मुख्य सहायक के विरुद्ध की गयी विभागीय कार्यवाही उपरान्त महानिदेशालय द्वारा लिया गया निर्णय/आदेश संख्या- 3प/ लिपिक/5/1/2004/7460, दिनांक 28.03.2007 को इस शर्त के साथ निरस्त किया जाना औचित्यपूर्ण पाया गया कि दिनांक 16.01.2004 से सेवानिवृत्ति की तिथि दिनांक 31.03.2007 तक फोरगो स्वीकार न किये जाने एवं एकतरफा जनपद पौड़ी के

लिए प्रोन्नति के आधार पर स्थानान्तरित किये जाने के फलस्वरूप श्री भट्ट को अनुपस्थित नहीं माना जा सकता, जिस कारण श्री भट्ट को दिनांक 01.01.2004 से 31.03.2007 तक के समस्त अवशेष देयकों का भुगतान/स्वीकृति तथा पेशन का निर्धारण/स्वीकृति नियमानुसार जनपद उत्तरकाशी से, इस शर्त के साथ कि इस मध्य श्री भट्ट द्वारा किसी अन्य प्रकार का कोई सेवायोजन न किया गया हो, किये जाने का निर्णय लिया गया है।

अतः उपर्युक्त तथ्यों का दृष्टिगत रखते हुये मा10 उच्च न्यायालय उत्तराखण्ड द्वारा विशेष अपील संख्या 5/2007 द्वारिका प्रसाद भट्ट बनाम उत्तराखण्ड राज्य एवं अन्य में पारित आदेश दिनांक 18.05.2007 के अनुपालन में याचिका के याची श्री द्वारिका प्रसाद भट्ट, सेवानिवृत्त मुख्य सहायक द्वारा प्रस्तुत अपील/प्रत्यावेदन दिनांक 25.08.2007 को विभाग के अपीलीय अधिकारी (लिपिक संवर्ग का नियुक्ति प्राधिकार महानिदेशक में निहित होने के कारण अगले स्तर पर शासन के प्रमुख सचिव/सचिव) द्वारा निस्तारित किये जाने के संदर्भ में याची श्री द्वारिका प्रसाद भट्ट द्वारा अपनी पदोन्नति हेतु दिनांक 29.07.2003 को किये गए फोरगो को नियमानुसार स्वीकार कर महानिदेशालय/मुख्य चिकित्साधिकारी, उत्तरकाशी के संगत आदेश क्रमशः दिनांक 13.11.2003, 16.01.2004 एवं 28.03.2007 को आधारहीन होने के कारण एतवद्द्वारा निरस्त करते हुए श्री भट्ट को दिनांक 01.01.2004 से सेवानिवृत्ति की तिथि दिनांक 31.03.2007 तक का अवशेष वेतन एवं सेवानिवृत्ति उपरान्त सम्पूर्ण पेशन का निर्धारण/स्वीकृति जनपद उत्तरकाशी से ही तदनुसार किये जाने का निर्णय लिया गया। याची के प्रत्यावेदन में उल्लिखित बिन्दुओं पर सम्यक् परीक्षणोपरान्त उपरोक्त विवेचनानुसार निस्तारण किया जाता है।

केशव देसिराजु
प्रमुख सचिव

The perusal of above decision of the Principal Secretary, Medical and Health, Government of Uttarakhand reveals the following:

- (i) The request of the petitioner to forgo promotion was accepted by the Government. The rejection of the representation of the petitioner for allowing forgoing of the promotion dated 29.07.2003 vide letters 13.11.2003/16.01.2004 was not found in

accordance with Rules and the decision to reject the representation (vide letters dated 13.11.2003/16.01.2004) was set aside.

(ii) The transfer of the petitioner to Pauri after promotion was not found proper as the petitioner had forgone the promotion. It was, therefore, held that the period from 16.01.2004 to 31.03.2007 cannot be treated as absence from duty and this period is to be counted as regular service.

(iii) The petitioner will be paid salary for the period from 01.01.2004 to 31.03.2007. The pension, etc. of the petitioner after his retirement will also be fixed/sanctioned accordingly.

In pursuant to decision of the Government dated 02.06.2009 above, the petitioner was paid full salary for the period from 01.01.2004 to 31.03.2007 amounting to Rs. 5,84,786/- on 19.07.2010. In relief (ii) in paragraph 8 of the claim petition, the petitioner has claimed interest at the rate of 18 percent per annum on this amount of arrears of salary from 01.01.2004 to 31.03.2007 from the due date till 19.07.2010 when payment was made.

2.4 As mentioned in paragraph 2.3 above, the question of payment of salary to the petitioner for the period from 01.01.2004 to 31.03.2007 remained undecided till 02.06.2009 and as a result the retiral benefits (pension, gratuity and leave encashment) could not be fixed/sanctioned after the retirement of the petitioner on 31.03.2007. Only after the decision was taken by the Government on 02.06.2009 about the period of service of the petitioner from 01.01.2004 to 31.03.2007, the matter of retiral benefits was processed.

2.5 It is surprising to note that the Government did not sanction the interim pension to the petitioner after his retirement on 31.03.2007. The petitioner was paid arrears of full pension on 31.05.2011. The amount of arrears of pension paid to the petitioner has been stated in claim petition as Rs. 9,45,087/-. This amount seems to be an unrealistic figure. Neither the petitioner nor the respondents have shown the calculations of arrears of pension. The petitioner in his Relief (iii) in paragraph 8 of the claim petition has claimed interest at the rate of 18 percent per annum on the amount of arrears of pension from 01.04.2007 to 31.05.2011.

2.6 The amount of gratuity Rs. 2,90,000/- (admitted to both the parties) was paid to the petitioner on 14.08.2010. The petitioner in his Relief (iv) in paragraph 8 of the claim petition has claimed interest at the rate of 18 percent per annum on Rs. 2,90,000/- for the period from 01.04.2007 to 14.08.2010.

2.7 The amount of leave encashment Rs. 1,87,530/- (as stated by the petitioner) was paid to him on 05.03.2011. The petitioner in his Relief (v) in paragraph 8 of the claim petition has claimed interest at the rate of 18 percent per annum on Rs. 1,87,530/- for the period from 01.04.2007 to 05.03.2011.

2.8 The petitioner sent a legal notice to Respondent no. 2 to pay interest at the rate of 18 percent annum on arrears of salary and retirement benefits mentioned in paragraphs 2.2, 2.3, 2.5, 2.6 and 2.7 above on 02.04.2013 (Annexure: A1) which has not been decided by the respondents. Hence, the petition.

3. Respondents No. 1 to 4 have opposed the claim petition and it has been stated in their joint written statement that the claims of interest of the petitioner are time barred. It has further

been stated that the Uttar Pradesh Public Services Tribunal had only set aside the termination order of the petitioner and it had not given any direction to pay salary to the petitioner (details given in paragraph 2.2. of this order). It has also been contended that after the orders of the competent authority, arrears of salary and retiral benefits have been paid to the petitioner and the petitioner is not entitled for payment of interest and, therefore, the petition is devoid of merit and the same is liable to be dismissed.

4. The petitioner has also filed a Rejoinder Affidavit and same averments have been reiterated in it which were stated in the claim petition.

5. I have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of respondents and perused the record carefully.

6. Learned counsel for the petitioner has mainly argued that the amount of salary and retiral benefits were wrongly withheld by the respondents and as per various judgments of the Hon'ble Supreme Court (which will be taken up later in paragraph No. 8 of this order), the petitioner is entitled to receive interest for the period of delay in making payments to him. Learned A.P.O. has refuted the argument and contended that the claims of interest of the petitioner are time barred though he has not explained how it is applicable in the present controversy. It has further been argued by the learned A.P.O. that arrears of salary and retiral benefits have been paid to the petitioner immediately after the sanction orders of the competent authority and, therefore, the petitioner is not entitled for payment of interest.

7. Learned A.P.O. was asked whether there are any rules/administrative orders in respect of situations where “interest” is payable for delay in payment of retiral benefits, etc. Learned A.P.O. stated that the Government of Uttarakhand has issued a Government Order (G.O.) on 10.08.2004 dealing with “सेवानैवृत्तिक लाभ का समय से भुगतान, न्यायिक/विभागीय कार्यवाही की समाप्ति पर ग्रेच्युटी के विलम्ब से अदायगी के भुगतान पर ब्याज का भुगतान।” The said G.O. is reproduced below:

“संख्या-979/XXVII(3)पे/2004

प्रेषक,

इन्दु कुमार पाण्डे
प्रमुख सचिव
उत्तरांचल शासन।

सेवा में,

समस्त विभागाध्यक्ष एवं
प्रमुख कार्यालयध्यक्ष
उत्तरांचल।

वित्त अनुभाग-3

देहरादून: दिनांक 10 अगस्त, 2004

विषय: सेवानैवृत्तिक लाभ का समय से भुगतान, न्यायिक/विभागीय कार्यवाही की समाप्ति पर ग्रेच्युटी के विलम्ब से अदायगी के भुगतान पर ब्याज का भुगतान।

महोदय,

आप अवगत है कि राज्य सरकार द्वारा पेन्शनरो/पारिवारिक पेन्शनरों को अनुमन्य देयों का भुगतान समय से करने के सम्बन्ध में समय-समय पर विस्तृत आदेश निर्गत किए गये हैं। प्रशासनिक कारणों से “ग्रेच्युटी” की अनुमन्य धनराशि के समय से भुगतान न होने पर भुगतान अनुमन्य होने की तिथि से तीन माह की अवधि के बाद ब्याज दिये जाने की व्यवस्था की गई है। इस सन्दर्भ में शासनादेश संख्या-सा-3-684/दस-971/80 दिनांक 29.04.1983, शासनादेश संख्या- सा-3-1776/दस-971/80 दिनांक 30.11.1984 शासनादेश संख्या -सा-3-2112/दस-971/80 दिनांक 06.12.1994 एवं अर्दशासकीय पत्र संख्या-सा-3-902/दस-99-303/99 दिनांक 28-09-1999 द्वारा निर्देश निर्गत किए गये हैं।

2. शासन के संज्ञान में यह बात आई है कि प्रायः कर्मचारियों द्वारा ग्रैच्युटी के भुगतान में विलम्ब होने पर चक्रवृद्धि ब्याज दिये जाने की मांग की जाती है। उक्त के परिप्रेक्ष्य में स्थिति को स्पष्ट करते हुए मुझे यह कहने का निदेश हुआ है कि ग्रैच्युटी पर ब्याज के भुगतान की दर वही रखी गई है जो संगत अवधि में सामान्य भविष्य निधि खाते में जमा धनराशि पर ब्याज की हो, किन्तु चक्रवृद्धि ब्याज दिए जाने का कोई प्राविधान नहीं है। अतः ग्रैच्युटी पर तीन माह से अधिक विलम्ब पर भुगतान की अवधि में नियमानुसार साधारण ब्याज का ही भुगतान अनुमन्य होगा और उसकी दर संगत अवधि में सामान्य भविष्य निधि खाते में जमा धनराशि पर अनुमन्य ब्याज की दर के समान होगी।

3. जिन कर्मचारियों के विरुद्ध न्यायिक/विभागीय कार्यवाही लम्बित होने के कारण उपादान एवं राशिकृत धनराशि के भुगतान के बिलम्ब हो जाता है, उन प्रकरणों में ब्याज किस प्रकार अनुमन्य होगा, इस सम्बन्ध में सम्यक् विचारोरान्त मुझे यह स्पष्ट करने का निदेश हुआ है कि:-

(1) यदि किसी कर्मचारी की सेवानिवृत्ति की तिथि को उसके विरुद्ध अनुशासनिक अथवा न्यायिक कार्यवाही लम्बित है तो उसे ग्रैच्युटी की धनराशि का भुगतान तब तक नहीं किया जाता है, जब तक उक्त कार्यवाही समाप्त करके अन्तिम आदेश निर्गत नहीं हो जाते हैं। ऐसे प्रकरणों में यदि ग्रैच्युटी के भुगतान का निर्णय लिया जाता है तो भुगतान की तिथि वही होगी जिस तिथि में सक्षम प्राधिकारी द्वारा आदेश निर्गत किये जाते हैं। जिन प्रकरणों में सरकारी सेवक के विरुद्ध चल रही कार्यवाही में अन्तिम निर्णय के फलस्वरूप उसे पूर्णतः दोषमुक्त किया जाता है, उन प्रकरणों में सेवानिवृत्ति की तिथि से ग्रैच्युटी की अनुमन्यता मानी जायेगी और ऐसे तीन माह से अधिक के विलम्ब की अवधि हेतु ब्याज अनुमन्य हो जायेगा। परन्तु जिन प्रकरणों में विभागीय/न्यायिक कार्यवाही चलते हुए सरकारी सेवक की मृत्यु हो जाती है तथा मात्र मृत्यु के कारण विभागीय/न्यायिक कार्यवाही समाप्त की जाती है, ऐसे प्रकरणों में ब्याज अनुमन्य नहीं होगा।

(2) उपरोक्त व्यवस्था केवल उन प्रकरणों में लागू होगी जो अभी तक निर्णीत नहीं हो सके हैं, परन्तु जिन प्रकरणों में निर्णय लिया जा चुका है उन्हें पुनर्उद्घाटित नहीं किया जायेगा।

(3) सेवानिवृत्त कर्मचारी के सेवानैवृत्तिक लाभों के भुगतानादेश सेवानिवृत्ति की तिथि को ही निर्गत किए जाने के प्राविधान है तथा इस सम्बन्ध में समय-समय पर शासनादेश भी निर्गत किए गये हैं। सेवानैवृत्तिक लाभों को समय से भुगतान करने के सन्दर्भ में भारतीय संविधान के अनुच्छेद 309 के अधीन उत्तरांचल पेंशन के मामलों का

(प्रस्तुतीकरण, निस्तारण और विलम्ब का परिवर्जन) उत्तरांचल नियमावली, 2003 अधिसूचना संख्या-1033/वित्त अनु0-4/2003, दिनांक 10 नवम्बर, 2003 को निर्गत की जा चुकी है। उक्त नियमावली में पेन्शन प्रकरणों के निस्तारण हेतु समय सारणी भी निर्धारित है तथा विलम्ब के लिए दोषी कार्मिकों को विरुद्ध दण्ड दिए जाने की भी व्यवस्था है। यह पुनः स्पष्ट किया जाता है कि उपर्युक्त नियमावली का कड़ाई से अनुपालन सुनिश्चित करें तथा कर्मचारी को सेवानिवृत्ति की तिथि को सेवानैवृत्तिक लाभों के भुगतानादेश निर्गत किए जाँय तथा यदि पेन्शन निर्धारण में विलम्ब की सम्भावना हो तो उक्त स्थिति में अनन्तिम पेन्शन का भुगतान किया जाय। यदि सेवानैवृत्तिक लाभों के भुगतानादेश सम्बन्धित कार्मिक की सेवानिवृत्ति की तिथि को नहीं हो सके तो उसकी जानकारी भुगतानादेश निर्गत न होने के कारणों सहित उच्चतर अधिकारी को दिया जाना अपेक्षित होगा, जो पेन्शन प्रकरण का सीधे निस्तारण सुनिश्चित करेंगे।

4. यदि प्रशासनिक कारणों से ग्रेच्यूटी का भुगतान निर्धारित तिथि से तीन माह बाद किया जाता है तो भुगतान अनुमन्य होने की तिथि से तीन माह से अवधि के बाद से निर्धारित दर पर ब्याज दिया जायेगा। यदि यह निर्णीत हो जाता है कि ग्रेच्यूटी का भुगतान किया जाना है तो इसका भुगतान तुरन्त कर दिया जाय और ब्याज की मद पर शीघ्र निर्णय लेकर कार्यवाही की जाय। ऐसा करने से ब्याज की मद में दी जाने वाली धनराशि में बचत की जा सकेगी। परन्तु यह ब्याज केवल उन्हीं परिस्थितियों में दिया जायेगा जहाँ यह स्पष्ट रूप से सिद्ध हो कि ग्रेच्यूटी के भुगतान में विलम्ब प्रशासनिक त्रुटि के कारण अथवा उन कारणों से हुआ है जो सम्बन्धित सरकारी कर्मचारी के नियंत्रण के बाहर हो। ब्याज के भुगतान के प्रत्येक मामले में शासन के प्रशासनिक विभाग द्वारा विचार किया जायेगा और ब्याज का भुगतान शासन द्वारा ही प्राधिकृत किया जायेगा। जिन मामलों में ब्याज का भुगतान किया जाना होगा उन सभी मामलों में विलम्ब के लिए दोषी अधिकारी/कर्मचारी के विरुद्ध अनुशासनिक कार्यवाही भी की जायेगी तथा ब्याज के रूप में भुगतान की गई धनराशि की वसूली दोषी व्यक्तियों से उनके वेतन के अनुपात में की जाये।

5. सेवानिवृत्त कार्मिक अपनी पेन्शन के एक भाग के राशिकरण की धनराशि को विलम्ब से भुगतान किए जाने पर यदि ब्याज की मांग करते हैं तब ऐसे प्रकरणों हेतु स्पष्ट किया जाता है कि उक्त नियम के अधीन देय धनराशि के विलम्ब से भुगतान पर कोई ब्याज देय नहीं हैं, क्योंकि पेन्शन के एक भाग की राशिकृत मूल्य की स्वीकृति हो जाने पर भी उसके भुगतान की तिथि तक पेन्शन एवं देय मंहगाई राहत का भुगतान होता है। यह भी स्पष्ट किया जाता है कि

यदि किसी कर्मचारी की सेवानिवृत्ति की तिथि को उसके विरुद्ध विभागीय/न्यायिक कार्यवाही लम्बित है तो उस कार्यवाही के लम्बित रहते पेन्शन के एक भाग का राशिकरण अनुमन्य नहीं होगा।

कृपया उपरोक्त प्रस्तारों में स्पष्ट की गयी स्थिति का कड़ाई से अनुपालन सुनिश्चित किया जाय।

भवदीय

इन्दु कुमार पाण्डे
प्रमुख सचिव, वित्त”

The perusal of above G.O. reveals the following:-

- (i) If after the departmental inquiry, the employee is exonerated, he will be paid interest on delayed payment of the gratuity for the delay beyond three months from the date of his retirement.
- (ii) If the payment of gratuity is delayed due to administrative reasons or reasons beyond the control of the employee, he will be paid interest on delayed payment of the gratuity for the delay beyond three months from the date of his retirement.
- (iii) The interest for delay in payment of gratuity (for the delay beyond three months from the date of retirement) will be paid at the same rate at which the interest is payable on General Provident Fund during that period.
- (iv) The interest for delay when permissible is payable automatically irrespective of claiming it by the employee.

In the present case in hand, the amount of gratuity was not paid to the petitioner (who retired on 31.03.2007) because of dispute

regarding counting of "service" of the petitioner from 01.01.2004 to 31.03.2007. As has been stated in detail in paragraph 2.3 of this order, the competent authority passed an order on 02.06.2009 by which full salary was allowed to be paid to the petitioner from 01.01.2004 to 31.03.2007. It is clear from the Office Memorandum dated 02.06.2009 reproduced in paragraph 2.3 of this order that the salary of the petitioner was withheld without any fault of the petitioner. The salary could not be paid to the petitioner due to administrative fault and the petitioner was not found responsible for the same. Thus, the delay in payment of gratuity is not attributable to the petitioner. The petitioner was given a clean chit by the competent authority vide its order dated 02.06.2009. Under these circumstances, I am of the clear opinion that the case of the petitioner is squarely covered by the G.O. dated 10.08.2004 reproduced in this paragraph above and the petitioner is entitled for simple interest from 01.07.2007 (three month after the retirement) to 13.08.2010 at the rate at which interest is payable on General Provident Fund during that period on the amount of gratuity paid to the petitioner on 14.08.2010.

8.1 In so far as delay in payment of arrears of pension and the amount of leave encashment is concerned, learned A.P.O. has argued that unlike gratuity, there is no Rule or Government Order for payment of interest on arrears of pension and on the amount of leave encashment. Learned counsel for the petitioner has referred to the case **S.K.Dua vs. State of Haryana and Another (2008)1 Supreme Court Cases (L&S) 563**, wherein the Hon'ble Supreme Court has held that even in the absence of specific Rule or order for providing interest, an employee can claim interest on the basis of Articles 14,19 and 21 of the Constitution of India as retirement

benefits are not a bounty. The relevant paragraphs 13 and 14 of the judgment are reproduced below:

“13. 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 30.06.1998. It is also undisputed 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 law. 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 malpractices and misconduct 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 of 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."

8.2 In the case of **D.D. Tiwari (D) Versus Uttar Haryana Bijli Vitran Nigam Ltd. & Others Civil Appeal No. 7113 of 2014 (arising out of SLP (C) no. 25015 of 2011)**, Hon'ble Supreme Court has held in paragraph 3 and 4 as under:-

"3. 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 payments. 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**, 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.....”*

“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.”

8.3 In the present case, the pension, gratuity and leave encashment which all are retiral benefits, were due to be paid to the petitioner at the time of his retirement on 31.03.2007. As has been mentioned in detail in paragraph 7 and paragraph of 2.3 of this order, the delay in payment of retiral benefits is not attributable to the petitioner. There is no fault of the petitioner for delay as is clear from the Office Memorandum dated 02.06.2009 reproduced in paragraph 2.3 of this order. Thus, it is fair and just to pay interest for the delay in payment of retiral benefits related to leave encashment and pension also to the petitioner. Therefore, in the circumstances of the case in hand, it is fully justified to give interest to the petitioner on equitable grounds as respondents unjustifiably withheld the leave encashment and pension of the petitioner without any fault of the petitioner. In so far as rate of interest on period of delay for payment, the scheme of G.O. dated 10.08.2004 (reproduced in paragraph 7 of this order) with regard to gratuity can be applied in respect of pension and leave encashment also. Thus, I am of the opinion that the petitioner should be paid simple interest on arrears of pension and on the amount of leave encashment from 01.07.2007 (three months after the retirement) till the date of payment at the rate at which interest is payable on General Provident Fund during that period.

9.1 The learned counsel for the petitioner has also argued that the petitioner is also entitled to get interest on arrears of salary for the period from 01.07.1985 to 10.06.1998 which was paid to him on 31.03.2009. The contention of the learned counsel for the petitioner is that the order of petitioner's removal from service dated 16.07.1985 was quashed by the Uttar Pradesh Public Services Tribunal, Lucknow on 10.07.1997 and the petitioner rejoined the service on 11.06.1998. The petitioner was paid his salary from 01.07.1985 to 10.06.1998 only on 31.03.2009 and, therefore, the petitioner should also be paid interest for delay in payment of salary. Learned A.P.O. has opposed and contended that the Tribunal had only set aside the termination order of the petitioner and it had not directed to the department to pay arrears of salary and, therefore, after payment of salary from 01.07.1985 to 10.06.1998 by the department, the claim of the petitioner to get interest on arrears of salary is not sustainable and is not supported by any Rule or Government Order.

9.2 The perusal of record by me reveals that the petitioner was convicted in a criminal case and a fine was imposed upon him. He was removed from the service. The Tribunal set aside the punishment order on the ground that the petitioner's conduct which led to his conviction was not considered by the disciplinary authority while imposing the punishment. It is also pertinent to mention that the Tribunal in its order also held that the disciplinary authority will be at liberty to pass a proper order again according to law, if it so wishes. Thus, the Tribunal quashed the punishment order on technical ground and not on merit. It is also clear by perusing the order of the Tribunal that it did not pass any order for payment of arrears of salary to the petitioner. The Government after due

consideration decided to pay salary to the petitioner from 01.07.1985 to 10.06.1998 vide order dated 07.03.2008 (Annexure: A3). The arrears of salary were paid to the petitioner on 31.03.2009. The petitioner has claimed the interest on arrears of salary for the first time on 02.04.2013. The learned counsel for the petitioner could not show by any Rule, Statutory Provision, Government Order or otherwise his case to claim the interest on arrears of salary and that too at such a belated stage. Under these circumstances, the claim of the petitioner in respect of interest on arrears of salary paid to him on 31.03.2009 is not justified and the same cannot be accepted.

10. Learned counsel for petitioner has also contended that the petitioner is also entitled to get interest on arrears of salary for the period from 01.01.2004 to 31.03.2007 which was paid to him on 19.07.2010. It has been argued by the learned counsel for the petitioner that the salary paid after retirement is presumed to be a retiral benefit. Learned A.P.O. has refuted the argument of the learned counsel for the petitioner and stated that the claim of interest on salary cannot be included in retiral benefit. It has been further contended by the learned A.P.O. that the Departmental Appellate Authority (Principal Secretary, Medical and Health, Government of Uttarakhand) decided the representation of the petitioner as directed by the Hon'ble High Court at Nainital and the order to pay salary was passed by him on 02.06.2009 (Annexure: A3). Perusal of the said order (reproduced in paragraph 2.3 of this order) reveals that the petitioner in his representation dated 25.08.2007 had requested for payment of salary from 01.01.2004 to 31.03.2007 which was paid to him on 29.07.2010. The petitioner for the first time claimed interest on arrears of salary on 02.04.2013.

Learned counsel for the petitioner could not show by any Rule or G.O. or otherwise his claim of interest on arrears of salary as a retiral benefit. Under these circumstances, the claim of the petitioner for payment of interest on arrears of salary from 01.01.2004 to 31.03.2007 is not justified and the same cannot be accepted.

11. For the reasons stated in paragraph 7 to 10 above, the claim petition deserves to be partly allowed. While the claims on interest for delay in payment in respect of Pension, Gratuity and Leave Encashment are justified, the claim of interest on arrears of salary is not acceptable.

ORDER

The claim petition is partly allowed. Respondents are directed to pay to the petitioner (i) interest on monthly pension from 01.07.2007 till the date of actual payment; (ii) interest on gratuity from 01.07.2007 till the date of actual payment; and (iii) interest on the amount of leave encashment from 01.07.2007 till the date of actual payment. The rate of interest shall be the simple rate of interest payable on General Provident Fund during the relevant period. The petitioner will be paid the amount of interest as above within a period of three months from the date of copy of this order is received by the respondents. No order as to costs.

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: SEPTEMBER 22, 2016

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