
(2018) 10 CAT CK 0068

In the Central Administrative Tribunal

Case No : Original Application No. 1810 Of 2016

Bimal Prasad

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 16-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0068

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Charu Ambwani, Shailendra Tiwari

Final Decision : Dismissed

Judgement

1. Heard Ms. Charu Ambwani, learned counsel for applicant and Sh. Shailendra Tiwari, learned counsel for respondents.

2. The applicant brought out that he was appointed on the respondent - Railway on 18.07.1984 as a gazetted officer. He was promoted to Senior Administrative Grade in the year 2005. Thereafter, he applied for deputation in Rail India Technical and Economic Service Limited (RITES), which is a PSU under Respondent - Railway, seeking to be permanently absorbed in RITES after the implementation of 6th CPC. The intent for absorption in RITES was approved by the Ministry of Railway in principle vide orders dated 24.03.2009. At this point of time, he was working in Chittranjan Locomotive Works (CLW). He was relieved on 30.04.2009 from CLW for joining RITES.

3. Thereafter he had been representing to the Railway vide his letter dated 03.09.2009, 12.10.2009, 12.01.2010 and 15.03.2010 for payment of the retiral dues. Since the same were not paid, he filed an OA in the Tribunal vide No.1781/2010, which was decided on 11.02.2011, wherein following directions were passed:

"5. In view of the facts, as mentioned above, we direct the concerned authority

to pass orders on the acceptance of resignation of the applicant sought for by the respondents, as expeditiously as possible and preferably within a period of three weeks from the date of receipt of certified copy of this order. We may mention here that because of non-approval of the resignation, the post-retiral benefits of the applicant have been withheld, and he is suffering financially in that regard. We are sanguine that after the orders on acceptance of the resignation of applicant are issued by the concerned authority, the post-retiral dues of the applicant would be released expeditiously."

4. Thereafter, Ministry of Railways issued notification dated 11.07.2011 wherein permanent absorption was approved and it was to take effect from 30.04.2009 (FN). This letter also contained instructions in respect of pension/gratuity and other retiral dues and these were "payable from the date following the date of cessation of service under the Railways."

5. The applicant pleaded that despite this, the retiral dues have not been paid and accordingly he has again approached the Tribunal in OA No.3524/2012. This OA was decided on 25.01.2015, wherein following observations and directions were passed by the Tribunal:

"6. In the submissions made on behalf of the respondents and what the applicant has undertaken before us is adjustment of the outstanding dues against the payable gratuity. It has been noticed above that nothing would be payable by the respondents to the applicants by way of gratuity and on the contrary an amount of Rs.28,078/- would need to be recovered from the applicant. As per the submissions of the applicants counsel, the recoverable amount would be deposited by the applicant with the respondents within two weeks from today. In this way, payment of gratuity also would be complete through adjustment and recovery, as agreed by counsel for both parties.

7. In so far as the payment of interest is concerned, after the outstanding amount is deposited by the applicant, as stated above, he may if so advised take up the matter with the respondents within three weeks from the date of receipt of this order, through a representation giving the details of his claim for interest on retiral dues. Respondents shall examine the same and shall pass and communicate their decision through a reasoned order within six weeks from the date of filing of representation by the applicant.

8. It is also apparent that the release of retiral dues of the applicant would be effected in the manner stated above. Thus, the relief claimed by the applicant in the OA is being granted to the extent indicated in this order. Nothing remains to be done."

6. The applicant pleaded that as ordered by the Tribunal on 29.10.2015, he deposited an amount of Rs.28,078/- on 09.02.2015 and he represented to the respondent - Railway for payment of interest on the retiral dues on account of delay from 30.04.2009 till 2015.

Since this was not complied with by the respondent - Railway, he preferred a Miscellaneous Application no.3426/2015 for execution of the Tribunal's order dated 29.01.2015. In compliance thereof, the respondent - Railway passed a speaking order dated 04.12.2015 wherein all the payments made by the applicant have been accounted for and the respondent - Railway in turn has worked out that a further amount of Rs.1,88,102/-, which is towards the interest for the advances which the applicant had taken while he was still in service of the Railway, to be payable by applicant. This interest has also been paid by the applicant under protest, since he needed the original documents for his residential property for which he had taken House Building Advance (HBA) from the Railway and which were not being released unless the due interest was paid. Accordingly, he had no option but to pay the same, though under protest.

But this interest payment was not justified and accordingly, he had preferred the instant OA and following reliefs have been sought:

"(a) Quash and set aside the speaking order 14.12.2015 (sic) issued by the Chief Electrical Engineer (Constn) South Eastern Railway whereby the Respondents has rejected the claim of the Applicant on interest of delayed payment of retiral benefits; and

(b) Consider the claim of the applicant for release of interest on delayed payment of retiral benefits in compliance of the order dated 25.1.2015 passed in OA 3524 of 2012 and in light of the representation dated 30.6.2015 made by the applicant before the Respondent Authorities; and

(c) pass an order directing the Respondents to pay a sum of Rs.50,000/- as litigation cost along with appropriate cost for mental agony and mental harassment; and

(d) Pass any other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in favour of the Applicant and against the Respondents."

7. In support of the same, he also drew attention to a judgment of Hon'ble Apex Court in CA No.687/2000 delivered on 31.01.2000 wherein Apex Court had held that interest is to be paid on the delay which takes place in payment of retiral dues.

8. The respondents brought out that while the applicant was under the service of the Railway, he had taken several loans and all of these were interest bearing. Since these loans along with due interest were not paid by the applicant when he was relieved from CLW to join RITES, the retiral dues could not be paid at that time. Moreover, his resignation from service and absorption to RITES has been approved by the Ministry of Railway vide orders dated 11.07.2011 only, though those took effect from 30.04.2009. Only thereafter were papers processed for accountal and releasing retiral dues.

9. It was also pleaded by respondents that in response to OA No.3524/2012,

counter was filed by the respondents on 09.11.2013 wherein it was brought out that total retiral dues payable to the applicant worked to Rs.9,66,667/- whereas total amount to be paid by the applicant on account of principal and interest on various loans which the applicant had taken from the Railway (HBA, motor car advance and personal computer advance) and some other dues like house rent, electricity charges, electric charges and water charges worked to a total of Rs.9,94,745/-, whereas the retiral dues payable worked out to Rs.9,66,667/- and accordingly instead of respondent - Railway paying to the applicant, infact, it was applicant who had to pay Rs.28,078/- for clearing the dues, which he deposited later on 09.02.2015. In this context, the respondents brought out that the calculations of Rs.28,078/- were as on 06.11.2013 and since the advances taken by the applicant were all interest bearing and interest had continued to accrue on the same and accordingly a net amount of Rs.1,88,102/- was payable by the applicant which he has since deposited also on 04.12.2015 though under protest. In view of the foregoing, the respondents pleaded that nothing is due to be paid to the applicant.

10. Matter has been heard at length. It comes out that the applicant was a gazetted officer with the respondent - Railway right from his joining of service on 18.07.1984. He was promoted to Senior Administrative Grade in the year 2005 and it was only in the year 2008 that he had applied for deputation to RITES. At that stage, he was working as Head of Department (just below Principal Head of Department) and was fully aware of the advance he had taken and that these advances were interest bearing and unless cleared, the retiral dues could not be paid.

11. The respondent - Railway had communicated in principle approval for absorption on 24.03.2009. At that stage, an officer of his level is expected to clear all his dues in time. However, this has not been done in the instant case. Subsequently, in response to OA No.3524/2012, he came to know on 06.11.2013 itself when the counter was filed that an additional amount of Rs.28,078/- was still payable by him, but this was eventually paid on 09.02.2015 only.

A close reading of the decision by the Tribunal on 29.01.2015, as brought out above, makes it clear that payable dues will have to be cleared by the applicant. Since at that stage, calculations were available as of 2013 only, the amount payable was indicated as Rs.28,078/-. Since advances were interest bearing, it is only natural that interest will continue to accrue till the same are cleared. Even after knowing that certain amount is payable by the applicant as early as November 2013, the applicant had continued to wait till 09.02.2015. All this while, the interest bearing advances had continued to accrue the interest.

12. Now since calculations have already been submitted by the respondents through their order dated 04.12.2015 which clearly indicate the three interest bearing advances in respect of principal as well as interest and in respect of other dues, the position is already explained clearly.

13. In the event, applicant's request for grant of interest on retiral dues from 30.04.2009 till it was finally cleared on 04.12.2015, cannot be accepted. In fact, interest bearing advances were not cleared by the applicant as of March 2009, when in-principle approval for absorption in RITES was communicated or even in November 2013 when he came to know of his liability. Therefore, the claim of applicant to pay all those interests on retiral dues cannot be accepted, as there is no delay on the part of respondents.

In the event, the OA stands dismissed being devoid of merit.

No order as to costs.