

**GOA HUMAN RIGHTS COMMISSION**  
**PANAJI – GOA**

**Proceeding No. 90/2017**

**INQUIRY REPORT**

The Complainant/Shri A. B. Pankar has filed the present complaint alleging that there was a delay of seven years for settlement of his legitimate retirement dues and over eight years of departmental inquiry causing financial loss to him. He has also alleged that the interest on delayed payment has not been paid till date.

2. The Complainant retired from services of EDC Ltd. on 31/12/2008 on superannuation after 33 years. The Complainant has stated that in June 2015, after a delay of about seven years, he received partial retirement dues comprising of superannuation benefit disbursed through the Life Insurance Corporation of India (LIC). He received interest from LIC for delayed period i.e. from January 2009 till June 2015. He has further stated that no interest has been paid by EDC Ltd. on the retirement dues which were released simultaneously after a delay of about seven years. It is also the case of the Complainant that he has not been given copy of the report of the departmental inquiry which was delayed for over eight years. The Complainant has prayed that the EDC Ltd. may be directed to pay him the interest amounting to Rs.8,07,322 (Rupees eight lakhs seven thousand three hundred twenty two only) as on 20<sup>th</sup> June 2015 and additional interest at 12% compounded quarterly till the date of final settlement.

3. Taking cognizance of the complaint, this Commission called for report from the Managing Director, EDC Ltd., EDC House, Panaji-Goa/Respondent. In pursuance to the notice, the Respondent has filed reply dated 23/06/2017. The Complainant has filed Rejoinder dated 02/08/2017. The Respondent has filed Sur-Rejoinder dated 12/04/2018. The Complainant has filed Sur Sur-Rejoinder dated 04/07/2018.

4. The case of the Respondent in brief is as follows:-

The Respondent vide letter No. EDC/ADM/3820 dated 02/01/2009, informed the Complainant that the decision for release of retirement benefits to him under the EDC Employees Superannuation Scheme and Leave Encashment Scheme shall be the subject to the outcome of the disciplinary proceedings in respect of non-payment of Wealth Tax initiated against the Complainant. The reason for not making the payment of retirement dues was due to the disciplinary proceedings that were pending against the Complainant as on date of retirement i.e. 31/12/2008.

...2/-

The Respondent vide letter No. EDC/ADM/212 dated 28/01/2009, informed the Complainant that the Respondent has decided to release the balance retirement benefits of superannuation and leave encashment on his handing over the charge and up to date books of accounts of EDC Employees Provident Fund Trust to the new Trustees appointed vide Order dated 21/02/2008. Thereafter, on 19/06/2015, a cheque dated 18/06/2015 for Rs.7,03,280/- was forwarded to the Complainant towards payment of leave encashment.

The Respondent has further stated that in its 352<sup>nd</sup> Board Meeting held on 02/09/2016, after discussions in brief as regards payment of interest on leave encashment amount at a later stage than the retirement date which was due to a Board decision taken and the prevailing circumstances then, the Board decided not to pay interest as requested by the Complainant.

5. I have heard the Complainant and Adv. Nikhil Vaze for the Respondent. Both the Parties have filed written arguments which are on record. I have also gone through the entire records of this case.

6. On the basis of the material brought on record, the points for determination are formulated as follows:-

- i. Whether the complaint is barred by Law of Limitation in terms of Section 36 (2) of the Protection of Human Rights Act, 1993.
- ii. Whether the Complainant is entitled for interest on retirement dues for delay in pensionary benefits.

I shall first deal with the question of limitation. The Respondent in its written arguments has contended for the first time that the complaint is barred by Law of Limitation. It is contended by the Respondent that Section 36(2) of the Protection of Human Rights Act, 1993, provides that the Central or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. It is submitted that the complaint has been filed on 30/03/2017 and the Complainant has requested for payment of interest as on 20/06/2015. Thus, according to the Respondent, the claim of the Complainant for payment of interest has been filed 21 months after the receipt of payment of retirement dues by the Complainant. On the contrary, the Complainant in his written arguments has submitted that considering the habitual approach of purposeful delays by the Respondent, the matter was regularly followed up by the Complainant at various levels. It is submitted

that the cause of action to claim the compensatory dues was continued time to time for which correspondence was done till filing of the present complaint. It is next contended that the matter of payment of interest was taken up in the 352<sup>nd</sup> Board Meeting of EDC Ltd., held on 02/09/2016 and as such there was acknowledgment of compensatory dues payable to the Complainant and hence further cause of action also arose from 02/09/2016. It is submitted that the present proceeding is filed on 03/03/2017 (should be 30/03/2017) and as such the complaint is within the period of limitation.

It is apparent that the matter of payment of interest was under consideration by the Respondent. In my opinion therefore the cause for action for filing the present complaint has to be construed w.e.f. 02/09/2016. Thus, the complaint is within the period of limitation. The contention of the Respondent that the complaint is barred by the Law of Limitation is therefore rejected.

The next question for my determination is whether the Complainant is entitled for interest on delayed payment of pensionary benefits. The records indicate that the Complainant retired on superannuation on 31/12/2008. The Complainant received a cheque dated 18/06/2015 for Rs.7,03,280/- (Rupees seven lakhs three thousand two hundred eighty only) towards payment of leave encashment. Thus, it is seen that the Complainant received pensionary benefits towards payment of leave encashment after a delay of about six years and six months. In my view, the Complainant is entitled to receive interest on leave encashment from the date of his retirement.

7. The Respondent has resisted the claim of the Complainant on three grounds. First ground is that the disciplinary proceedings in respect of non-payment of Wealth Tax was initiated against the Complainant and the said disciplinary proceedings were pending against the Complainant as on the date of retirement i.e. 31/12/2008. In my considered opinion, pendency of disciplinary proceedings cannot be an excuse to delay the payment of retirement dues. There was no legal prohibition to the Respondent to pay the retirement dues, even though the disciplinary proceedings were pending against the Complainant. This justification given by the Respondent for non-payment of retirement dues therefore cannot be accepted.

The next ground urged by the Respondent for not releasing the balance retirement benefits was that the up to date books of accounts of EDC Provident Fund Trust were not handed over by the Complainant to the new Trustees. The Respondent in its written arguments has submitted that the Complainant has taken time of six years to handover all the files, cheque

books and other relevant documents pertaining to EDC Provident Fund Trust. It is further submitted that there was no reason for the Complainant to hold the documents pertaining to the EDC Provident Fund Trust for six years after his retirement. It is also submitted that the Complainant himself was responsible for delay in payment. This ground also does not appeal to my mind. There was nothing to prevent the Respondent to release the balance retirement benefits of superannuation and leave encashment to the Complainant as on the date of retirement.

The third ground for non-payment of retirement benefits is that the Board in its 352<sup>nd</sup> Meeting held on 02/09/2016 decided not to pay interest as requested by the Complainant. The extract of the minutes of the 352<sup>nd</sup> Board Meeting is on record as Exhibit 'C'. In the said meeting it is stated that the Board decided not to pay interest as decided in the meeting. The decision taken by the Board meeting appears to my mind arbitrary in nature. The decision of the Board, therefore, cannot come to the rescue of the Respondent.

8. The Respondent in its written arguments has also contended that the interest cannot be claimed through this Commission. It is submitted that this Commission cannot adjudicate as to whether the Complainant is entitled for interest. It is also submitted that this Commission does not have jurisdiction to grant interest as requested by the Complainant. I am not able to reconcile myself with this contention of the Respondent. In my opinion, the claim of the Complainant for interest on delay of payment is a part of pensionary benefits. The Complainant therefore cannot be denied interest on delayed payment. The non-payment of interest on delayed payment of retirement dues in my view is a violation of basic human rights of the Complainant.

9. In the facts and circumstances of this case, the Commission makes the following recommendations:-

- I. *The Respondent shall pay interest on delayed payment to the Complainant at lending rate by Nationalised Banks.*
- II. *The Respondent shall pay compensation of Rs.10,000/- (Rupees ten thousand only) to the Complainant on account of mental agony suffered by the Complainant on account of delay in payment of interest.*

Date: 03/07/2019.

Place: Panaji – Goa.

Sd/-  
(A. D. Salkar)  
Member  
Goa Human Rights Commission