
(2002) 05 DEL CK 0094
In the Delhi High Court
Case No : CWP No. 5843 of 1999

Sh. M.M. Aggarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 12, 48(A), 68, 69, 9

Citation : (2002) 05 DEL CK 0094

Hon'ble Judges : S.B. Sinha, C.J.; A.K. Sikri, J

Bench : Division Bench

Advocate : Party in perso, for the Appellant; Rekha Palli, for the Respondent

Final Decision : Partly Allowed

Judgement

A.K. Sikri, J.—The petitioner feels aggrieved against the order dated 19th February, 1999 passed by the Central Administrative Tribunal, Principle Bench, New Delhi in Original Application No. 636/97. In this Original Application the petitioner had primarily prayed for grant of interest on delayed payments of GPF, CGEIGIS, DCRG, provisional pension, leave salary and leave encashment. He had also sought for directions to the respondents to quash penal rate of interest imposed upon him in regard to the TA/DA advance taken by him while in service and also to make corrections in his half pay leave account. It may be stated at this stage that the petitioner had served notice for voluntary retirement under Rule 48(A) of CCS (Pension) Rules, 1972 (hereinafter referred to as "the Rules") and on expiry of this notice period, he sought the release of his retiral benefits which were not allowed. He accordingly approached the learned Tribunal at that time also by filing Original Application No. 1764/90 which was disposed of by an order dated 17th May, 1994, inter alia, directing the respondents to release the petitioner his terminal dues. The precise directions contained in the said order dated 17th May, 1994 are to the following effect:

"(i) We declare that the applicant shall be deemed to have voluntarily retired from service w.e.f. 2.5.90 under the provisions of Rule 48-A of the C.C.S.

Pension Rules, 1972 and that, Therefore, he is entitled to pensionary benefits on that basis.

(ii) As a disciplinary proceeding is pending against the applicant, the benefit of provisional pension shall be granted to him in accordance with the provisions of Rule 9 and Rule 69 of the C.C.S. Pension Rules within three months from the date of receipt of this order.

(iii) The prayer to quash the disciplinary proceeding is dismissed and, Therefore, the interim order is vacated. The respondents are directed to complete the disciplinary proceedings as expeditiously as possible."

2. After the aforesaid directions of the learned Tribunal, the petitioner was released his terminal benefits. However, as he had also demand interest on the delayed payments which was not granted. The Original Application No. 636/97 was filed. The learned Tribunal, in the impugned judgment, allowed the interest at the rate of 12 per cent per annum on GPF up to 30th November, 1994 to be calculated as per the Rules, 12 per cent per annum on Gratuity and 12 per cent per annum on leave encashment.

3. His request for grant of interest on arrears of pension was rejected on the ground that the petitioner had made same plea in the earlier Original Application and as no relief was granted in the earlier Original Application it was deemed to have been rejected the petitioner was barred from re-agitating the same question of interest on delayed payment of pension. Likewise the petitioner's request for grant of interest on DCRG was also rejected holding that under Rule 68 of Rules, interest was not permissible.

4. The contention of the petitioner challenging the action of the respondents in charging penal rate on his outstanding TA/DA advance was rejected holding that the respondents were perfectly right in deducting the penal rate as per rules and the deduct the same from his leave salary/leave encashment payments.

5. The petitioner filed a Review Application which was marked as RA No. 89/99 seeking review of the aforesaid judgment dated 19th February, 1999. In this Review Application the petitioner pointed out that some of the reliefs claimed by him in his amended Original Application were not taken into consideration and dealt with in the impugned judgment and he, inter alia, prayed for that the respondents be directed to pay interest at the rate of 12 per cent per annum to him on delayed payment of GPF, CGEGIS, DCRG, provisional pension, leave salary and leave encashment. This Review Application was rejected vide order dated 10th June, 1999, inter alia, observing as under:

"I find that the Tribunal had mentioned all the reliefs sought for by the applicant. As pointed out by him some of the reliefs were allowed while others were rejected. The applicant impugns the order on the ground that three of the reliefs sought for by him have not been specifically dealt with and findings given and that it indicates that there is no application of mind by the Tribunal on those

issues.

The findings of the Tribunal as well as the orders required have been indicated in the judgment. Where no relief has been indicated, it clearly means that the prayer of the applicant has been rejected. It is not necessary that each and every point raised by the applicant must be answered. Since all the major issues raised by the applicant have been dealt with in the impugned order, I do not find merit in the contention of the petitioner that the impugned order requires a review. RA is accordingly dismissed."

6. At the outset, it may be mentioned that the aforesaid approach of the learned Tribunal in rejecting the Review Application is erroneous. The learned Tribunal accepted the fact that the impugned order dated 19th February, 1999 did not deal with three of the reliefs sought for by the petitioner. However, still the learned Tribunal did not deal with the same and rejected the prayer of the petitioner on the ground that where no relief had been indicated, it means the prayer to that extent was rejected. If it was treated to be as deemed rejection for which there was no discussion in the impugned judgment and the Review Application was filed on the ground that the impugned judgment did not deal with the three reliefs, the learned Tribunal was supposed to deal with the same and give reasons therefore. It may be stated that if a particular prayer was not dealt with in the impugned judgment though pressed, it was a valid ground for the petitioner to seek review of the judgment, more particularly when the learned Tribunal in the earlier portion of the impugned judgment had mentioned the relief sought for by the petitioner but failed to deal with the same. If it is treated as deemed rejection then the order in OA suffers from clear infirmity as no reasons in support thereof are given. It would have been a different matter if the petitioner had not challenged the said order at all and the same would have attained finality. In such circumstance, it would not have been permissible for the petitioner, thereafter, to file fresh petition and claim the same relief and in such circumstance, it would have been permissible for the learned Tribunal to dismiss the second petition on the ground of constructive res judicata. However, the position here is totally different. When the learned Tribunal did not at all deal with some of the reliefs although prayed for and pressed by the petitioner at the time hearing, the petitioner herein filed a Review Application. Therefore when this fact is pointed out in Review Application it became a valid ground for review and at least at that stage, the learned Tribunal could give reasons in support thereof when particularly a Review Application was preferred. The Review Application could not have been summarily rejected by stating that the prayer of the petitioner in respect of three reliefs which were not specifically dealt with, stood rejected.

7. The petitioner, in these circumstances, has claimed interest at the rate of 12 per cent per annum on the following dues:

"to direct the respondents to allow the interest at the rate of 12% p.a. on-

1. CGEGIS from 2.5.1990 to 12.12.1994;
2. Leave salary from 3.5.1990 till 29.01.1996.
3. Arrears of pension (provisional) from 31.5.1990 to 30.11.1994;
4. Interest at the rate of 12% p.a. on interest amount withheld on DCRG, GPF, CGEGIS, provisional pension, leave encashment, leave salary etc. w.e.f. 2.5.90 up to actual payment date."
8. It may be mentioned that although there are certain other prayers made in the writ petition, at the time of arguments, the petitioner pressed the aforesaid prayers only.
9. In so far as interest on delayed payment of CGEGIS fund is concerned, it is not in dispute that the money in that fund was petitioner's own money which became due for payment on the date following the deemed date of voluntary retirement i.e. 2nd May, 1990. However, the payment was only on 12th December, 1994. Therefore, the petitioner should be held entitled to interest on this amount. We accordingly award interest at the rate of 12 per cent annum to the petitioner on the delayed payment of CGEGIS fund i.e. from 3rd May, 1990 to 12th December, 1994.
10. The interest on delayed payment of leave salary is claimed on the ground that the leave salary for the period from 30th November, 1988 to 2nd May, 1990 was sanctioned after a period of more than five and half years i.e. on 3rd November, 1995, and Therefore, interest should be granted to him. The petitioner had applied for leave for the aforesaid period on medical grounds when he had fallen sick. The petitioner has alleged that during this period he made several representations asking the respondents to pay the leave salary. In the reply the respondents have not denied this fact. It is admitted that medical certificates informing the sickness of the petitioner were received. The only Explanation given by the respondents is that the leave could not be regularised owing to non-availability of specific decision either about his joining at Metal and Steel Factory in Ishapore or voluntary retirement and the matter was processed only after the decision of the Tribunal. This is hardly any ground to justify delay in making the payment of leave salary when the petitioner had applied for leave on the ground of sickness. Infact the dispute regarding voluntary retirement had nothing to do with the grant of leave salary. Thus there is no cogent reason given to delay the payment of leave salary, the petitioner would be entitled to interest at the rate of 12 per cent per annum for the period from 3rd May, 1990 to 3rd November, 1995.
11. In so far as interest on arrears of pension is concerned, in our opinion, the learned Tribunal rightly rejected the interest on the ground that such a prayer was made by the petitioner in earlier Original Application and was not granted. It may also be mentioned that after the petitioner had given the notice for voluntary retirement and claimed that he stood voluntarily retired on the export

of notice period, there was a dispute to this effect which was settled by the Tribunal in its judgment dated 17th May, 1994. The learned Tribunal by that judgment further observed that since the disciplinary proceedings were pending, the learned Tribunal ordered payment of provisional pension but did not grant interest thereon although claimed. Therefore, the petitioner could not claim this relief again in Original Application 636/97.

12. We are also not inclined to grant interest on interest as claimed by the petitioner as such a relief is not admissible.

13. This writ petition is allowed partly to the extent mentioned above.

14. There shall, however, be no order as to costs.

Since the petitioner appeared in person, the Registry is directed to send a copy of this judgment/order to the petitioner free of cost.