(2018) 03 CAT CK 0065

In the Central Administrative Tribunal

Case No : Original Application No. 2788 Of 2016

Madan Lal — APPELLANT

Vs

Union Of India And Ors — RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2018) 03 CAT CK 0065

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Sachin Chauhan, U. Srivastava, Neelima Rathore

Final Decision : Allowed

Judgement

1. Briefly stated, the facts of the current O.A. are that the applicant was working as Deputy Commissioner of Customs and Central Excise Department. He rendered 32 years of service with the Department and retired from Alwar (Central Excise Commissionerate Jaipur) on 30.09.2010. It is submitted that on the date of superannuation, he was served with a Memo dated 30.09.2010 alongwith Articles of Charge and imputation of misconduct whereby a departmental enquiry was initiated against him under Rule 14 of CCS (CCA) Rules. Consequently, his retiral dues were withheld due to initiation of this departmental enquiry, by the respondents.

2. Being aggrieved, the applicant filed OA No. 23/2011 before the Principal Bench of Central Administrative Tribunal. The Tribunal vide order dated 08.11.2011 allowed the O.A., and quashed and set aside the Memo dated 30.09.2010. The operative part of the order reads as under:-

"4. For the reasons mentioned above we find it to be a case where the charge memo. needs to be quashed and set aside. We order accordingly.

5. This Original Application is allowed in the manner indicated above, leaving,

however, the parties to bear their own costs."

Against the order of the Tribunal, the respondents approached the Hon"ble High Court of Delhi in WP(C)-3144/2012. Hon"ble High Court of Delhi vide order dated 01.10.2013 dismissed the said Writ Petition and affirmed the order of the Tribunal, directing that:-

"(i) The Writ petition is dismissed as devoid of legal merits.

(ii) The petitioners shall ensure that the terminal benefits due to the respondent are computed within a period of four weeks from today and communicated to the respondents forthwith.

(iii) the petitioner shall ensure that the payment of arrears of the pension is effected to the respondents within a further period of four weeks thereafter.

(iv) The respondents shall be entitled to costs which are assessed as Rs.25,000/- each before the 7th day of next calendar year."

Consequently, all the retiral benefits i.e. leave encashment, commutation of pension and gratuity were paid to the applicant on 28.07.2014.

3. The applicant made a representation to the respondents regarding interest on retiral benefits from the date of retirement (30.09.2010) till the date of actual payment (28.07.2014). Since no response was received by the applicant, he again approached the Tribunal in OA-307/2015 against the inaction on part of the respondents in not granting interest on the delayed retiral benefits. The said O.A. was disposed of on 23.01.2015 giving the following directions to respondents:-

"4. In the circumstances, the present OA is disposed of at the admission stage itself, without going into the merits of the case, by directing the respondents to dispose of the aforesaid representations of the applicant and pass appropriate speaking and reasoned order thereon within 90 days from the date of receipt of certified copy of this order. There shall be no order as to costs."

Thereafter, the applicant received an amount of Rs.2,22,629/- as interest on delayed payment of gratuity vide order dated 12.01.2016. The applicant again sought grant of interest on delayed payment of leave encashment and commutation of pension by way of a representation, which was rejected by the respondents on 10.02.2016.

4. The applicant contends that his retiral benefits were withheld due to initiation of departmental enquiry dated 30.09.2010. Since the same was quashed by the Tribunal and said order affirmed by the Hon"ble High Court, he is entitled for interest on delay which took place in payment of his retiral dues i.e. leave encashment and commutation of pension, from the date of retirement till the date of actual payment.

5. The applicant is placing reliance on Government of India"s Instructions issued vide O.M. No. F.7(1)-P.U./79 dated 11.07.1979, O.M. No.1(4)/Pen.Unit/82 dated

10.01.1983, and, O.M. No. F.7/1/93P.P.W.(F) dated 25.08.1994 . The applicant has further relied on the decisions of Hon"ble High Court of Delhi in the case of Ram Kishan Vs. UOI & Ors. [WP(C)No. 9767/2015 dated 07.12.2015 and in WP(C) No. 3766/2015 dated 12.01.2016 . He has also cited the judgments of this Tribunal in the cases of Bhram Dutt Yadav Vs. GNCTD (OA-3029/2013) dated 28.03.2016, Brijendra Singh Vs. UOI (OA-1611/2011) dated 20.09.2011 and Vijayender Singh Rathee Vs. UOI & Ors., (OA-345/2016) dated 05.10.2017, on the same subject. ,

6. The applicant has filed the current O.A. seeking the following relief:-

"(i) To set aside the order dated 10.02.2016 and to further direct the respondents that applicant be granted the 18% interest calculated cumulative on the amount of Leave Encashment, and Commutation of Pension from the date of superannuation i.e. 30.09.2010 to the date of actual payment.

(ii) That the applicant be further awarded the cost of Rs.25,000/- towards the cost of present litigation

(iii) Any other relief which this Hon"ble Court deems fit and proper may also be awarded to the applicant."

7. In the counter, the respondents state that the applicant has been paid the benefits/interest, as permissible under the rules. They contend that provisions under CCS (Pension) Rules, 1972 do not envisage payment of interest on delayed payment of commutation of pension, and leave encashment. Further, the applicant was paid full pension i.e. Rs.15,795/- for the period from 01.10.2010 to 31.07.2014, hence no interest on the value of commutation of pension can be claimed by him. They also aver that leave encashment is a benefit granted under the leave rules and not a pensionary benefit, hence no interest is payable on the same.

8. During the course of hearing, learned counsel for the respondents Sh. U. Srivastava reiterated the submissions already made in the counter to the O.A. Drawing attention to para 4.21 of the reply, he submitted that the interest on delayed payment of gratuity has already been paid to the applicant in compliance of Government of India Instruction No. F 7(1)-P.U./79 dated 11.07.1979 and No. 1(4)Pen./Unit/82 dated 10.01.1983. However, the provisions under CCS (Pension) Rules, 1972 do not provide for payment of interest on commutation of pension and leave encashment in the case of delayed payment. He emphasized that in the matter of delayed payment of leave encashment, the Department of Personnel and Training in note, dated 2-8-1999 has also clarified that there is no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility.

9. Rebutting these contentions forcefully, learned counsel for the applicant Sh. Sachin Chauhan stated that the controversy involved in the current O.A. stands settled by way of various judgments passed in numerous judicial fora. Taking the

Bench through the facts of the case, he submitted that the applicant has already suffered psychologically and socially by way of a frivolous departmental enquiry instituted against him on 30.09.2010. Those proceedings stand quashed by the Tribunal"s order dated 08.11.2011 in OA-23/2011, which has been affirmed by the Hon"ble High Court of Delhi vide their order dated 01.10.2013 in WP(C)-3144/2012. The Hon"ble High Court had directed that terminal benefits should be released to the applicant in a time bound manner. Though the retiral benefits have been paid to the applicant but his grievance regarding interest, on retiral benefits, still remains unaddressed.

9.1 Sh. Chauhan submitted that an amount of Rs. 2,22,629/-has been released as interest on gratuity, after the applicant filed another OA-307/2015, for seeking redressal of his continued grievance regarding non-payment of interest on retiral dues. However, the issue regarding interest on leave encashment and commutation of pension has been negated by the respondents vide their order dated 10.02.2016. The learned counsel vehemently argued that in view of the plethora of judgments on the subject, such cussedness on part of the respondents is not only unfair but also bad in law.

9.2 In support of his contentions, he again drew attention to the judgment passed by the Tribunal in the case of Vijayender Singh Rathee Vs. UOI & Ors. (OA-345/2016) dated 05.10.2017, Ram Kishan Vs. UOI & Ors. [WP(C)No. 9767/2015 dated 07.12.2015 and in WP(C) No. 3766/2015 dated 12.01.2016 . He also cited the judgments of this Tribunal in the cases of Bhram Dutt Yadav Vs. GNCTD (OA-3029/2013) dated 28.03.2016, Brijendra Singh Vs. UOI (OA-1611/2011) dated 20.09.2011 and the law laid down by Apex Court in the case of S.K. Dua Vs. State of Haryana & Anr., Civil Appeal No. 184/2008 decided on 09.01.2008.

10. I have gone through the facts of the case and carefully considered the rival contentions of both sides. The stand taken by the respondents in the current O.A. is similar to the one involved in Vijender Singh Rathee (supra) holding that there is no provision under CCS (Pension) Rules for payment of interest on delayed payment of leave encashment and commutation of pension.

10.1 I find that the issue regarding grant of interest on delayed payment of retiral dues has been succinctly dealt with in para-9 of Vijender Singh Rathee (supra) decided on 05.10.2017, which is reproduced below:-

"In view of the fact that the charge against him has not been proved and taking cognizance of the same, the Tribunal has also directed the respondents to release all his retiral dues, which had been done by the respondents in March, 2015, it is only logical that the applicant be granted interest on all such delayed payments. The respondents cannot be allowed to take shelter under the OM dated 05.10.1999 of Department of Pension and Pensioners Welfare for denying the payment of interest to the applicant. This issue is no more res integra since it has been decided by this Tribunal in Suraj Bhan (supra) and Tribunal"s order has been duly upheld by the Hon"ble Delhi High Court in W.P.(C) No.3776/2015."

10.2 It is undisputed that the alleged disciplinary proceedings instituted against the applicant stand quashed by the order dated 08.11.2011 of the Tribunal in OA-23/2011, and duly upheld by the Hon"ble High Court. Thus, it stands to reason that had there been no contemplation of such proceedings, the applicant would have got all his retiral dues on the date of his superannuation itself i.e. on 30.09.2010.

10.4 The applicants, have very fairly relied upon the landmark judgment of Hon"ble Supreme Court in the case of S.K. Dua Vs. State of Haryana & Anr., 2008 (3) SCC 44 holding that:-

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."

The issue regarding payment of interest on delayed payment of commutation of pension has been decided by the Hon"ble High Court of Delhi in WP(C) No. 3766/2015, dated 12.01.2016, holding that:-

"5. It is difficult to accept the submission made. As far as the respondent herein is concerned, there has been a delay in receipt of commuted value of pension. The respondent should be compensated for the said delay. An identical situation had arisen in the case of Narender Pal, the senior of the respondent, against whom also departmental proceedings were initiated. He had filed OA NO.432/2011, which was decided by the Tribunal vide order dated 30th May, 2011 and it was directed that he should be paid interest on the commuted value of pension with effect from 1st June, 2006, his date of retirement being 30th September, 2005. Order of the Tribunal dated 30th May, 2011 passed in the case of Narender Pal was made subject matter of challenge in W.P.(C) 127/2012, titled Union of India & Ors. Vs. Narender Pal. The writ petition was dismissed vide order dated 9th January, 2012, recording that the retiral benefits had not been paid to the employee in view of the pending disciplinary proceeding, which were ultimately dropped. In these circumstances, the respondent-employee was entitled to interest on retiral benefits and there was no infirmity in the order passed by the Tribunal in making the said direction. It is also recorded that due to inflation, the real value of money had depreciated and payment of interest only ensured that no loss was caused to the retired employee. We perceive interest in such matters is not gratis or penal, but paid to recoup the loss incurred and suffered by the aging retiree, who stands deprived and denied of what should have been paid earlier."

11. In my view the situation in the current O.A. stands squarely settled by various citations relied upon by the applicant, ratio of which needs to be followed in letter and spirit in the instant case also.

12. In view of the foregoing, I allow the O.A. and direct the respondents to pay interest at GPF rate, for delayed release of commutation of pension and leave encashment, to the applicant from the date of his superannuation i.e. w.e.f. 30.09.2010 till the date of actual payment i.e. 28.07.2014. This exercise should be completed within a period of three months from the date of receipt of a certified copy of this order. No costs.