

(2018) 08 CAT CK 0166

In the Central Administrative Tribunal

Case No : Original Application No. 1183 Of 2016

Ashok Kumar Kapoor

APPELLANT

Vs

Delhi Development Authority And Ors

RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Citation : (2018) 08 CAT CK 0166

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Arun Birbal

Final Decision : Dismissed

Judgement

1. This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

"(a) Allow this application.

(b) Direct the respondents to immediately pay the interest amount @18% per annum on the delayed payment of leave encashment which was due on 31.7.2009 and paid on 15.5.2015.

(c) Direct the respondents to pay the litigation charge of Rs.50,000/- or as decided by the Hon. Tribunal as the petitioner has been compelled to go into various rounds of litigation un-necessary for which huge amount has been spent for legal and other charges.

(d) impose and award an exemplary cost upon the Respondents and

(e) Grant any other relief which your Lordship may kindly deem fit and proper in the circumstances of the case."

2. The brief facts of the case are that the applicant was superannuated from the Delhi Development Authority (DDA) on 31.07.2009 under suspension due to some disciplinary proceedings pending against him. Since the retiral dues were

not paid, the applicant filed OA No. 868/2010 before this Tribunal which was dismissed on 30.08.2011. The applicant challenged the said order before the Hon'ble High Court vide Writ Petition No. 2714/2012 and the Hon'ble High Court, vide its order dated 26.02.2013, granted a limited relief of Leave Encashment. On non-compliance of the order of the Hon'ble High Court, the applicant filed CP No. 389/2014 which was decided on 03.07.2014 after recording the statement of the counsel of the respondent for compliance of the order dated 26.02.2013 within three week. The respondents had failed to comply with the same. Thereafter the applicant filed another CP No. 345/2015 which was decided on 28.05.2015 granting liberty to him for filing a separate application for payment of interest. The applicant then filed a separate application bearing CM No 13015/2015 for grant of interest for the delayed period of six years on the payment of leave encashment amount. The said CM application was decided on 10.12.2015 granting liberty to seek appropriate remedy as available to him in accordance with law with regard to the interest. Hence, this OA.

3. In response to the claims of the applicant, the respondents informed that after the departmental proceedings on this issue, the disciplinary authority had imposed a penalty of 10% cut in pension for two years vide order dated 11.01.2010. After conviction, the issue was revisited and a penalty of 20% cut in total pension was imposed on the applicant vide order dated 20.08.2014. However, against this order, the applicant had filed proceedings before this Tribunal, but this Tribunal dismissed the OA with liberty to the applicant to approach departmental forum in this regard. In the circumstances, leave encashment could not have been released during the pendency of various proceedings or until it was established that no pecuniary loss recoverable from the applicant was caused to DDA and until the relevant proceedings were finally decided and an order on the treatment of his suspension period was passed by the competent authority. In this regard, the order dated 23.07.2014 was passed by the competent authority with respect to the period of suspension from 15.11.2000 to 31.07.2009. The order dated 23.07.2014 stipulated that the period of suspension is to be treated as wholly justified. In that situation, as per FR-54B(5) & (7), the period of suspension cannot be treated as a period spent on duty. However, if the applicant so desires, the suspension period can be converted into leave of the kind due and admissible to him. Thus in case the applicant exercised his option as available to him under FR 54(B)(5) & (7), there was a possibility of leave being adjusted from the leave account of the applicant and only then the amount of leave encashment could have been arrived at. The applicant, on receipt of the order dated 23.07.2014, did not make any request for conversion of the suspension period into leave of kind due and admissible to him. Therefore, under the provision of FR 54-B, a notice was sent on 21.04.2015 to the applicant to make a representation within the specified period, i.e. 30 days against the proposal for considering the period of suspension w.e.f. 15.11.2000 to 31.07.2009 as dies non followed by another notice. As the applicant did not again exercise his option to convert the suspension period into leave due, the

competent authority passed the order dated 15.05.2015 treating his suspension period as dies non and directed that leave encashment be released to the applicant. Accordingly, the payment of leave encashment amounting to Rs.2,85,360/- was made to the applicant vide cheque bearing no.644404 dated 19.05.2015. It is, thus, submitted that the leave encashment to the applicant could have only been finalized once the period of suspension was either regularized by way of leave due and admissible to the applicant, if he so desired or the period was treated as dies non for which a notice had been issued.

4. Heard both sides and examined the records.

5. The applicant appearing in person does not deny that various departmental proceedings were pending against him at the time of his retirement. The respondents have been able to show that leave encashment of the applicant could have only been finalized once the period of suspension was either regularized by way of leave due and admissible to the applicant, if he so desired or the period was treated as dies non for which a notice had been issued. Hence, the respondents, after following the laid down formalities, finalized the amount of leave encashment due and paid the same to the applicant. It has also been clarified in OM No.38/64/98-P7PW(F) GOI dated 05.10.1999 that there is no provision under CCS (Leave) Rules for payment of interest. Para (f) of the said OM provides as under:-

"In the matter of delay payment of leave encashment, the Departmental of Personnel & Training in their note dated 02.08.99 has clarified that there is no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility. Moreover, encashment of leave is a benefit granted under the leave rules and not a pensionary benefit."

6. In the light of the discussions made hereinabove, there is no merit in the OA and the same is dismissed. No order as to costs.