

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** 420/11

Case of **SHIVA DAYAL RAI**

This matter was heard in presence of applicant Shiv Dayal Rai and Special Secretary, Home (Police) Department Shri Dharmeshwar Thakur on 23.03.2012.

The complaint relates to non-payment of amounts of group insurance, provident fund dues (GPF) and unutilised leave salary (leave encashment) The applicant was Assistant District (Public) Prosecutor in the Directorate of Prosecution of the Government of Bihar. He was dismissed from service on 16.07.1996. He moved the Patna High Court against his dismissal. The Single Bench of the High Court directed his reinstatement but the order was stayed by Division Bench in letters patent appeal which is still pending.

At the hearing the applicant did not press his claim with respect to group insurance. He has been paid sum of Rs.26,349 towards group insurance. Challenging the quantum, he has filed a writ petition being CWJC No.6308/11 in the High Court which is pending. The matter is thus sub judice in court. The applicant also did not press for leave encashment. He confined his complaint to the issue of Provident Fund (GPF) dues.

The applicant stated that he applied for withdrawal of GPF dues on 27.03.1997 which was refused on 18.08.1997 on the ground that he can apply for final withdrawal after reaching the due date of superannuation. His due date of superannuation being 31.07.2008 he applied for final withdrawal on 06.08.2008. Authority slip for the sum of Rs.303038 including interest calculated up to due date of superannuation was issued by the Directorate of Provident Fund on 27.04.2010 but payment was not made. None else than the Directorate of Prosecution raised objection on the ground that interest should have been calculated up to the date of dismissal. A fresh authority slip was then issued by the Directorate of Provident Fund for the sum of Rs.103030 on 15.06.2010, which has given rise to the dispute.

The Commission wanted to know as to why payment of GPF dues was kept on hold until the due date of superannuation. In reply it was submitted that the rules do not permit withdrawal prior to the date of superannuation. The Commission is at a loss to appreciate the rationale in keeping the payment on hold considering that the applicant was a dismissed employee. Dismissal from service results in severance of employer-employee relationship and therefore the supposed due date of superannuation is not at all relevant in the case of a dismissed employee. For example, in the case of premature death an employee

in service, can it be said that he, meaning thereby his legal representatives, can not be paid GPF dues until the supposed due date of superannuation of the deceased employee? The answer has to be in the negative.

The Commission is inclined to think that where GPF dues are not paid to the dismissed government servant until the supposed due date of superannuation, he is entitled to interest on the deposits/contributions till the date of superannuation. There can be no justification to keep the money, refuse payment and yet deny interest on the money which always belonged to the applicant. As a matter of fact, as seen above, the Directorate of Provident Fund did calculate interest up to 31.07.2008 – the due date of superannuation of the applicant but the amount was slashed on the objection raised by the Directorate of Prosecution. Non-payment of the GPF dues clearly caused financial hardships to the applicant resulting in violation of human rights for which he is entitled to be compensated. The Commission is of the view that the applicant should not only be paid the sum of Rs.303038 as per determination of the Directorate of Provident Fund vide authority slip dated 27.04.2010, he should also be paid compensation which may to some extent mitigate the hardships and harassment which he and his family members have suffered over a period of time. In the facts and circumstances, the Commission would quantify the compensation at rupees fifty thousand. The applicant should thus be paid sum of Rs.3,53,038. The Commission would grant six weeks time and direct the Principal Secretary, Department of Home (Police) to make payment within this period.

It is open to the State Government to recover the additional amount (paid by way of compensation) from the salary of the officials responsible for the delay and harassment. According to the applicant, the officials responsible are (i) Shri Abhijit Sinha, Director-General of Prosecution, (ii) Shri Jai Prakash Singh, Deputy Director, Prosecution (Hqrs.) and (iii) Shri Ranjit Shankar Prasad, Assistant Prosecution Officer (Hqrs.). Principal Secretary, Department of Home may get their role examined and if they are indeed found to be guilty, to make recovery from their salary in accordance with law.

Let copy of this decision be sent to Principal Secretary, Home (Police) Department, Government of Bihar for compliance, and to applicant for information.

Date: 26.03.2012

Justice S.N. Jha
Chairperson