

(2019) 08 CAT CK 0061

In the Central Administrative Tribunal

Case No : Original Application No. 3400 Of 2016

Narottam Singh Shami

APPELLANT

Vs

Govt. Of NCTD Through And Ors

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Section 14, 68, 69(1)(c)
Central Civil Services (Pension) Rules, 1972 — Rule 68
Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2019) 08 CAT CK 0061

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

Bench : Single Bench

Advocate : Sachhin Chauhan, Amit Anand

Final Decision : Dismissed

Judgement

1. The applicant has filed this Original Application (OA) seeking the following reliefs:-

(i) To direct the respondents that applicant be granted the 18% interest on the delayed retiral benefits i.e. 12,34,609/- (Rs. 4,65,890/- leave encashment and Rs. 7,68,719/- towards gratuity) from the date of retirement i.e. 30.06.2010 to the date of actual payment i.e. 23.09.2016.

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

Or/and

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

2. The facts in brief are that the applicant, who was working on the post of Executive Engineer (Civil), was served a Memorandum of chargesheet dated

30.6.2010, i.e., on the day of his superannuation whereby proposing to hold an enquiry with the approval of Hon'ble Lt. Governor under Rule 14 of the CCS (CCA) Rules, 1965. Consequent to which, the applicant was denied his retiral benefits (leave encashment and gratuity) from 30.6.2010. The applicant was granted provisional pension subsequent to his superannuation.

2.1 According to the applicant, no further steps were taken by the authority to conduct the departmental enquiry as proposed vide Memorandum dated 30.6.2010 till the dropping the alleged charged.

2.2 Applicant further averred that the authority issued an order dated 19.4.2016 (issued in the name of Hon'ble President of India) whereby the charges levelled against the applicant vide Memorandum dated 20.6.2010 have been dropped. Thereafter applicant made a representation dated 3.6.2016 requesting to the respondents to release the withheld amount of leave encashment and gratuity.

2.3 Thereafter vide communication dated 6.6.2016 issued by the respondents, the applicant was directed to submit pension papers and in compliance of the said communication, the applicant submitted the pension papers to the authority. Thereafter the concerned authority also issued another letter to him advising him to attend office personally for completing the pension papers and applicant attended the office and completed all formalities in respect of pension papers and thereafter applicant has received an amount of Rs.7,68,719/-vide cheque dated 23.9.2016 towards gratuity and Rs.4,65,890/- vide cheque dated 23.9.2016 towards leave encashment (Total amount of Rs.12,34,609/-).

2.4 The applicant also made representations dated 4.9.2016 and 23.9.2016 requesting to the respondents to grant interest on the delayed payment of gratuity and leave encashment from the date of his superannuation, i.e., 30.6.2010 to the date of actual payment i.e. 23.9.2016.

2.5 When no response was received by the applicant from the respondents on his aforesaid representations, he has filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the payment of gratuity to the applicant was withheld by the department in terms of the provisions of Rule 69(1)(c) which stipulates that Government servant retiring while departmental and judicial proceedings are pending is not entitled to retirement gratuity benefits, as the applicant was chargesheeted on his date of retirement under Rule 14 of the CCS (CCA) Rules for the illegalities as alleged in the chargesheets. However, immediately after the receipt of Hon'ble President's order dated 19.4.2016 vide which the applicant was discharged from the alleged irregularities, as pointed in the chargesheet, the department considered his case for release of gratuity and leave encashment as per the provisions of Rules 68 of CCS (CCA) Rules, which reproduced as under:-

"It has been decided that where the payment of DCRG has been delayed beyond three months from the date of retirement, an interest at the rate applicable to GPF deposits will be paid to retired/dependants of deceased Government servants"

3.1 They further stated that in consonance with the above rule position, the applicant was paid the DCRG in which besides the Principal amount the element of interest on delayed payment within the admissible limit under the applicable rules was made to him vide cheque dated 12.12.2016 for Rs.3,91,988/- without making the payment of interest for the grace period of three month as prescribed under the above rules.

3.2 They also stated that as far as payment of leave encashment is concerned, the same was also released vide cheque dated 23.9.2016 but since the applicant was not entitled for the interest on the delayed payment, so no interest on the payment of leave encashment was made. The abstract of relevant instructions of DOP&T as relied upon by the respondents is reproduced as under:-

"In the matter of delayed payment of leave encashment, the department of Personnel and Training in their note, dated 02-08-1999 has clarified that there is no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility. Moreover, encashment of leave is a benefit granted under the leave rules and not a pensionary benefits."

3.3. Lastly they contended that instant OA in the above facts and circumstances of this case is liable to be dismissed by this Tribunal.

4. During the course of hearing, learned counsel for the applicant has insisted that applicant is entitled for interest on delayed payment of gratuity as well as leave encashment from the date of his retirement i.e. 30.6.2010 which the respondents have not given to the applicant.

5. On the other hand, learned counsel for the respondents by referring to their counter affidavit submitted that after release of amount of gratuity and leave encashment to the applicant vide cheques dated 23.9.2016, the matter was taken up for grant of interest on delayed payment of gratuity and the competent authority vide Order dated 21.12.2016 passed the orders on the issue of interest on the delayed payment of gratuity to the applicant, who retired on 30. 6.2010 and due to the fact that the aforesaid chargesheet dropped on 19.4.2016, in the following manner:-

Sr.

Amt.

Of

Period of

interest

Interest

Rate of

No.

DCRG

with

(DOR is 30.06.2010)

interest

held

1.

7,68,719/-

01.10.2010

to

30,749/-

(8%)

31.03.2011

2.

7,68,719/-

01.04.2011

to

40,998/-

(8%)

31.11.2011

3.

7,68,719/-

01.12.2011

to

22,037/-

(8.6%)

31.03.2012

4.

7,68,719/-

01.04.2012

to

67,647/-

(8.6%)

31.03.2013

5.

7,68,719/-

01.04.2013

to

66,879/-

(8.7%)

31.03.2014

6.

7,68,719/-

01.04.2014

to

66,879/-

(8.7%)

31.03.2015

7.

7,68,719/-

01.04.2015

to

66,879/-

(8.7%)

31.03.2016

8.

7,68,719/-

01.04.2016

to

03,286/-

(8.1%)

19.04.2016

9.

7,68,719/-

20.04.2016

to

1,903/-

(8.1%)

30.04.2016

10.

7,68,719/-

01.05.2016

to

20,755/-

(8.1%)

31.08.2016

11.

7,68,719/-

01.09.2016

to

3,978/-

(8.1%)

23.09.2016

TOTAL OF INTERST

3,91,988/-

5.1 Counsel for the respondents further submitted that interest only for the grace period of three months as prescribed under the provisions of Rule 68 of the CCS (Pension) Rules, 1973 has not been paid to the applicant. Counsel further submitted that there is no provision in the CCS (Leave) Rules for paying any

interest on the delayed payment of leave encashment, as has been clarified by the DOP&T vide afore quoted instructions. Lastly counsel for the respondents submitted that instant OA deserves to be dismissed by this Tribunal.

6. After having heard learned counsel for the parties and after perusing the pleadings available on record, it is observed that applicant has not disputed the fact that the respondents have released the admissible amount of interest on the delayed payment of gratuity although subsequent to filing of the instant OA. However, it is the claim of the applicant that interest on his gratuity amount ought to have been granted to him from the date of his retirement, i.e., 30.6.2010 and not from 1.10.2010 and also claimed that interest on delayed payment of his leave encashment has also to be given to him from the date of his retirement, i.e., from 30.6.2010 to 23.6.2016, which the respondents have not granted to him.

7. So far as non-grant of interest on delayed payment of gratuity for the period of three months is concerned, the respondents have placed reliance on Rule 68 of the CCS (Pension) Rules, 1972, which provides as under:-

"(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.

Having regard to the aforesaid provision, it is relevant to note that the applicant himself stated that after dropping of the aforesaid chargesheet vide order dated 19.4.2016, the applicant was directed to submit pension papers vide communication dated 6.6.2016 which was complied by the applicant and the applicant also attended the office of the respondents in compliance of the directions of the respondents given to him vide letter dated 6.7.2016 and thereafter after completion of all the formalities, the respondents have released the payment of withheld gratuity as well as leave encashment amount vide cheques dated 23.9.2016, as such this Tribunal does not find any illegality in the action of the respondents as the same is in conformity with the provisions of the Pension Rules as well as DOP&T OM dated 25.8.1984 (Page 93 of the paperbook) in which it has clearly been provided that where the payment of DCRG has been delayed beyond three months from the date of retirement, an interest at the rate applicable to GPF deposits will be paid to retired/dependent's of deceased Government servant. As such, it is evident that after completion of requisite formalities as required for release of payment of withheld gratuity and leave encashment by the applicant to the respondents in compliance of communication

of the respondents dated 6.7.2016, the respondents have released the amount of withheld gratuity and leave encashment on 23.9.2016 and decision to release the payment of interest on delayed payment of gratuity was taken vide order dated 21.12.2016, which was received by the applicant, as not disputed by him in his pleadings. As such the applicant is not entitled to interest on the alleged delayed payment of gratuity for the aforesaid period of three months, as the same has rightly not been paid by the respondents to the applicant in terms of the provisions of the Rules *ibid*.

8. So far as claim of interest on delayed payment of the amount of his leave encashment is concerned, the respondents have specifically placed reliance of the DOP&T instructions as quoted above. However, learned counsel for the applicant has not produced any rule or law to the contrary as submitted by the learned counsel for the respondents. However, he placed reliance on the decision of the Apex Court in the case of S.K. Dua vs. State of Haryana and others, (2008) (3) SCC 44, wherein the Apex Court held that "even in the absence of specific Rule or order for providing interest, relief can be claimed on the basis of Articles 14, 19 and 21 of the Constitution of India, as retirement benefits are not a bounty" as also the Hon'ble Delhi High Court's decision dated 7.12.2015 in WPC No.9767/2015 (titled Ram Kishan vs. Union of India and others). This Tribunal carefully perused the said judgements of the Apex Court as well as of the Hon'ble Delhi High Court in Ram Kishan's case (*supra*), however, the same are not applicable to the facts of this case as the respondents in this case have themselves released the admissible amount of interest on the delayed payment of gratuity during the pendency of this OA and the fact that interest on delayed payment of amount of leave encashment was denied on account of the above clarification of the DOP&T as quoted above. It is to be noted that OMs relied upon by the applicant do not supersede the provisions of the Rules *ibid* on the subject and the fact that when there is no rule on a particular subject, the instructions and guidelines issued by the competent authority on the said subject holds the field. Therefore, this Tribunal is of the considered view that the said decisions are not helpful to the case of the applicant in the peculiar facts of this case.

9. In view of the above for the foregoing reasons, we dismiss this OA being devoid of merit as the respondents have themselves released the admissible amount of interest on the delayed payment of amount of gratuity to the applicant during the pendency of this OA. There shall be no order as to costs.