

(2020) 01 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Petition No. 9669, 10995 Of 2018

Dr. Yog Raj Handoo

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48A, 68

Citation : (2020) 01 DEL CK 0051

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : R. K. Handoo, Yoginder Handoo, Aditya Chaudhary, Gaurang Kanth, Eshita Baruah, Vibha Mahajan Seth

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, J

1. Both these petitions filed against orders of the Central Administrative Tribunal ("CAT"), Principal Bench, New Delhi raise an identical issue and are accordingly being disposed of by this common judgment.

2. While W.P.(C) 9669/2018 by Dr. Yog Raj Handoo is directed against an order dated 14th August, 2018 of the CAT in O.A. No. 2355/2017; W.P.(C) 10995/2018 by Dr. Shirlata Gupta is directed against the judgment dated 30th August, 2018 of the CAT in O.A. No. 2581/2017.

3. Both the aforementioned O.A.s constituted the second round of litigation. In the first round, the O.A.s of both the aforementioned Petitioners were dealt with and disposed of by a common order of the CAT.

4. The background to both these petitions is that Dr. Gupta was appointed by the Ministry of Health and Family Welfare, Government of India and posted to the Delhi Administration on 31st August 1987, whereas Dr. Handoo was so appointed on 1st February, 1990. Both of them, after completing 20 years of qualifying

service, gave three months" notices to the Competent Authority ("CA") seeking voluntary retirement from service in terms of Rule 48-A of the Central Civil Services (Pension) Rules, 1972 ["CCS (Pension) Rules"]. Without taking a decision on the above applications of the Petitioners seeking voluntary retirement, the Government of NCT of Delhi ("GNCTD") issued orders suspending both the Petitioners on 24th November, 2011.

5. Subsequently, the suspensions were revoked on 9th July, 2012. Yet, no decision of the CA was communicated to either of the Petitioners on their request for voluntary retirement. This led both the Petitioners to file O.A. Nos. 3206/2014 (by Dr. Gupta) and 3212/2014 (by Dr. Handoo), seeking declarations to the effect that each of them stood voluntarily retired from service with effect from 2nd December, 2011 and 11th December, 2011 respectively. The second relief sought by the Petitioners was for retiral benefits.

6. Both the above O.A.s were disposed of by the CAT by a common order dated 4th August, 2015. The CAT accepted the plea of both the Petitioners that they were deemed to have voluntarily retired from service - on 2nd December, 2011 in Dr. Gupta's case, and on 11th December, 2011 in Dr. Handoo's case. The CAT accordingly directed the Respondents to make "payment of consequential retiral dues as per rules within a period of three months from the date of receipt of a copy of this order. For any delay beyond three months, respondents shall make payment of interest on the admissible unpaid amount at the rate as paid in the matter of GPF."

7. The aforesaid order was not complied with by the Respondents, leading to both the Petitioners filing contempt petitions before the CAT. While these contempt petitions were pending, the GNCTD filed W.P.(C) 5235/2016 and 5236/2016 before this Court against the order of the CAT dated 4th August, 2015. Both the said writ petitions came to be dismissed by this Court by its judgment dated 21st July, 2016. Relevant to the present round of litigation is the portion appended to the main judgment which reads as under:

"After the order was dictated, the matter was mentioned by the learned counsel for the petitioner. Original file was produced before us wherein the note signed in the afternoon by the Secretary (Health) has been produced, which reads as under:

"Put up request to EC plus direction that CAT will not hold us in contempt"

Based on this note, learned counsel for the petitioner submits that he has instructions to state that the process of releasing the pensionary benefits to the Doctors would be completed latest by within six weeks from today. Let an appropriate affidavit be filed by the petitioner before the Central Administrative Tribunal as well as before the Court where the contempt proceedings are pending. We have no hesitation in recording that should the affidavit be filed by the petitioner before the Central Administrative Tribunal, the respondents would not press the contempt petition. Leave granted to both the Doctors (respondent

no. I in the present writ petitions) to approach this Court in case the undertaking given to this Court is flouted."

8. Thereafter, separate orders were issued by the Respondent GNCTD on 2nd September, 2016, accepting the request of each of the Petitioners for voluntary retirement with effect from their respective dates i.e. 2nd December, 2011 in Dr. Gupta's case and 11th December, 2011 in Dr. Handoo's case.

9. The question now arose of payment of retirement dues. Again, two separate orders were issued on 9th September, 2016, in respect of each of the Petitioners, releasing inter alia the retirement gratuity and the final payment of GPF.

10. Thereafter, on 15th September 2016, the Contempt Petition Nos. 98/2016 and 100/2016, by Dr. Gupta and Dr. Handoo respectively, were heard by the CAT. The copies of the abovesaid orders dated 9th September, 2016 were placed before the CAT by the Respondents, who contended that they had "substantially complied with the directions of this Tribunal." The CAT observed thus at paragraphs 9 and 10 of its common order dated 15th September, 2016 disposing of the said contempt petitions:

"9. As indicated hereinabove, once the respondents, have substantially complied with the indicated directions of this Tribunal, by virtue of the said order, in that eventuality, no action is legally permissible against them for wilful, deliberate disobedience of the abovementioned order as urged on behalf of the Petitioners.

10. Be that as it may, indeed .in any case, the validity or otherwise the said order cannot be decided in the instant CPs. In case the Petitioners are aggrieved in any manner, they would be at liberty to challenge the validity of the order dated 09.09.2016 by filing in independent OAs, in accordance with law."

11. It is not in dispute that the amounts paid by way of the above orders dated 9th September, 2016 did not include interest on the delayed gratuity. Admittedly, the above order dated 15th September 2016 of the CAT was not challenged by the Petitioners. Nevertheless, in terms of the liberty granted to them in paragraph 10 of the said order, a second round of litigation commenced with Dr. Handoo filing O.A. No. 2355/2017 and Dr. Gupta filing O.A. No. 2581/2017 before the CAT.

12. By the impugned order dated 14th August, 2018, while dismissing O.A. No. 2355/2017 filed by Dr. Handoo, the CAT held that payment could not have been made by the Respondents during the pendency of the challenge to the earlier order dated 4th August, 2015 of the CAT before this Court, and that after the writ petitions that had been filed by the GNCTD were dismissed by this Court on 21st July, 2016, "necessary compliance was made by the respondents by making the payment to the applicants." The CAT viewed the time frame of six weeks, in terms of the undertaking given by the GNCTD before this Court, as a time period "set for themselves to release the pensionary benefits to the applicant." It was, therefore, of the view that the processing of the retirement dues, which had

taken about eight weeks, seemed "justifiable" and did not "violate the orders of the Hon"ble High Court of Delhi." As a result, the prayer of Dr. Handoo for interest was negated.

13. As far as Dr. Gupta's O.A. No.2581/2017 was concerned, by a separate order dated 30th August, 2018, it was dismissed by the CAT by following the order dated 14th August, 2018 in Dr. Handoo's O.A. No. 2355/2017.

14. This Court has heard the submissions of Mr. R.K. Handoo, learned counsel appearing for the Petitioners and Ms. Vibha Mahajan Seth, learned counsel appearing for the GNCTD.

15. To begin with, the true purport of the directions issued by the CAT in the first order dated 4th August 2015, which was affirmed by this Court on 21st July 2016, needs to be appreciated. In the operative portion of the judgment dated 4th August, 2015 of the CAT, at paragraph 30, the specific directions issued to the Respondents were to make payment of "consequential retiral dues as per rules" within a period of three months from the date of receipt of a copy of that order.

16. One question before this Court in the present petitions is whether the phrase "as per rules" would include Rule 68 of the CCS (Pension) Rules, which reads as under:

"68. Interest on delayed payment of gratuity

(1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to General Provident Fund amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.

(2) Every case of delayed payment of gratuity shall be considered by the Secretary of the Administrative Ministry or the Department in respect of its employees and the employees of its attached and subordinate offices and where the Secretary of the Ministry or the Department is satisfied that the delay in the payment of gratuity was caused on account of administrative reasons or lapse, the Secretary of the Ministry or the Department shall sanction payment of interest.

(3) The Administrative Ministry or the Department shall issue Presidential sanction for the payment of interest after the Secretary has sanctioned the payment of interest under sub-rule (2).

(4) In all cases where the payment of interest has been sanctioned by the

Secretary of the Administrative Ministry or the Department, such Ministry or the Department shall fix the responsibility and take disciplinary action against the Government servant or servants who are found responsible for the delay in the payment of gratuity on account of administrative lapses."

17. Mr. Handoo, learned counsel for the Petitioners submits that while for the delayed payment of gratuity, Rule 68 of the CCS (Pension) Rules would apply, for the delay in paying the other retiral dues, interest was payable in any event, in terms of further directions issued by the CAT in the abovesaid order dated 4th August, 2015 that "for any delay beyond three months, respondents shall make payment of interest on the admissible unpaid amount at the rate as paid in the matter of GPF."

18. On the other hand, it is contended by Ms. Vibha Mahajan, learned counsel for the Respondent GNCTD that there is no express reference by the CAT in the above order to Rule 68 of the CCS (Pension) Rules. In any event, this was not specifically prayed for in the O.A.s filed by the Petitioners in the first instance before the CAT. It is further contended that with the contempt petitions filed by both the Petitioners having been dismissed in the Respondents' favour, and that order dated 15th September, 2016 having become final, any prayer for interest is barred by the principles of res judicata.

19. In the considered view of this Court, the directions of the CAT in its order dated 4th August 2015 that the payment of consequential retiral dues should be "as per rules" clearly envisaged all applicable rules relating to the payment of retiral dues. The phrase "as per rules" would, therefore, include Rule 68 of the CCS (Pension) Rules. This would be the position, notwithstanding the fact that the Petitioners may not have specifically adverted to Rule 68 of the CCS (Pension) Rules in their respective applications. The CAT was, in the applications of the Petitioners in the first round, concerned with the question of the delayed acceptance of the Petitioners' request for voluntary retirement, which was decided in their favour, deeming Dr. Gupta to have voluntarily retired with effect from 2nd December, 2011, and Dr. Handoo with effect from 11th December, 2011. Therefore, when the Respondents failed to make the payment of consequential retiral dues "as per rules" within a period of three months, a fresh cause of action did arise for the Petitioners to seek the payment of interest amounts in terms of the applicable rules, which included Rule 68 of the CCS (Pension) Rules.

20. While it is true that the contempt petitions filed by the Petitioners were dismissed by the CAT, it requires to be noticed that the CAT itself expressly granted them liberty to approach it with fresh petitions questioning the calculation of the retiral dues in the orders dated 9th September, 2016 passed by the GNCTD in purported compliance with the undertaking given by it before this Court on 21st July, 2016.

21. The Court is unable to concur with the CAT's view in the impugned order in

the second round that the Respondents had, by way of their undertaking before this Court on 21st July 2016, extended the time limit stipulated by the CAT to comply with its directions in its order dated 4th August, 2015. While that extension was for issuing appropriate orders in terms of the order of the CAT dated 4th August 2015, it was not an extension of the time limit fixed by the CAT for the payment of the consequential retiral dues. In other words, the Respondent GNCTD was bound to comply with the directions issued by the CAT in its order dated 4th August 2015, in letter and spirit, including the calculation and payment of the interest amount with reference to the time period indicated therein, within the extended period of six weeks. Admittedly, the GNCTD paid no interest on the delayed payments i.e. the delayed payment of gratuity, on which interest was payable in terms of Rule 68 of the CCS (Pension) Rules, and the delayed payment (for the period beyond three months after 4th August, 2015) of the other retiral dues for which, in terms of the CAT's judgment dated 4th August 2015, interest was payable at the same rate as in cases of delayed payment of GPF.

22. Therefore, both the Petitioners were justified in approaching the CAT again with fresh petitions for relief in relation to the payment of interest. The fact of the matter is that the directions issued by the CAT in its judgment dated 4th August, 2015 that retiral dues should be paid as per rules has not been complied with.

23. This Court's attention was drawn by Mr. Handoo to the judgment of the Division Bench of this Court in V. K. Sareen v. Union of India 187 (2012) DLT 483. In that case, the Court applied Rule 68 of the CCS (Pension) Rules and granted the Petitioner interest on the gratuity amount which had been paid to him belatedly on account of pendency of litigation. The Court expressly negated the plea of the Union of India that gratuity became payable to the Petitioner therein only when departmental proceedings pending against him were concluded, upon this Court upholding the order of the CAT quashing the charge sheet in the said proceedings. Central to the Court's determination was the fact that no stay had been granted to the order of the CAT quashing the charge sheet. This Court referred to its earlier decisions in W.P.(C) 5843/1999 dated 31st May, 2002 (M. M. Aggarwal v. Union of India) and Ranvir Singh v. Union of India 2006 (86) DRJ 289 which supported its conclusions.

24. In the present case also, at no stage was there any stay granted to the judgment dated 4th August, 2015 of the CAT. Even when this Court affirmed the said order by dismissing the writ petitions of the GNCTD on 21st July, 2016, it did not modify the directions issued by the CAT as regards payment of retiral dues as per rules, and accrual of interest in the case of a delay in payment beyond three months of retiral dues other than gratuity. All that was done was to extend the time for compliance with those directions by six weeks. It did not relieve the GNCTD from the requirement of strictly complying with the said order of the CAT.

25. Although the order dated 15th September, 2016 of the CAT dismissing the

Petitioners" contempt petitions could be viewed as precluding them from claiming such interest without challenging the said order itself, the fact of the matter is that the CAT, in the same order, permitted the Petitioners to re-agitate this issue before the CAT. Consequently, this Court negatives the plea of the GNCTD that no interest is payable, either on the delayed payment of gratuity in accordance with Rule 68 of the CCS (Pension) Rules, or on the delayed payment of other retiral benefits in accordance with the judgment dated 4th August, 2015 of the CAT.

26. For the aforementioned reasons, the impugned orders dated 14th August, 2018 and 30th August, 2018 of the CAT passed in O.A. Nos. 2355/2017 and 2581/2017 are hereby set aside. The Respondents will now issue appropriate orders within a period of eight weeks for payment of interest to each of the Petitioners on the delayed payment of gratuity in terms of Rule 68 of the CCS (Pension) Rules, as further clarified by an Office Memorandum ("OM") dated 1st May, 2012, and other OMs, if any, issued from time to time, as well as interest on the delayed payment of other retiral benefits beyond the period of three months after the date of the receipt of the certified copy of the order dated 4th August, 2015 of the CAT. It is clarified that the interest amounts will be calculated for the period up to the actual date of payment.

27. Both the petitions are disposed of in the above terms. No costs.

C.M. APPL. 37653/2018 (exemption) in W.P.(C) 9669/2018 and C.M. APPL. 42810/2018 (exemption) in W.P.(C) 10995/2018

28. Allowed, subject to all just exceptions.