

(2018) 03 CAT CK 0025

In the Central Administrative Tribunal

Case No : Original Application No. 1166 Of 2016

Inderjeet Singh

APPELLANT

Vs

North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 21-03-2018

Acts Referred:

Citation : (2018) 03 CAT CK 0025

Hon'ble Judges : Uday Kumar Varma, Member (A)

Bench : Single Bench

Advocate : J.S. Malik, Punam Singh

Final Decision : Allowed

Judgement

1. The sole prayer of the applicant in this OA is for issuing a direction to the respondents to pay interest @ 18% per annum on the delayed amount of pensionary benefits i.e. gratuity, GIS, GPF, Leave Encashment and commutation of pension etc.

2. Brief facts of the case are that the applicant was appointed in erstwhile Municipal Corporation of Delhi [now as North Delhi Municipal Corporation] as Assistant Malaria Inspector in April, 1979 and superannuated in the same capacity on 31.08.2015. It is the contention of the applicant that he was not paid the retiral dues immediately after his retirement. He has further submitted that though he was paid the GIS amount on 14.09.2015 and the GPF amount on 12.10.2015 but leave encashment, gratuity and commutation of pension were not granted to him. Being aggrieved, the applicant served a Legal Notice dated 02.01.2016 upon the respondent for making the payment of retiral dues to him with interest. It is the contention of the applicant that even after serving legal notice, he was only paid the amount of leave encashment on 09.02.2016 but gratuity and commutation of pension were still not paid on the ground of non-availability of funds. It is contended by the applicant that he was served with a letter dated 12.02.2016, impugned in this OA, stating that though bills pertaining

to pension commutation and gratuity had been passed by the department on 31.08.2015 but could not be disbursed due to financial crisis in MCD and remaining dues would be disbursed as and when funds are available. Hence, the applicant was compelled to file the instant OA before this Tribunal for redressal of his grievance.

3. The respondents have filed their written statement admitting the delay in making payment of retiral dues to the applicant. However, the respondents submitted that the delay was not intentional but was due to financial crisis in the department. However, the dues were paid to the applicant soon after the funds were available. Hence, the delay in making the payment of retiral dues to the applicant cannot be attributed on part of the respondents.

4. It is seen that during the pendency of this OA, the respondents have made available one letter dated 20.07.2016, which has been taken on record, showing the dates of disbursement of post retiral dues. For the sake of convenience, the details of payment so disbursed by the respondents to the applicant are reproduced hereunder:-

Sl. No.

Head

Amount (In Rs.)

Date of disbursement

1.

Leave Encashment

5,34,200/-

09.02.2016

2.

GPF

8,80,049/-

12.10.2015

3.

GIS

13,072/-

14.09.2015

4.

DCRG

8,81,430/-

26.05.2016

5.

Pension commutation

4,93,214/-

26.05.2016

5. It is not disputed by the respondents that the payment of retiral dues was made to the applicant with delay but the only justification given by them is "non- availability of funds" to disburse the same in time. The justification given by the respondents, in my view, is not tenable in the eyes of law, which gets further strengthened by the decision of the Hon"ble High Court of Judicature at Allahabad in case of Asif Beg & Ors. vs. State of UP & Ors. [Writ Petition No.41395/2003 decided on 27.10.2006] wherein the similar plea of very bad and poor financial condition of Nagar Panchayat, Katra was taken by the respondents for not making the payment of salary, other allowances and post retiral benefits to the petitioners. The said justification was held to be arbitrary and unreasonable. It was also observed by the High Court that since the date of retirement was known to the respondents well in advance, there was no reason for them not to make arrangements for payment of retiral benefits to the petitioners well in advance so that as soon as the employee retires, his retiral benefits are paid to him on the date of retirement itself or within reasonable time thereafter.

6. Insofar as payment of interest on the delayed amount of post retiral dues to the applicant is concerned, it is expected that all the payment of the retiral benefits are paid to the retiree on the date of his retirement or soon thereafter. If, however, any delay is occurred in making the payment of post retiral dues to the concerned retiree that too without any justifiable reason, the same attracts interest over the same. The same view has been taken by the Hon"ble Supreme Court in the case of Vijay L. Mehrotra vs. State of U.P. & Ors. [2001 (9) SCC 687]. The relevant portion of the decision is reproduced hereunder:-

"3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payment for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e. 31.08.1997 till the date of payments."

7. At the time of oral arguments, learned counsel for the applicant also raised the

question of short payment made in respect of gratuity and leave encashment. In his rejoinder, he has claimed that some of the retiral benefits like leave encashment to the extent of Rs. 17,500/- and gratuity for Rs.48,000/- have still not been paid to the applicant. However, he has not claimed the reimbursement of the short payment in the relief clause of the main OA. He has also not submitted any calculation to show that under-payment had been made to him on account of the above two items. On the contrary, the respondents have claimed that they have paid full amount of gratuity and leave encashment as per the entitlement of the applicant. For want of any rebuttal to the claim of the respondents and also for want of any calculation that establishes short payment on these two items of retiral benefits, I am not inclined to grant this prayer.

8. Given the facts and circumstances of the case, I do not find the justification of non-availability of funds in the department, given by the respondents for delayed payments, tenable in the eyes of law and, therefore, allow this OA. I direct the respondents to calculate the interest at the prevailing GPF interest rate on all the items of retiral benefits mentioned in paragraph 4 of this order w.e.f. 01.11.2015. I have allowed two months concession to the respondents as, while doing so, certain administrative formalities could have been required for releasing the dues. The respondents are further directed to carry out the above exercise and effect the actual payment to the applicant within four months from the date of receipt of certified copy of this order. There shall be no order as to costs.