

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
T.A. No. 461 of 2009
W.P.(C) No. 7781 of 2009 of Delhi High Court**

IN THE MATTER OF:

Ex Sqn Ldr Vijay Prakash
Through : Applicant in person

.....Applicant

Versus

Union of India and Others
Through: Mr. Ankur Chhibber, counsel for the Respondents

.....Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 25.05.2011

1. The petition was filed in the Delhi High Court on 24.03.2009 and was transferred to the Armed Forces Tribunal on its formation on 03.12.2009. The applicant vide this petition has prayed for directions to respondents to release the requested information sought by the applicant immediately of his terminal dues that accrue to him for having rendered effective service of approximately 12 years of service. He has also prayed that he be granted Rs.5,00,000/- (Rupees Five Lacs) as compensation apart from the financial dues with interest thereon since 30th September, 2001 on account of deliberate and wilful denial of constitutional right of the applicant. It has been further prayed

that clarifications be sought from the respondents about the promotional policies and the entire matter of Court of Enquiry be brought forth afresh.

2. The applicant vide M.A. Nos. 21/2010, 422/2010 and 296/2010 has prayed that directions be issued to the respondents to declare the entire details of legitimate dues of the applicant and also to disburse interest since September 2001, granting of the Medical and Canteen facilities as part of NE benefits, granting compensation of Rs. 25 lacs, re-induction into service with full back wages and perks, taking judicial notice of the fraud committed in perpetuation of the crash of AN-32 on 07.03.1999 and initiating legal action against all such unscrupulous officers amongst other reliefs.

3. The brief facts of the case are that applicant was commissioned in Indian Air Force on 16.12.1989 in the transport stream as Pilot. The applicant was posted at various stations during his tenure of 12 years of service and subsequently he was posted to Agra. During his tenure applicant had repeatedly brought out certain snags in aircrafts flown by him. The same was deliberately ignored by the senior officers in his unit with active support and encouragement from station authorities thus jeopardizing the safety practices. The applicant was subsequently declared medically unfit for flying and was harassed and victimized by the senior officers. In view of this background applicant filed a case before the Hon'ble Court on 24.03.2009 as W.P.(C) No. 7781/2009.

4. The applicant sought premature release from the service on 04.02.2000. The petition filed before the Hon'ble Delhi High Court was also for pre mature release from service. On 20.10.2000, applicant submitted his resignation after his application for pre mature release was turned down.

5. On 26.09.2001 the Hon'ble Delhi High Court held the petition infructuous after due acknowledgment and cognizance of resignation being granted to the applicant with direction to pay all dues within six months with liberty to approach the court again in the eventuality of non compliance of the same.

6. On 06.10.2008 the applicant despite illegal motive of the Air Force Authorities sought information about his terminal dues under the RTI Act. On 06.02.2009 the Air Force furnished evasive reply without giving information about relevant rules and guidelines. Therefore, the applicant filed a fresh petition in 2009 before the Hon'ble Delhi High Court.

7. On 26.03.2009, the Hon'ble Court appointed Col. C.M. Khanna (Rtd.), Advocate as Amicus Curiae on behalf of the applicant to assist in the calculation of the terminal dues to the applicant. The Amicus Curiae submitted his report (Annexure R-5) on 03.07.2009 which stated that all the dues have been paid correctly except for retirement gratuity which should have been Rs.3,80,620/- against what was paid Rs.1,57,500/-.

8. The Air Force Authorities acknowledged the mistake by their letter on 01.12.2009 and requested the officer to forward the documents to claim for the balance amount. This has since been paid.

9. The applicant in person argued that amount was legitimately due on 31.12.2009. The delay which has occurred due to the fault of the Air Force Authorities for not calculating the gratuity in a proper manner should be paid with penal interest. To support his contention, he has relied on the judgment of **State of Kerala & Ors VS M. Padmanabhan Nair (1984) RD-SC 237** of the Hon'ble Supreme Court in which their Lordships had ruled that *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.*

10. Learned counsel for the respondents argued that all the dues of the applicant have been settled. The issue of his complaints and his pre mature retirement have been disposed of by the Hon'ble Delhi High Court. The only issue that remains is payment of gratuity as calculated by the Amicus Curiae on the order of the Hon'ble Delhi High Court. He further stated that the same has been accepted by the authorities and payment has been made. There has been no delay in the payment on the part of the authorities as Amicus Curiae report is

dated 03.07.2009 and the mistake has been accepted and rectified on 01.12.2009. So at best there is a delay for six months.

11. Learned counsel for the respondents further argued that delay beyond December, 2009 has been because of the reluctance of the applicant to submit proper claim papers to recover the balance amount. The authorities had to literally force him to come to the office so that he could submit the relevant papers. As such, the delay has been only for six months. Since the issue was still under dispute it cannot be said that the dues have been pending since the date of his resignation i.e. on 31.12.2001.

12. Learned counsel for the respondents further argued that the applicant has also sought that he should be made a member of ECHS. The ECHS came into being on 01.04.2003. The rules for ECHS membership are same that one should be designated as an ex-serviceman. It implies that he should be in receipt of pension. Since there are current rules for ECHS, the respondents are unable to give this facility to the applicant. This rule is similarly applies to the facilities extended by Canteen Department Services.

13. Having heard both the parties at length and examined the documents, we are of the opinion that the mistake in calculation was made by the authorities when the applicant resigned w.e.f 31.12.2001. The discrepancy in amount of gratuity was to the tune of Rs.2,28,372/- which should have been paid instead of Rs.1,57,700/- on 31.12.2001.

Giving six months time to the authorities who calculated and finalized claim amount should have been released by 01.05.2002. Therefore, we are of this opinion that the delay in payment has been for no fault of the applicant and he should have been paid the amount i.e. Rs.2,28,372/- latest by 01.05.2002 i.e. when the applicant was paid Rs.1,57,500/-. Therefore, the differential between what was due and what was actually paid to the applicant should attract interest rate at the rate of 9% per annum w.e.f 01.05.2002 giving lead time to authorities to work out the amount of payment and make that payment.

14. As regards, the prayer regarding membership of ECHS and extension of facility of CSD services, we are not inclined to interfere since the applicant has 'resigned' is not termed as "Ex Serviceman". However, the definition of ex-servicemen when it changes in subsequent years, he shall be entitled to those facilities as well.

15. In view of the foregoing, we partially allow the application and direct that differential in the gratuity payment made i.e. Rs.2,28,372/- — (minus) Rs.1,57,500/- = Rs.70,872/- to the applicant to be computed at the interest rate of 9% per annum w.e.f. 01.05.2002 till the applicant received the balance of gratuity payment. The exercise may be completed within 90 days from the passing of this judgment by the respondents.

16. With aforesaid directions, the main application as well as all three MAs stand disposed off. As observed above, since the payment was inadvertently delayed for which the applicant was forced to approach the Courts, a cost of Rs.1000/- is imposed on the respondents, to be paid to the applicant.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on this 25th day of May, 2011