(2013) 05 DEL CK 0313

In the Delhi High Court

Case No : Writ Petition (C) 3360 of 2012

Harjinder Singh Bhatia APPELLANT

Vs

Govt. of NCT of Delhi and Another RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : (2013) LabIC 2500

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : K.P. Gupta, for the Appellant; Varun Gupta, Sonia Arora and Nishant Pandey, for Delhi Jal Board, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—The petitioner was served with a charge memo dated September 02, 2005. An Inquiry Officer was appointed who submitted a report exonerating the petitioner and agreeing therewith the disciplinary authority passed a final order absolving petitioner of the charge against him vide order dated December 01, 2011. In the interregnum the petitioner superannuated from service on September 30, 2007. Exercising power under Rule 69(1)(c) of the CCS (Pension) Rules, since petitioner had a pensionable service, gratuity was withheld till conclusion of the departmental proceedings. Similarly, exercising power under Rule 39(3) of the CCS (Leave) Rules encashable leave to the credit of the petitioner was not encashed. On January 16, 2012 the gratuity as also encashable leave was paid to the petitioner and he laid a claim for interest to be paid.

2. The petitioner predicated a stand under the proviso to Rule 69(1)(c) of the CCS (Pension) Rules which entitles a Government servant having rendered pensionable service to be paid gratuity upon superannuation provided when the departmental proceedings have been instituted under Rule 69 of the CCS (CCA) Rules and the basis thereof was a typographic error which, instead of typing the numeral ''14'' typed the numeral ''16''; and taking advantage thereof the

petitioner started claiming that he was facing proceedings for a minor penalty because under the CCS (CCA) Rules a charge-sheet issued under Rule 16 relates to a minor penalty proceedings and the charge-sheet issued under Rule 14 pertains to a major penalty proceedings.

3. The petitioner, we are sure, would regret having raised said issue, for the reason the memorandum serving the charge-sheet listed along therewith, a Statement of Imputation, a List of relied upon documents and a List of witnesses through whom the documents and the charge would be proved. In other words, it was clearly indicated that an inquiry would be held by the department to prove the charges. Meaning thereby, the petitioner was given sufficient indication that the charge-sheet was for a major penalty proceeding and that the numeral ''16'' was a typographic error.

4. This has led the Central Administrative Tribunal to discuss exhaustively the effect of a typographic error and the applicable law, and by the time the Tribunal reach the stage when it had to decide the issue with respect to a Government of India instruction dated January 10, 1983, except to note the same, the Tribunal, probably exhausted, did not discuss the same.

5. The stand of the respondent before the Tribunal was that they were justified, under Rule 69(1) of the CCS (Pension) Rules to withhold gratuity till the conclusion of the domestic inquiry and were justified in not paying the encashable leave in view of the power under Rule 39(3) of the CCS (Leave) Rules. One of the contentions urged by the petitioner was with respect to the Government of India instruction dated January 10, 1983. To mitigate the hardship caused to the Government servant entitled to gratuity, where payment of gratuity is delayed on account of a disciplinary proceedings pending, the Government of India instructions dated January 10, 1983, inter-alia, record as under:--

In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings are fully exonerated, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped.

6. Suffice would it be to state that as per the said Government of India instructions, if a Government servant is fully exonerated and upon retirement gratuity is withheld, he would be entitled to be paid interest on the gratuity.

7. As we have noted above, the petitioner was exonerated of the charges on December 01, 2011. Thus, the petitioner would be entitled to interest on the

gratuity payable for the period October 01, 2007 (since he superannuated on September 30, 2007) till when the gratuity was paid on January 16, 2012.

8. The rate of interest would be as prescribed in accordance with the instructions issued from time to time; for the reason this is the requirement of sub-rule (1) of Rule 68 of the CCS (Pension) Rules.

9. As regards leave encashment, as noted above the competent authority was empowered under Rule 39(3) of the CCS (Leave) Rules to withhold encashment of Earned Leave on retirement till conclusion of disciplinary proceedings. There is no Rule nor any Government of India instruction entitling petitioner to interest to be paid on belated encashment of the leave, but we are of the opinion that the equitable principle contained in the Government of India instruction dated January 10, 1983 pertaining to belated payment of gratuity to be paid to a Government servant upon being exonerated could be extended to payment of interest when leave is not encashed due to same reason i.e. the date when the Government servant superannuated from service he was facing a departmental inquiry.

10. The writ petition stands disposed of directing respondents to pay interest to the petitioner as aforesaid pertaining to the gratuity paid and leave encashment paid at such rates of interest as was prescribed from time to time in accordance with the instructions issued by the Government of India relating to gratuity.

11. Payment would be made within eight weeks from today. No costs.

