

(2019) 09 CAT CK 0070

In the Central Administrative Tribunal

Case No : Review Application No. 169 Of 2019, Miscellaneous Application No. 4551, 4552 Of 2018, Original Application No. 2855 Of 2012

Delhi Transport Corporation

APPELLANT

Vs

Mukesh Chander And Ors

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0070

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

Bench : Single Bench

Advocate : Arati Mahajan Shedha, Mukesh Chander

Final Decision : Disposed Of

Judgement

1. Heard both the parties in RA 169/2019.

2. By filing the instant RA, the review applicant (respondent in original lis) is seeking review of Order dated 17. 12.2018 passed in MAs 4551-4552 of 2018. The operative part of the said Order reads as under:-

"5. M.A. is allowed. The respondents are directed to pay interest on the arrears of pension from the due date at the GPF rates, as applicable from time to time. This shall be done within a period of three months from the date of receipt of a copy of this order."

3. Counsel for the review applicant submitted that the respondents (original applicants) had filed OA 2855/2012 before this Tribunal with the following prayers:-

"...Direct the respondent to refund the interest charged on the amount of PG (GOVT SHARE) for the period of delay attributable to the respondent in sanctioning pension by the Respondent, Direct the respondent to pay interest on the INORDINATE delay in payment of pension/F. Pension. Direct the respondent to pay costs as the respondent has caused mental agony to the pensioner and

also the legal expenses incurred on this petition and harassed compelling the applicant for coming to the Court..."

This Tribunal vide Order dated 27.8.2013 closed the said OA with the following observations:-

"...My conscious do not allow me to put any more burden on public exchequer. Applicant has received the benefit that she is morally entitled to. It is not proper to go beyond this. Original Application is closed. No order as to costs."

Thereafter the review respondents filed RA 90/2014 in OA 2855/2012 and this Tribunal dismissed the same vide Order dated 2.6.2014. Thereafter the review respondents filed Writ Petition (Civil) No.7234/2014, which was dismissed by the Hon'ble Delhi High Court vide Order dated 11.11.2014 with the following observations:-

"..... In the circumstances, even though Gyan Devi was disbursed the amount in 2008, withholding of the benefit to the extent of her obligations with the interest payable thereon cannot be characterized as arbitrary. Therefore, this court sees no reason to interfere with the CAT's order. The Writ Petition stands dismissed accordingly."

The review applicants have also filed SLP (C) No.11685/2015 before the Hon'ble Supreme Court and the Apex Court on 1.5.2017 disposed of the same with the following observations:-

"Heard.

The respondent may adjust the amount already paid with interest but the interest will be admissible after the date the pension become payable.

The Special Leave Petition is disposed of accordingly. Pending applications, if any, shall also stand disposed of."

The review applicants have also filed Contempt Petition No.1107/2018 in SLP (C) No.11685/2015 before the Apex Court. However, the said CP was allowed to be withdrawn without prejudice to any other remedy, if any, in accordance with law on 5.7.2018. Thereafter on 4.10.2018, the review respondents filed MA Nos.4551-4552/2018 in OA 2855/2012 and this Tribunal vide Order dated 17.12.2018 allowed the same with the directions to the respondents to pay interest on the arrears of pension from the due date at the GPF rates, as applicable from time to time. This shall be done within a period of three months from the date of receipt of a copy of the said Order."

3.1 Counsel for review applicant further submitted that after receipt of the aforesaid Order of this Tribunal, the review applicant decided to file IA No.43641/2019 seeking clarification/direction before the Apex Court in the said SLP. The said IA was numbered as MA 1902/2019 in SLP (C) No.11685/2015 and the Apex Court issued notice and the same is returnable on 18.11.2019.

3.2 Counsel further contended that the order under review suffers from the error apparent on the face of records as by way of the same, DTC has not been directed to implement an order of the Hon'ble Supreme Court but a whole new direction has been given, i.e., to pay interest w.e.f. 1.3.1983 and the said date cannot by any stretch of imagination be held to be the date pension became payable (from which date interest is to be paid as per the direction of the Hon'ble Supreme Court in the direction of the Hon'ble Supreme Court in the order/judgment dated 01.05.2017). As such the order under review goes beyond the directions of the Hon'ble Supreme Court.

3.3 Counsel for the review applicant also contended that by way of an execution application, the applicant has been given a relief, which has not been granted even by the Court whose order has been sought to be implemented. Counsel also contended that the order under review has been passed in the absence of any lawyer/representative for the DTC and hence the actual facts of the instant case could not be stated before this Tribunal, which are important for adjudication of the instant case.

3.4 Counsel further submitted that since in the MA 1902/2019 in SLP(C) No.11685/2015 notices were issued by the Supreme Court, which was filed by review applicant for seeking clarification/direction of the Order/judgment dated 1.5.2017 in SLP(C) No.11685/2015, the said Order of the Apex Court cannot be interpreted to mean that the interest is payable from 1.3.1983 till date, nor can DTC be directed to pay interest on arrears of pension from the said date as sought by the original applicant in MA Nos.4551-4552/2018.

3.5 Counsel for the review applicant further contended by referring to the Hon'ble Delhi High Court's Order dated 11.11.2014 in WP(C) No.7234/2014 in which the High Court specifically held that "Clause 6 of the DTC pension scheme is specific that while exercising option (under clause 9) the amounts payable by the concerned employee have to be deposited back.... The re-payment of CPF contribution and monetary benefits secured by the superannuated employee is an important element in the pension scheme and its due implementation." and urged that an employee is entitled for pension/family pension only when the employers EPF share with interest was deposited. However, in the present case since the employer CPF share with interest was not deposited, however, it was only as a gesture of good will that DTC adjusted the amount from the pension of Rs.13731/- arrears, the individual became entitled for pension only from the date of CPF amount with interest was adjusted, i.e., in the month of March 2008. As such the pension became payable only in March 2008 and in fact the pension was released in March 2008, no interest would be admissible at all from any date whatsoever as there was no delay in payment of pension. Counsel also emphasized that Smt. Gyan Devi, who is the mother of the applicant, submitted her claim form for pension only in January 2008 and completed other formalities in February 2008 and DTC released the pension in March 2008 without any delay along with all arrears of pension, as such no interest is payable much less from

1983.

4. On the other hand, Mr. Mukesh Chander, one of the LR's in person submitted that Order, review of which is sought by the review applicant in the instant RA, does not suffer from any illegality as the same has been passed by this Tribunal keeping in view the observations of the Hon'ble Supreme Court in Order dated 1.5.2017 in SLP (C) No.11685/2015 and therefore, the instant RA deserves to be dismissed by this Tribunal.

5. After hearing both the parties, it is observed that in the said SLP, the Apex Court specifically observed that the respondents (review applicant) may adjust the amount already paid with interest but the interest will be admissible after the date the pension became payable. Since admittedly all the formalities relating to pension were completed by the applicant in February 2008 and the pension and arrears of pension were disbursed to the applicant in March 2008 after adjusting the employer's EPF share with interest by the original respondents themselves, although the mother of the applicant was under obligation to refund the employer's contribution paid to her with interest to enable the review applicant to proceed in the matter of grant of pension to her, this Tribunal does not find any justification in the claim of the applicant to claim interest from the year 1983. Therefore, the Order dated 17.12.2018 passed in MA Nos.4551-4552/2018 is recalled and the said MAs are accordingly disposed of in terms of observations made in this para.

6. However, we note that the respondents have also informed that they have filed MA No. 1902/2019 in SLP(C) No.11685/2015 before the Hon'ble Supreme Court by which they are seeking clarification/direction of the Order/judgment dated 1.5.2017 in SLP(C) No.11685/2015 and notices in the matter have been issued by the Hon'ble Supreme Court and the said MA is listed for 18.11.2019. Hence, the respondent/review applicant will be bound by whatever observations/directions are/to be given by the Hon'ble Supreme Court in the said MA. There shall be no order as to costs.