

F.R.  
n. Singh

# IN THE HIGH COURT OF SIKKIM

## WRIT PETITION (C) NO.14 OF 2002

Justice Malay Sengupta (Retd.)  
1, Belur Station Road,  
P.O. Belur Math, P.S. Bally,  
Dist. - Howrah - 711 202. ... Petitioner.

- VERSUS -

1. The Secretary,  
Government of India,  
Ministry of Law and Justice  
(Department of Justice),  
Jaisalmer House,  
Man Singh Road,  
New Delhi - 110 011.
2. The Chief Controller of Accounts (Pension),  
Central Pension Accounting Office,  
Trikoort - II, Bhikaji Kama Place,  
New Delhi - 110 066.
3. The Finance Secretary,  
Government of Sikkim,  
Tashiling,  
Gangtok,  
Sikkim - 737 101.
4. The Registrar General,  
High Court of Sikkim,  
Gangtok - 737 101.
5. The Senior Deputy Accountant  
General (A & E),  
Sikkim,  
Gangtok - 737 101. ... Respondents.

**Coram: Hon'ble Mr. Justice N. S. Singh, Judge.**

N. Singh

Present: Mr. A. Moulik, assisted by Mr. N. G. Sherpa, Advocates for the petitioner.

Mr. S. P. Wangdi, Senior Central Govt. Standing Counsel assisted by Mr. Karma Thinlay, Advocate for respondent Nos.1, 2 and 5.

Mr. N. B. Khatiwada, Addl. Advocate General assisted by Mr. J. B. Pradhan, Govt. Advocate for the respondent No.3.

Mr. H. K. Sharma, Joint Registrar, High Court of Sikkim for respondent No.4.

***Date of Decision: July 28, 2003.***

## **J U D G M E N T**

**Singh, J.**

In this writ petition, the writ petitioner sought for a direction to the respondent-authorities to calculate and disburse forthwith the interest amount on delayed payment of arrears of pension amount and of commuted value of pension to him, by contending inter alia, that the writ petitioner, Justice Malay Sengupta retired as Judge of the High Court of Sikkim on superannuation on 10<sup>th</sup> November 1998 and he duly submitted pension papers to the concerned authorities with a request not to give effect to it till the notification relating to revised rates of pension etc. is issued and published by the Government of India and that, the Government of India revised the rates of pension of the

N. G. Sherpa

Retired Judges with effect from 1<sup>st</sup> January 1996 under a related Circular bearing No.L.11016/08/97-Jus. dated 13<sup>th</sup> January 1999 as in *Annexure-A* to the writ petition and in terms of the said Circular, the Deputy Accountant General (A & E), Sikkim sent eligibility report on the pensionery benefits payable to the writ petitioner, to the concerned authority/Ministry on 22<sup>nd</sup> March 1999 as in *Annexure-B* to the writ petition and, on the basis of the said eligibility report (*Annexure-B*), the President of India accorded approval to the sanction of pension of Rs.1,56,000/- per annum along with other pensionery benefits vide, office letter dated 16<sup>th</sup> April 1999 as in *Annexure-C* to the writ petition and, in like manner, on the basis of the eligibility report mentioned above, the President of India accorded his approval to the sanction of Rs.7,13,700/- on account of commuted value of pension equal to Rs.6,500/- per month out of pension already sanctioned to the writ petitioner under another office letter dated 16<sup>th</sup> April 1999 as in *Annexure-D* to the writ petition and thereafter, the required Special Seal Authority was issued from the office of the Senior Deputy Accountant General (A & E), Sikkim in favour of the Chief Controller of Accounts (Pension), Department of Expenditure, Government of India under a related office letter dated 14<sup>th</sup> May 1999 as in *Annexure-E* to the writ petition and subsequently, pension

*N. S. Choudhary*

payment order was issued on 27<sup>th</sup> May 1999 by the Central Pension Accounting Office, Government of India as seen in the document marked as *Annexure-F* to the writ petition and in the said pension payment order, the date of commencement of Residual pension @ Rs.6,500/- was wrongly noted as 10<sup>th</sup> November 1998 which was the writ petitioner's date of superannuation and on which date question of payment of commutation value did not arise at all and the commuted value to be paid by the Bank was wrongly shown as "Nil" in the said pension payment order and since after issuance of pension payment order which was more than six months from the date of superannuation of the writ petitioner, only a sum of Rs.6,500/- per month was being deposited in the Bank account of the writ petitioner with arrears from 10<sup>th</sup> November 1998 @ Rs.6,500/- per month and, no payment towards commuted value of pension was paid or deposited in the Bank account and accordingly, the writ petitioner had to remain contented with a paltry sum of Rs.6,500/- per month even without getting the commuted value of pension though the same was duly sanctioned by the President of India and the authorisation of the payment of the same was duly made by the Accountant General of Sikkim. But ultimately instruction was sent by the Central Pension Accounting Office under its office letter dated 21<sup>st</sup> December

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2000 as in *Annexure-G* to the writ petition for payment of arrears of balance amount of pension with effect from 10<sup>th</sup> November 1998 @ Rs.6,500/- per month so far unpaid and also for payment of commuted value of pension and the amounts were worked as Rs.1,67,050/- and Rs.7,13,700 respectively as seen in the document marked as *Annexure-G* and the banker intimated the writ petitioner under its office letter dated 9<sup>th</sup> January 2001 that they had credited the aforesaid amount totaling Rs.8,80,750/- in the pension-account of the writ petitioner as in *Annexure-H* to the writ petition. It is also the case of the writ petitioner that the payment of pension at the approved rate and the commuted value of the pension was delayed abnormally as it was paid only on 9<sup>th</sup> January 2001 though the date of the superannuation of the writ petitioner was 10<sup>th</sup> November 1998 inasmuch as notification of the revised rates of pension was issued by the Government of India on 13<sup>th</sup> January 1999; Accountant General of Sikkim issued the eligibility report on 22<sup>nd</sup> March 1999; the approval of the President of India was accorded on 16<sup>th</sup> April 1999 and the Special Seal Authority was issued on 14<sup>th</sup> May 1999 and on account of such delayed payment, the writ petitioner raised protest and demanded interest on the entire amount for which he submitted representation and claim vide, representation dated 20<sup>th</sup> March 2001 to the authorities

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concerned as seen in the document marked as *Annexure-I* to the writ petition and the claim of the writ petitioner was justified by the Senior Deputy Accountant General (A & E), Sikkim under his office letter dated 17<sup>th</sup> April 2001 as in *Annexure-J* to the writ petition and in the mean time, this Court took up the matter suo motu under Writ Petition (C) No.23 of 2001 and in the said writ petition, the Deputy Secretary in the Department of Justice of the Ministry of Law, Justice and the Company Affairs filed counter affidavit wherein it has been contended that since Rule 19A(i) of the All India Services (DCRG) Rules, 1959 did not provide for interest of delayed payment of pension, leave encashment, commuted value of pension etc., the petitioner was not entitled any interest on the delayed payment of any retirement benefit except that of death-cum-retirement gratuity and, in the said writ petition, this Court by an order dated 16<sup>th</sup> October 2001 directed the writ petitioner to submit a representation to the Department of Justice, Government of India and accordingly, he submitted the representation on 19<sup>th</sup> November 2001 as in *Annexure-K* to the writ petition and thereafter, the said writ petition was finally disposed of on 24<sup>th</sup> January 2002 with a liberty to the writ petitioner to approach the appropriate authority or appropriate forum or court for redressal of such grievance as in *Annexure-L* to the

N. S. Choudhary

writ petition. The writ petitioner also highlighted the fact that his present claim confined to the extent of interest on the outstanding balance and commuted value of pension which remained unpaid so far and was paid only on 9<sup>th</sup> January 2001.

**2.** Supporting the case of the writ petitioner, Mr. A. Moulik, learned counsel submitted that despite the existence of the specific orders of the President of India and the related notifications thereof dated 13<sup>th</sup> January 1999, 22<sup>nd</sup> March 1999, 16<sup>th</sup> April 1999, and also order/office letter pertaining to required Special Seal Authority as in *Annexures - A, B, C, D* and *E* to the writ petition as well as the claim and approach made by the writ petitioner, the respondent-authorities concerned did not disburse or afford the interest over the arrears amount of pension and of commuted value of pension to the writ petitioner which is the legitimate claim of the writ petitioner. It is also further argued that the respondent-authorities, particularly, the respondent Nos.1 and 2 are mainly responsible for causing unnecessary and inordinate delay in settling the matter and making the payment of the outstanding balance of the pension amount and the commuted value of pension and as such, they are bound to

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pay interest for delayed payment on such arrears of pension and commuted value of pension. According to Mr. Moulik, learned counsel, because of the inaction and failure on the part of the respondent Nos.1 and 2 in not settling the matter in time, the delay has been caused in making payment of such arrears of pension and commuted value of pension to the writ petitioner for which the reasonable rate of interest should be given to the writ petitioner by the said respondent Nos.1 and 2/authorities. Supporting his submission, Mr. Moulik, learned counsel has relied upon the following decisions of the **Apex Court** rendered in: -

1. **State of Kerala & ors. v. M. Padmanabhan Nair** reported in **AIR 1985 SC 356**.
2. **O. P. Gupta v. Union of India & ors.** reported in **(1987) 4 SCC 328**.
3. **Dr. Uma Agrawal v. State of U.P. & anr.** reported in **(1999) 3 SCC 438**.
4. **R. P. Kapur v. Union of India & ors.** reported in **(1999) 8 SCC 110**.
5. **Mohd. Zameeruddin Siddiqui v. Executive Council, A.M.U. & anr.** reported in **(2000) 9 SCC 48**.

3. The case of the writ petitioner is resisted by the respondent Nos.1, 2, 3 and 5 by filing respective counter affidavits, particularly, the respondent Nos.1 and 2.

*N. Moulik*

According to the respondent No.1, the Ministry of Law, Justice & Company Affairs (Department of Justice) duly conveyed the sanction of the President of India to the Senior Accountant General (A & E), Sikkim for payment of pensionary benefits/commuted value of pension vide, sanction letters dated 16<sup>th</sup> April 1999 as in *Annexures-C* and *D* to the writ petition without any delay and as such, there was no lapses on the part of the respondent No.1 in affording the pensionary benefits to the writ petitioner. Mr. S. P. Wangdi, learned Senior Central Government Standing Counsel appearing for respondent Nos.1, 2 and 5 contended that arrangement for making payments of retiral benefits was duly made by the authorities concerned and the writ petitioner had been paid all the retiral benefits and there was no delay on the part of the authorities concerned in conveying sanction for grant of pensionary benefits in respect of the writ petitioner. According to the respondent No.2, it is inconsistent to claim interest both for pension as well as commuted value of pension on the part of the writ petitioner and as such the writ petitioner has not clearly spelt what his case is about and the commuted value of pension was paid to the writ petitioner on 9<sup>th</sup> January 2001 and for the preceding period from 11<sup>th</sup> November 1998 to 8<sup>th</sup> January 2001, remaining 50% pension has also been paid to him, in other words,

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the writ petitioner has received full pension from 11<sup>th</sup> November 1998 to 8<sup>th</sup> January 2001 and reduced pension from 9<sup>th</sup> January 2001 and apart from that reduced pension after commutation is being paid to him from 9<sup>th</sup> January 2001 and as such nothing more remains to be paid to him. It is also the case of the respondent Nos.1 and 2 that there was no provision under the Central Civil Service (Pension) Rules with regard to the payment of interest on pension, commutation value of pension etc. Mr. Wangdi, learned Senior Central Government Standing Counsel, supporting the case of the said respondents argued that the respondents had explained their bonafide action in the matter and gave cogent reasons in their respective counter affidavits in the matter of payment of retiral benefits to the writ petitioner and as such, the relief sought for by the writ petitioner in the writ petition should not be granted by this Court and the writ petition deserves its outright dismissal.

**4.** The case of the respondent No.3, i.e. Finance Department, Government of Sikkim is that the Central Pension Accounting Office, Ministry of Finance, Government of India, the respondent No.2 herein, is to arrange for payment of retiral benefits to the retired Judges of the High

*Wangdi*

Courts as in the case of Central Government Civil Pensioners with effect from 1<sup>st</sup> January 1990. In other words, pension payment orders in respect of the retired High Court Judges will be issued by the State Accountant General and sent to the Central Pension Accounting Office for arranging payments. The case of the State-respondents is supported by Mr. N. B. Khatiwada, learned Additional Advocate General for the State of Sikkim.

**5.** The plea/stand taken by the respondent No.5 is that the role of the office of the Senior Deputy Accountant General (A & E), Sikkim being only to calculate the pensionary benefits and then to issue required Special Seal Authority on receipt of sanction from the Ministry of Law, Justice and Company Affairs, all the required actions have been taken promptly as far as practicable and the authorisation letters to all the concerned authorities were issued on 14<sup>th</sup> May 1999 for arranging payment of the pensionary benefits to the writ petitioner and as such, there is no lapses on the part of the respondent No.5 in arranging the payment of retiral benefits as claimed by the writ petitioner.

*N. B. Khatiwada*

**6.** Now, this Court is to see and examine as to whether the writ petitioner has enforceable legal right in the instant case or not; and whether the reliefs sought for by the writ petitioner in his writ petition can be granted or not?

**7.** Upon hearing the learned counsel for the parties and also on perusal of the available materials on record, it appears to me that a very important issue/question arises in the instant case as to whether there is a delay in arranging the payment of retiral benefits, particularly, pension and the commuted value of pension as claimed by the writ petitioner in his writ petition and if there is delay in doing so, who is responsible for it and, whether the writ petitioner shall be entitled the reasonable interest as claimed by him in his writ petition or not ?

**8.** After proper application of my mind in this matter, I am of the view that there is no lapses on the part of the respondent No.1, 3, 4 and 5 in making arrangement of payment of retiral benefits to the writ petitioner for the following reasons: -

The petitioner retired as Judge of the High Court of Sikkim on superannuation on 10<sup>th</sup> November 1998

N. J. Gille

and at the appropriate time, he duly submitted pension papers to the concerned authorities with a request not to give effect to the same till the revised rates of pension of the retired Judges are issued by the Government of India which was looked into by the concerned authorities. According to me, the respondent No.1 had promptly acted upon the matter pertaining to the grant of revised pension etc. to the retired Judges of the High Courts and Supreme Court as seen in the documents marked as *Annexure-A* to the writ petition which is the Government of India circular dated 13<sup>th</sup> January 1999 issued by the Ministry of Law, Justice and Company Affairs (Department of Justice) and in pursuance of it, the Deputy Accountant General (A & E), Sikkim sent eligibility report on the pensionary benefits payable to the writ petitioner vide, office letter dated 22<sup>nd</sup> March 1999 as in *Annexure-B*, in time which was duly acted upon by the Ministry of Law, Justice and Company Affairs (Department of Justice) as seen in the related office letters dated 16<sup>th</sup> April 1999 as in *Annexures-C* and *D* to the writ petition which are very important in the present case for just determination of the real points in controversy between the parties and, accordingly, these are quoted below: -

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ANNEXURE - C

“ No.L-12029/1/99-Jus  
GOVERNMENT OF INDIA  
MINISTRY OF LAW, JUSTICE & C.A.  
( DEPARTMENT OF JUSTICE )

---  
Jaisalmer House, Mansingh Road  
New Delhi, the 16 April, 1999

To

The Dy. Accountant General (Pen),  
O/o the Sr. Accountant General (A&E),  
Sikkim,  
GANGTOK - 29.

Subject: Grant of Pensionary benefits to  
Justice Malay Sengupta, Retd.  
Judge, Sikkim High Court.

Sir,

With reference to your letter No.TM/  
JUDGE/MSG/98-99/424 dated 22.3.1999, I  
am directed to convey the sanction of the  
President of the payment of Rs.3,50,000/-  
(Rupees three lakh fifty thousand only) in  
lump-sum as Death-cum-Retirement Gratuity  
and a pension of Rs.1,56,000/- p.a. (Rupees  
one lakh fifty-six thousand only per annum) to  
Mr. Justice Malay Sengupta, Retd. Judge,  
Sikkim High court, w.e.f. 10.11.98.

2. The sanction of the President is also  
accorded to the payment of family pension of  
Rs.7,800/- p.m. (Rupees Seven thousand eight  
hundred only per month) to the wife of Justice  
Sengupta, upto 9.11.2001 and thereafter at the  
rate of Rs.3,900/-p.m. (Rupees three thousand  
nine hundred only per month) till her death or  
re-marriage, whichever is earlier. The family  
pension will be payable, in case, Justice Malay  
Sengupta predeceases his wife and it shall start  
from the date following the death of Mr. Justice  
Malay Sengupta.

*N. Sengupta*

3. The pension in the first instance is chargeable to the Consolidated Fund of India under Article 112(3)(d)(iii) of the Constitution of India and there after recoverable from the Government of Sikkim under Article 290 of the Constitution.

Yours faithfully,

Sd/-

( P. N. SINGH )

UNDER SECY. TO THE GOVT. OF INDIA

Copy to:

1. The Chief Secretary, Government of Sikkim, Gangtok.
2. The Registrar, Sikkim High Court, Gangtok.
3. Mr. Justice Malay Sengupta, Retd. Judge, Sikkim High Court, Gangtok.
4. Guard file.

( P. N. SINGH )

UNDER SECY. TO THE GOVT. OF INDIA”

ANNEXURE - D

“

No.L-12029/1/99-Jus  
GOVERNMENT OF INDIA  
MINISTRY OF LAW, JUSTICE & C.A.  
( DEPARTMENT OF JUSTICE )

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Jaisalmer House, Mansingh Road  
New Delhi, the 16 April, 1999

To

The Dy. Accountant General (Pen),  
O/o the Sr. Accountant General (A&E),  
Sikkim,  
GANGTOK - 29.

Subject: Commutation of pension - case of  
Justice Malay Sengupta, Retd.  
Judge, Sikkim High Court.

*N. Singh*

Sir,

With reference to your letter No.TM/JUDGE/MSG/98-99/424 dated 22.3.1999, I am directed to convey the approval of the President to the payment of Rs.7,13,700/- (Rupees Seven lakh thirteen thousand seven hundred only) on account of commuted value of pension equal to Rs.6,500/- per month out of pension already sanctioned to Mr. Justice Malay Sen Gupta, Retd. Judge, Sikkim High Court.

Yours faithfully,

Sd/-

( P. N. SINGH )

UNDER SECY. TO THE GOVT. OF INDIA

Copy to:

1. The Chief Secretary, Government of Sikkim, Gangtok.
2. The Registrar, Sikkim High Court, Gangtok.
3. Mr. Justice Malay Sengupta, Retd. Judge, Sikkim High Court, Gangtok.
4. Guard file.

( P. N. SINGH )

UNDER SECY. TO THE GOVT. OF INDIA”

**9.** A bare perusal of these office letters dated 16<sup>th</sup> April 1999 mentioned above show that the respondent No.1 had acted promptly in the matter pertaining to the grant of pensionary benefits to the writ petitioner in time and therefore, I am not in agreement with the statements and contentions of the writ petitioner that the respondent No.1 is responsible for the delay in making the payment of

*N. Singh*

pensionary benefits to the writ petitioner, but I would say that it is the respondent No.2 who caused the delay in making the pensionary/retiral benefits to the writ petitioner with the following reasons: -

In the process for making payment of retiral benefits to the writ petitioner, the Central Pension Accounting Office, Government of India, the respondent No.2 herein issued Special Seal Authority/Pension Payment Order on 27<sup>th</sup> May 1999 as seen in the document marked as *Annexure-F* to the writ petition in the following order: -

ANNEXURE - F

“

PENSIONER'S COPY

No.CC923905

CENTRAL PENSION ACCOUNTING OFFICE  
GOVERNMENT OF INDIA  
TRIKOOT 2 BHIKAJI CAMA PLACE, NEW DELHI – 110 066.  
EPABX NO.6174438, 6174599 FAX NO.011-6167326  
(CENTRAL CIVIL PENSIONS) CC223905A

SPECIAL SEAL AUTHORITY No.636589900017/242564 Date : 27.05.1999

To

THE MANAGER,  
STATE BANK OF INDIA  
9, G.T. ROAD  
DISTT. HOWRAH  
WEST BENGAL  
PIN – 711101

Dy. No. :3002061

THIS SHOULD NOT BE  
DETACHED FROM PPO

You are requested to make payment as per this authorisation below, (Details are given in the enclosed P.P.O.) to

SHRI MALAY SENGUPTA, holder of P.P.O. No. 63658990001  
Paying Branch Category of Pension

*N. S. Chatterjee*

BALLY, A/C No. 1957 SUPERANNUATION PENSION  
 P.P.O. Issuing Authority Accountant General, Sikkim  
 Basic Pension P.M. Rs.13000/- Date of Commencement 10.11.1998  
 (Rupees thirteen thousand only)

Residual Pension P.M. Rs.6500/-Date of Commencement 10.11.1998  
 (Rupees six thousand five hundred only)

Family Pension at Enhanced Rate Rs.7800/- From To 09/11/2001  
 (Rupees seven thousand eight hundred only)

Family Pension at Normal Rate Rs.3900/- From 10.11.2001 To  
 (Rupees three thousand nine hundred only)

Commuted value to be paid by bank NIL

Sd/-  
 PAY & ACCOUNTS OFFICER

NOTES: -

1. The Pensioner's portion of the P.P.O. may please be handed over to the pensioner after identification.
2. If pension papers do not pertain to your branch, please redirect them to the concerned branchy, under intimation to this office, to avoid delay.
3. Please see reverse for other guidelines for Banks and Pensioners.

COPY FORWARDED TO: -

1. (Pensioner) SHRI MALAY SENGUPTA  
 1, BELUR STATION ROAD, BELUR MATH  
 HOWRAH, WEST BENGAL - 711202
2. The PAO ACCOUNTANT GENERAL, ACCOUNTANTS GENERAL  
 SR. DY. A.G. (A&E), SIKKIM LAKARS BUILDING  
 GANGTOK - 737 101

GP = 119553 (A4) 14.7.2000

Send to RSD for rediary in Comm. Dy.  
 But not Diary) ”

**10.** In the said Pension Payment Order mentioned above, the date of commencement of residual pension @ Rs.6,500/- per month was wrongly noted/shown as 10<sup>th</sup> November 1998 (emphasis given) which was the writ petitioner's date of superannuation and on which date

*N. N. Choudhary*

question of payment of commutation value of pension did not arise at all and moreover, the commuted value to be paid by the Bank was wrongly shown as "Nil" in the said pension payment order and since after issuance of pension payment order which was more than six months from the date of superannuation of the writ petitioner, only a sum of Rs.6,500/- per month was being deposited in the Bank account of the writ petitioner with arrears from 10<sup>th</sup> November 1998 @ Rs.6,500/- per month and at the relevant time, no amount of commuted value of pension was paid or deposited in the Bank account of the writ petitioner, and accordingly, the writ petitioner was to receive only a paltry sum of Rs.6,500/- per month even without getting the commuted value of pension though the same was duly sanctioned by the President of India and authorisation of payment of it was duly made by the Accountant General of Sikkim as discussed above. But only on 9<sup>th</sup> January 2001, the commuted value of pension was paid to the writ petitioner and the remaining 50% pension for the preceding period from 11<sup>th</sup> November 1998 to 8<sup>th</sup> January 2001 has also been paid to the writ petitioner and there is delay in doing so. According to me, the respondent No.2, Central Pension Accounting Office, Government of India caused the delay because of their inaction in the matter of settling such

N. S. G. G. G.

payment as seen in the document marked as *Annexure-F* to the writ petition mentioned above and in view of the existing facts and circumstances of the case, it may be mentioned that despite existence of the approval of sanction order and related office letters/circulars issued by the Ministry of Law, Justice and Company Affairs (Department of Justice), Government of India vide, office circular dated 13<sup>th</sup> January 1999, eligibility report dated 22<sup>nd</sup> March, 1999 and office letters dated 16<sup>th</sup> April 1999 as in *Annexures-A, B, C and D* as highlighted above, the Central Pension Accounting Office, the respondent No.2 herein, continued to write letter to the writ petitioner in the following order as seen in the document marked as *Annexure-IXA* to the counter affidavit of the respondent No.5, which is quoted below: -

ANNEXURE - IXA

“

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF EXPENDITURE  
CENTRAL PENSION ACCOUNTING OFFICE  
TRIKOOT-II, BHIKAJI CAMA PLACE,  
NEW DELHI-110066  
PHONES : 6174596, 6174456, 6174438

Dated : 21/7/99

No.A-I/99/Vol 20/p-35

To

Sh. Malay Sengupta,  
1, Belur Station Road,  
Belur Math,  
Howrah, West Bengal-711202.

Sub : Revision of pension.

*N. S. Sengupta*

Sir,

Reference your letter No.Nil dated 30.6.99.

2. As per this office computer record, Commutation of pension will be paid by Deptt. Hence, you are requested to take-up the matter with your deptt. From where you have retired.

Yours faithfully,

Sd/-

Asstt. Accounts Officer.”

**11.** The above letter of respondent No.2 is of 21<sup>st</sup> July 1999. In my considered view, the respondent No.2 is/was quite aware of the existence of the earlier circular and office letters/sanctioned order etc. vide, circular dated 13<sup>th</sup> January 1999 (*Annexure-A*); eligibility report dated 23<sup>rd</sup> March 1999 (*Annexure-B*); sanctioned order dated 16<sup>th</sup> April 1999 (*Annexure-C*) and the approval of the President of India to such payment of commuted value of pension, vide, office letter dated 16<sup>th</sup> April 1999 (*Annexure-D*), but, the respondent No.2 without any justification wrote the above letter dated 21<sup>st</sup> July 1999 to the writ petitioner instead of expediting the payment of the said retiral benefits to the writ petitioner and as such, the respondent No.2 is responsible and liable for the delay in making the payment of retiral/due pensionery benefits to the writ petitioner entitled to him under the law.

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**12.** The respondent No.5 did its best effort in making necessary arrangement for payment of the pensionary benefits to the writ petitioner. In this regard, a related office letter of the respondent No.5 dated 25<sup>th</sup> January 2000 as in *Annexure-XV* to the counter affidavit of the respondent No.5 is relevant and the same is highlighted as hereunder: -

ANNEXURE - XV

“ OFFICE OF THE SR. DEPUTY ACCOUNTANT GENERAL (A&E)  
SIKKIM, GANGTOK - 737101

Under Special Seal Authority No. TM/J/MSG/99-2000/463  
Date 25<sup>th</sup> January 2000

To  
The Controller of Accounts,  
Government of India,  
Department of Expenditure,  
C. P. A. O., Trikoot - II,  
Bhikaji Cama Place,  
New Delhi - 110 066.

Subject: Authorisation of Commuted value of pension to Justice Malay Sengupta, Retd. High Court of Sikkim, holder of P.P.O. No. 63658/99/0001/7.

Sir,

I am to invite a reference to your endorsement No.CPAO/A-III//99/CC(P)Dy/P-29 dated 30.11.99 on the above mentioned subject wherein it has been advised to issue a separate authority for arranging payment of commuted value of pension. On the basis of Government of India, Ministry of Law, Justice and Company Affairs, Department of Justice sanction letter Nmo.12029/1/99-Jus dated 16.4.99, and in continuation of this office letter No. TM/Pen/J/MSG/99-2000/78 dated 14.5.99. I am to authorise you to make arrangement for payment of Rs.7,13,700/- (Rupees Seven lakhs thirteen thousand and seven hundred) only out of the pension Rs.13,000/- (Rupees thirteen thousand) only p.m. granted to Mr. Justice Malay Sengupta holder of

*N. M. G.*

PPO NO. 63658/99/0001/7 on or as soon as possible after receipt of this letter.

Reduced pension of Rs.6,500/- (Rupees Six thousand and five hundred) only per month consequent on commutation at 50% pension is payable to Hon'ble Shri Justice Malay Sengupta from the date of retirement or from the date of receipt of the commuted value of pension by the pensioner or at the end of three months after issue of this authority whichever is earlier. It may kindly be ensured that the date of which the payment of commuted value of pension is made to the pensioner be intimated to this office immediately after payment of the same.

The concerned bank i.e. State Bank of India, Bally (West Bengal) Branch-3882 may kindly be advised to obtain certificate from the pensioner regarding non-receipt of the pensionary benefits before making payment.

Yours faithfully,

Sd/-

Accounts Office/TM.

Memo No. TM/J/MSG/99-2000/464-466

Dated: 25-1-2000

Copy forwarded for information to:

1. Shri P. N. Singh, Deputy Secretary to the Government of India, Ministry of Law, Justice and Company Affairs, (Department of Justice), Jaisalmer House, New Delhi - 110 011. with reference to letter No. L-12029/2/99-Jus dated 7.1.2000.
2. Hon'ble Justice Shri Malay Sengupta (Retd.) Judge, 1, Belur Math Road, Belur Math, Distt. Hawrah, Pin code 711 202.
3. Registrar General, High Court of Sikkim, Gangtok, alongwith the copies of Ministry of Law, Justice and Company Affairs letter No.L-12029/2/99-Jus dated 7.1.2000 and Ministry of Finance, C.P.A.O. letter No.CPAO/A-III/99/CC(P)Dy/P-29 dated 30.11.99 for information and necessary action.

Sd/-

Accounts Office/TM. ”

*N. S. Sengupta*

**13.** In the same way, the respondent No.3 has no fault in the matter as the Central Pension Accounting Office, Ministry of Finance, Government of India is to arrange for the said payment to the retired Judges of the High Courts, in other words, pension payment order in respect of the retired High Court Judges is to be issued by the State Accountant General and sent to the Central Pension Accounting Office for arranging early payment of it.

**14.** It is well settled that pension and gratuity are no longer any bounty, but these are valuable personal property of the retired employees and/Judges of the High Court as well as Supreme Court of India and apart from that, pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any other dues outstanding against the retired employees or Judges and if there is any delay in payment of such retiral benefits, the authority concerned is liable to pay interest at reasonable rate preferably, at the market interest rate. At this stage, I hereby recall two related decisions of the **Apex Court** rendered in **Gorakhpur University & ors. v. Dr. Shitla Prasad Nagendra & ors.** reported in **2001 AIR SCW 2819** and another, in a case between **State of Kerala & ors. v. M.**

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**Padmanabhan Nair** reported in **AIR 1985 SC 356** and, the relevant observations and principles of law laid down by the **Apex Court** in these cases are quoted below: -

“ 5. We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996 (2) ESC 211 (All) (supra) is that of a Division Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in (1994) 6 SCC 589 (supra) which, in turn, relied upon earlier decisions in *State of Kerala v. M. Padmanabhan Nair* (1985) 1 SCC 429 : (AIR 1985 SC 356 : 1985 Lab IC 664) and AIR 1981 SC 212 (supra). This Court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.” [Gorakhpur University v. Dr. Shitla Prasad Nagendra (supra)]

“ 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

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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 at least 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.” [State of Kerala v. M. Padmanabhan Nair (supra)].

**15. In Dr. Uma Agrawal v. State of U.P. & anr.**

reported in **(1999) 3 SCC 438**, the **Apex Court** held thus: -

“ 5. .... If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the

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Rules/instructions apart from other relevant factors applicable to each case.”

**16.** Keeping in view of the existing facts and circumstances of the case and also established principles of law laid down by the **Apex court** in (i) *Gorakhpur University & ors. v. Dr. Shitla Prasad Nagendra & ors. (supra)*, (ii) *State of Kerala & ors. v. M. Padmanabhan Nair (supra)* and (iii) *Dr. Uma Agrawal v. State of U.P. & anr. (supra)*, I am of the view that the delay caused by the respondent No.2 in the process of making payment of retiral benefits of the writ petitioner as discussed above is not excusable and accordingly, this Court viewed the matter seriously and that being the position, the respondent No.2 is required to pay reasonable interest. For the purpose of determination of the specific period for which the respondent No.2 is required to pay reasonable rate of interest on what retiral benefit(s) of the writ petitioner, this Court require to examine certain facts in existence in the matter. At the first instance, I am not in agreement with the writ petitioner for claiming interest on both the amount of delayed payment of arrears of pension and of commuted value of the pension payable to the writ petitioner from the date of his retirement, i.e. 10<sup>th</sup> November 1998 for the following reasons, but the writ petitioner will be entitled certain interest

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which is to be paid by the respondent No.2 in the following order: -

The writ petitioner retired as Judge of the High Court of Sikkim on superannuation on 10<sup>th</sup> November 1998 and he duly submitted pension papers to the concerned authorities with a further request not to give effect till the revised rates of pension are issued by the Government of India and in the meantime, the related notification was issued on 13<sup>th</sup> January 1999 and on the basis of it, the President of India accorded approval to the sanction of Rs.7,13,700/- on account of commuted value of pension equal to 50% of the pension which amounted to Rs.6,500/- per month out of pension already sanctioned to the petitioner, and in that respect, required Special Seal Authority was also issued by the respondent No.5 in favour of the respondent No.2 for doing the needful in the matter vide, office order dated 14<sup>th</sup> May 1999. Under the law, a retired Judge of the High Court or Supreme Court can get either pension or commuted value of pension at a point of time, not on different points of time and if his case is that payment of commuted value of pension has been delayed, then he cannot plead that payment of pension was delayed and further, if his case is that, payment of 50% pension

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has been delayed, then he cannot claim interest on commuted value of pension, in other words, it is inconsistent to claim interest on both the payments. Therefore, it would be just and proper to afford interest @ 10% per annum only on the commuted value of pension of the writ petitioner, i.e. Rs.7,13,700/- for the period from 16<sup>th</sup> April 1999 on which the President of India conveyed the approval of the payment of Rs.7,13,700/- on account of commuted value of pension equal to Rs.6,500/- per month out of pension already sanctioned to the writ petitioner, to 9<sup>th</sup> January 2001 on which the same was credited in writ petitioner's Bank account as intimated by the paying Bank, namely, State Bank of India, Bally Branch, Howrah (W.B.)-3892 vide, Savings Bank Account No.1957, which shall be paid by the respondent No.2 within a period of one month from today for which the respondent No.2 shall make necessary deposit of the said interest amount on the aforesaid commuted value of pension after due calculation of it, through the State Bank of India, Bally Branch, Horwah in the petitioner's Savings Bank Account No.1957 failing which the respondent No.2 shall pay further interest of Rs.12.5% per annum on the said amount.

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**17.** For the reasons, observations and directions made above, the writ petition is allowed to the extent indicated above. There is no order as to costs.

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**( N. S. Singh )**

**Judge**

**28-07-2003**