(2019) 12 DEL CK 0439

In the Delhi High Court

Case No : Civil Writ Petition No. 13503 Of 2019

Rajender Singh Tushir & Anr — APPELLANT

Vs

Chairman & Managing Director, Mtnl & Anr — RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:
Constitution Of india, 1950 — Article 77(1), 77(2), 166(2)

Citation : (2019) 12 DEL CK 0439

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Puneet Verma, Sarfaraz Khan, Saiful Islam

Final Decision : Dismissed

Judgement

G.S. Sistani, J

CM APPL. 54706/2019 (Addl. affidavit)

1. Let the additional affidavit be taken on record.

2. The application stands disposed of.

W.P.(C) 13503/2019

3. The petitioners have filed the present writ petition being aggrieved by a decision dated 08.10.2018 rendered by Central Administrative Tribunal ('Tribunal'), wherein it was held that there has not been any delay on the part of the respondents in releasing the compensation amount in favour of the petitioners.

4. With the consent of counsels for the parties, the writ petition is set-down for final hearing and disposal at the admission stage itself.

5. Some necessary facts required to be noticed for disposal of this writ petition are that the petitioners were appointed on different dates as Postal Assistants in the then Department of Post & Telegraph under the Ministry of Communications

in the year 1985. During the period 1999-2000, petitioners were sent on deputation to the Department of Telecommunications (DoT) as Junior Account Officers. Thereafter, DoT posted them in MTNL on deemed deputation basis. The officers working with MTNL were given benefit of a compensation allowance of Rs.3,000/- per month in terms of communication dated 05.06.2000 which we reproduce below :

"MAHANAGAR telephone Nigam LIMITED

(A Government of India Enterprises)

No.MTNL/IRW/21(6)/99/Pt/

Dt. 5th June, 2000

Sub: Grant of compensation of R.3000/- p.m. to Group A & B officers working in MTNL.

In suppression of this office orders of even No. dated 25th May, 2000 and 26th May, 2000, the Board of Directors of MTNL have decided to pay a compensation of Rs.3000/- p.m. to all Group A and B officers working in MTNL. This compensation shall be payable with effect from 01.04.99 or from their date of joining MTNL, whichever is later, till the IDA pay scales become operative for Group A & B officers, subject to the following conditions:-

i) This compensation will not have any link with the pay of the officers.

ii) With the grant of this compensation, the payment of other benefits like quarterly, incentive with effect from 01.04.2000 and schemes for payment of Lunch Allowances for attending office on Saturdays and Holidays will stand withdrawn from the date of issue of this office order in respect of Group A & B officers working in MTNL.

iii) All group A & B officers will switch over to six days a week working with immediate effect.

This issues with the approval of the CMD MTNL.

Sd/-

(M.L. Malik)

Principal General Manager (O)

MTNL Corporate Office

Copy to:

1. PS to CMD

2. Director (Tech)/Director (Finance), MTNL C.O.

3. CGM MTNL, Delhi Mumbai

4. GM (Fin)/Company Secretary, MTNL, C.O.

5. All General Secretaries of officers Association of MTNL."

6. Two petitioners and some other similarly situate persons were denied the benefit of compensation of Rs.3,000/- per month. Separate O.As. were filed before the Tribunal. Orders were passed for grant of this allowance. Petitioner No.1 also approached the Tribunal and during pendency of the O.A., respondents made a statement that they have decided to grant relief to applicants. The O.A. was then rendered infructuous. The relevant portion of order dated 06.11.2012 passed by Tribunal reads as under :

"2. Today, when the matter was taken up for consideration, the learned counsel appearing on behalf of the respondents has submitted that the respondents on their own decided to grant the aforesaid reliefs to the applicant. In view of the submission made by the respondents' counsel, the Applicants counsel has no objection to treat that this OA has become infructuous.

3. Accordingly, this OA is dismissed as infructuous. However, the respondents shall ensure that all the benefits arising out of their decisions shall be released to the Applicant within a period of one month from the date of receipt of a copy of this order. No costs."

7. While to begin with, the petitioners did not receive any compensation allowance, it is not in dispute that after passing of order dated 06.11.2012 by the Tribunal in O.A. No.8828/2012 the petitioners were also granted the benefit of Rs.3,000/- per month as compensation allowance.

8. The bone of contention in this writ petition, as also in the O.A. before Tribunal, was in relation to the non-payment of interest on the compensation allowance, which, according to the petitioners was paid late. Tribunal having declined to grant interest, the present writ petition has come to be filed.

9. Learned counsel for the petitioners has strenuously urged before us that the petitioners were deprived of this allowance for no fault of theirs. They were similarly situate as regular employees of MTNL, and thus, the delay in making payment was on account of a deliberate act on the part of the respondents; and that therefore, the respondents should be saddled with the liability to pay interest.

10. Learned counsels for respondents however submit that as many as seven persons were similarly situate and all seven persons have been granted the allowance. But none of the persons have been granted interest for the reason that the issue of payment of this allowance to the persons on deputation was a grey area. Once a final decision was taken in the matter, MTNL released the amount to the persons without any undue delay and without waiting for any order of the Tribunal.

11. Counsel for petitioners submits that a right was created in their favour upon

their transfer on deputation; and the moment letter dated 05.06.2000 came into force, it was for the respondents to themselves release the payment of compensation allowance and it was not for the petitioners to ask for the same.

12. Counsel for the petitioners further submits that the internal stand of the respondents, as recorded in an office note, has been that "denying the monthly compensation of Rs.3000/- to said Sh. Tushir once again as proposed by CAO (A/C)/AO (P&A), could be susceptible to the interpretation of inequality/ discrimination." Counsel for respondents submits that internal file notings cannot be relied upon and no right accrues in favour of the petitioner merely by reason of such noting. Counsel for respondents has placed reliance on the judgment rendered by the Supreme Court in Shanti Sports Club v Union of India, 2009 (15) SCC 705 the relevant paragraph of which is reproduced as under:

"A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government, unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review."

13. Reliance is further placed by counsel for respondents on the judgment rendered by the Supreme Court in Sethi Auto Service Station v. DDA, (2009) 1 SCC 180, wherein the Supreme Court has observed as under:

"It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

14. We have heard learned counsels for the parties and have considered their rival submissions.

15. The issue has been decided in detail by the Tribunal in paras 11, 12 & 13 of order dated 08.10.2018, which we reproduce below :

"11. It is the settled principle of law that if any amount rightly payable to any employee is withheld by any employer, beyond a reasonable period, the said employee is entitled for payment of interest for the delayed period, at a reasonable rate of interest. However, in the above referred circumstances, whether the respondents deliberately denied the amounts payable to the applicants and delayed the same beyond a reasonable period.

12. The amount which was paid to the applicant in pursuance of the proceedings dated 05.06.2000 pertaining to granting of compensation of Rs.3000/- per month to all Group 'A' and 'B' officers working in MTNL. Admittedly, at the relevant point of time, the applicants were not employees of MTNL and were only working, on deputation in MTNL. Hence, there was a genuine dispute whether the said amount of compensation of Rs.3,000/- per month granted vide proceedings dated 05.06.2000 is applicable to the applicants or not. The said issue was finally decided in TA No.181/2009 vide its order dated 09.07.2010. In compliance of the said order of this Tribunal, the respondents granted the compensation amount to the applicant in OA No.3419/2012, vide order dated 30.04.2011 and accordingly granted the same to other applicants also as and when they obtained appropriate orders from this Tribunal. In this view of the matter, we do not find any deliberate delay on the part of the respondents. In fact, the respondents have released the amount within a reasonable period from the date of the various orders of this Tribunal.

13. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. All the pending Mas, if any, stand disposed of. No costs."

16. In view of the foregoing discussion and reasoning, we find no infirmity in the view taken by Tribunal. Admittedly at the relevant point of time, the petitioners were not employees of MTNL and were only working on deputation. Thus, there was a genuine doubt in the mind of MTNL whether the petitioners were entitled to this allowance or not; and once a policy decision was taken, the compensation allowance was released within a reasonable time. Thus, the Tribunal has correctly held that petitioners are not entitled to interest on the compensation allowance received. Moreover, the communication granting compensation allowance is of the year 2000 but petitioner No.1 approached the Tribunal only in the year 2007 while some other similarly situate persons sought legal remedy even later in the year 2010.

17. Accordingly, we find no merit in the writ petition and the same is dismissed.