
(2007) 02 DEL CK 0144

In the Delhi High Court

Case No : Writ Petition (C) No's. 16670-76 of 2004

Roshan Lal and Others

APPELLANT

Vs

D.T.C.

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 68(5)(2)

Citation : (2007) 140 DLT 49

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : K.C. Dubey, for the Appellant; Vibhu Shankar, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The petitioners herein have preferred the present writ petition seeking inter alia, directions to the respondent/DTC to pay interest on the pensionary benefits @ 12% compounded annually as the same were released to the petitioners belatedly without any justification.

2. A quick glance at the facts of the case reveals that the petitioners were employed with the respondent/DTC on the post of Traffic Supervisors and Conductors and after their retirement, they were entitled for payment of the pensionary benefits. However, the respondent/DTC withheld the pensionary benefits of the petitioners for a period ranging from one year to two years in the case of six petitioners and over 10 years in the case of petitioner No. 7. The details of the petitioners, the date of their retirement, the date of releasing of the pensionary benefits as also the delay that occurred in the payment of the pensionary benefits by the respondent/DTC, as furnished by the petitioners, is reproduced below in the following statement:

Sr. Name Designation Date of retirement pensionary benefits Date of releasing the payment of pensionary benefits Delay in retirement pensionary benefits

1 Roshan Lal Ex. Traffic 30.11.2001 August, 2003 21 months Sharma Supervisor

2 Ganga Ram -do- 31.5.2002 August, 2003 15 months

3 Sothu Ram -do- 30.4.2002 October, 2003 18 months

4 Brijmohan -do- 30.9.2002 August, 2003 11 months

5 Sabu Ram -do- 31.5.2001 August, 2003 5 months

6 Krishan Lal -do- 31.5.2002 August, 2003 15 months 7 Dev Raj Ex. Conductor 30.4.1993 August, 2003 10 years & 7 Singh months.

3. The counsel for the petitioners states that the aforesaid action of the respondent/DTC in withholding the pensionary benefits of the petitioners without any justification and delaying the release thereof to the petitioners is illegal and arbitrary and that the petitioners are entitled to interest on the delayed period of payment. Counsel for the petitioners claim that despite the repeated representations made by the petitioners to the respondent/DTC for payment of interest on the pensionary benefits released to them belatedly, the respondent/DTC neither took any action on the said representations, nor took any steps for making the said payment, thus compelling the petitioners to approach this Court by way of the present writ petition.

4. In support of their claim for payment of interest, the petitioners have placed reliance on the CCS (Pension) Rules which stipulate that any delay in releasing the payment of pensionary benefits beyond a period of 30 days from the date a payment was due, shall attract 12% penal interest per annum. The petitioners have also relied upon the judgments rendered by this Court in the cases of (i) Smt. Krishna Rani Chopra v. Delhi Transport Corporation and Anr. in CW 5164/2000, dated 20.11.2002, (ii) Gurmukh Singh v. DTC in WP(C) No. 6096/2000, dated 3.7.2002 and (iii) Smt. Jagroshni v. DTC in WP(C) No. 6599/1999, dated 2.4.2002, wherein this Court held that withholding of arrears of pension by the respondent/DTC was not warranted and as the same put the petitioners therein to considerable hardship, they were entitled to interest on the unpaid amount. The petitioners therein were, Therefore, held entitled to interest on the unpaid amount @ 12% compounded annually on the analogy that the respondent/DTC had charged the petitioners compounded interest @ 12% per annum on account of employees' Provident Fund contribution by the respondent.

5. In defense, the respondent/DTC submitted that the petitioners have no right to claim interest on the arrears of pension due to delay in disbursement as they had themselves submitted affidavits stating that they would not claim any interest on the arrears of pension. It was further submitted that pursuant to the pension scheme introduced by the respondent/DTC, vide order dated 27.11.1992, while the petitioners claimed that they had exercised their option in time, but their claims were not included in the list of employees who opted for the DTC pension scheme, thus, the matter remained under examination and after the due processing of their cases, the pension was released immediately without further delay. It was also claimed that the respondent/DTC had filed an appeal

against the orders of payment of interest on commutation value of pension in the matter of DTC Pensioners Welfare Association and Ors. and thus the petitioners were not entitled to payment of interest on arrears of pension. Reliance was also sought to be placed on Rule 68 (5)(2) of the CCS (Pension) Rules to state that no interest was payable on delayed payment of pension/commutation value of pension.

6. I have heard the learned Counsels for the parties and have also perused the records. It is not denied by the respondent/ DTC that there was delay in release of the arrears of pension to the petitioners. It is also not denied that the petitioners cannot be blamed for non-inclusion of their names in the list of employees who opted for the DTC pension scheme. It was not as if the forms submitted by the petitioners, were incomplete in any manner on information sought from them by the respondent was not furnished. If at all such an oversight occurred, it was purely an internal matter of the respondent/DTC for which the petitioners cannot be faulted. The contention the respondent/DTC that the petitioners had themselves submitted an affidavit stating inter alia that they will not claim interest on the arrears of pension, is denied by the petitioners who state that the respondent/DTC had made it a pre-condition for all its employees retiring from service to submit such an affidavit for release of their retirement benefits. Thus the affidavit, if any, submitted by the petitioners was not voluntary in nature but evidently furnished under compulsion.

7. Considering the fact that the relevant Rule applicable for payment of pensionary benefits itself stipulates payment of 12% interest on non-payment/delayed payment of pension, calling upon an employee to furnish such an affidavit as mandated by the respondent/DTC is per se illegal. It is a requirement imposed on the employees by the respondent/DTC unilaterally. The same amounts to putting a premium on its illegal act of not releasing the pensionary benefits within the stipulated time. The petitioners cannot be deprived of their lawful right in such a circuitous manner as adopted by the respondent/DTC by calling upon the retiring employees to sign and submit an affidavit as a pre-condition for releasing their pension. There is also no rebuttal on the part of the respondent/DTC to the claim of the petitioners in the rejoinder that such an affidavit was obtained compulsorily by the respondent/ DTC and that the same was not a voluntary act on the part of the petitioners.

8. Reliance placed by the respondent/DTC on Rule 68 (5)(2) of the CCS (Pension) Rules, is misplaced as Rule 68 (5)(2) of the Rules clarifies that wherever delays are anticipated, provisional pension shall be sanctioned immediately. In the present case, as per the scheme floated by the respondent/DTC, the petitioners/employees were required to leave the management's share of Provident Fund also with the management on which interest was earned by the management, which means that in effect the management earned interest not only on its share of Provident Fund but also on the arrears of pension payable to the petitioners. It is a settled law that payment of interest is not in the nature of penalty, but a

normal accretion on the capital. In this regard reliance may be placed on the recent judgment of the Supreme Court dated 15th February, 2007 in the case of Alok Shankar Pandey v. Union of India Civil Appeal No. 1598 of 2005, wherein it has been held that:

It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.

Therefore, this Court has no hesitation in arriving at the conclusion that as the respondent/DTC withheld the pension of the petitioners illegally and without any just cause or sufficient reason, it is liable to pay compound interest to the petitioners on the arrears of pension from the date the said amount was due and payable, till the same was paid, @ 12% per annum. The respondent is directed to calculate and pay the interest to the petitioners on the basis of the tabulated statement reproduced hereinabove, within a period of four weeks from today.

9. In terms of the aforesaid order, the writ petition stands disposed of.