

(2018) 07 CAT CK 0106

In the Central Administrative Tribunal

Case No : Original Application No. 3719 Of 2016

S.L. Gupta

APPELLANT

Vs

Director, Central Bureau Of Investigation And Ors

RESPONDENT

Date of Decision : 13-07-2018

Acts Referred:

Citation : (2018) 07 CAT CK 0106

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

Bench : Single Bench

Advocate : Hanu Bhaskar

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. This Original Application has been filed by the applicants claiming the following reliefs:-

"8.1 Respondents be directed to make compound interest @18% p.a. on late payment of all the retirement dues including leave encashment as well as delay of payment on interest thereon as follows:

a. Interest on payment of different in commutation of Rs.126820/- for the period from 19.3.2010 to 6.6.2014 as well as interest on the amount of interest due from 7.6.2014 till the date the same is paid.

b. Interest on payment of different in leave encashment of Rs.92219/- for the period from 19.3.2010 to 8.4.2014 as well as interest on the amount of interest due from 9.4.2014 till the date the same is paid.

c. Interest on payment of difference in gratuity of Rs.135691/- for the period from 19.3.2010 to 6.6.2014 by deducting the interest amount of Rs.23638/- already paid to the applicant by the respondents as well as interest on the amount of interest due from 7.6.2014 till the date the same is paid.

d. Interest on payment of Rs.301565/- towards difference monthly pension accrued from Feb 2010 to June 2014 as well as interest on the amount of interest due from 1.7.2014 till the date the same is paid.

8.2 To set aside the provision of OM No. 38/64/98-P&PW(F) dated 5.10.1999 of Govt. of India denying interest on any of the delayed payments especially for leave encashment being illegal.

8.3 Any other order(s) as deemed fit and proper to secure the ends of justice may be passed."

2. Brief facts of the case are that the applicant, who retired as ASP, CBI on 31.01.2010, was granted notional promotion to the rank of ASP with retrospective effect, SP and Sr. SP from the date of promotion of his immediate juniors in pursuance of the orders passed by this Tribunal in OA No. 2328/2009 which was filed by him challenging the disciplinary proceedings initiated against him. This Tribunal had ordered to fix the pay of the applicant on notional basis and pay post retiral dues accordingly. As per the orders of the Tribunal, the pay of the applicant on notional promotion as SP and Sr. SP was fixed by CBI, SC-1, New Delhi on notional basis and he was paid arrears of retirement dues, i.e. pension, commutation value, gratuity and leave encashment.

3. It is further submitted that the applicant then filed another OA for payment of interest on the arrears of retirement dues in the rank of SP for the delayed period beyond the time allowed by the Tribunal which was paid to him with the approval of DoPT. Thereafter the applicant further submitted representations dated 19.05.2014 and 22. 07.2014 for payment of interest @18% on the arrears of retirement dues in the rank of Sr. SP.

4. It is also submitted that while the aforesaid representations were under consideration, the applicant filed another OA No. 205/2015 seeking directions to respondents for payment of interest as requested in the representations. This Tribunal had disposed the said OA with the direction to the respondents to decide the representations as expeditiously as possible, preferably within a period of eight weeks. The applicant has also filed a CP No. 724/2015 in the said OA for non compliance of the Tribunal's order passed in OA No. 205/2015.

5. It is urged that the above representations were examined and a proposal was sent to the DoPT in March, 2015 for approval of the competent authority for payment of interest of Rs.23,638/- at the GPF rate on the different amount of gratuity for the delayed period w.e.f. 19.04.2012 beyond a period of three months from the date of order passed by the Tribunal in OA No. 3377/2011. It was also intimated by the DoPT that in view of OM dated 05.10.1999, there is no provision for payment of interest on the other amounts, i.e. encashment of EL, Pension and Commutation value etc. The DoPT conveyed the approval of competent authority for payment of interest of Rs.23638/- at the GPF rate on the different amount of gratuity. Accordingly, the payment of Rs.23,638/- was made to the applicant by CBI, SC-1, New Delhi.

6. It is also submitted that in compliance of the directions passed in OA No.205/2015, a compliance affidavit dated 19. 07.2016 was filed in the contempt proceedings stating that in view of OM dated 05.10.1999, no interest is payable on delayed payment of pension/commutation value of pension and further that there is no provision in CCS(Leave) Rules to allow payment of interest on delayed payment of leave encashment. Thereafter this Tribunal disposed of the CP No. 724/2015 vide its order dated 22.07.2016 which read as under:-

"We are satisfied that the respondents have complied with the order substantially. Accordingly the present CP is closed. If the applicant is still aggrieved, he shall be at liberty to question the same in an appropriate forum in accordance with law. Notices issued to the respondents are discharged. No costs."

7. Pursuant to the notices issued, the respondents have entered appearance and filed their reply.

8. The learned counsel for the respondents first of all drew attention to the relief claimed in Clause 8.2 of this OA which reads as under:-

"8.2 To set aside the provision of OM No. 38/64/98-P&PW(F) dated 5.10.1999 of Govt. of India denying interest on any of the delayed payments especially for leave encashment being illegal."

He further drew attention to the fact that the applicant in his grounds for relief in para 5f has himself claimed that OM No. 38/64/98-P&PW(F) dated 05.10.1999 is not applicable to his case. It is the contention of the respondents that the applicant is taking contradictory stand as on the one hand, he says in his written and verbal arguments before the Court that his case is not covered by the said OM but at the same time, he has sought striking down of the said OM without giving any reason. Quite clearly, if the applicant is not covered by the OM in question, he cannot impugn the same without giving any reason. This OM was issued in 1999 by DoPT and it is a policy decision of the Union Government and has withstood the test of validity and scrutiny of law for almost two decades. Hence, this plea of the applicant is clearly not maintainable.

9. Further, the learned counsel for the respondents has sought to contradict the claim of the applicant by stating that the applicant is not entitled to payment of interest on leave encashment, commutation and arrears of pension. The matter was examined in consultation with the Establishment Division of DoPT and Department of Pension and Pensioner's Welfare and as per OM dated 05.10.1999, no interest is payable on delayed payment of leave encashment as there is no delayed payment of leave arrear amount. It is further stated that no interest is payable on delayed payment of pension/commutation value of pension.

10. After hearing the applicant in person and learned counsel for the respondents, the pleadings on the record were perused.

11. It is an admitted position that the respondents had paid interest amount of Rs.23638/- at GPF rate on difference in gratuity of Rs.1,35,691/- w.e.f.

19.04.2012 to 05.06.2014. However, the respondents rejected the claim of the applicant with regard to interest on delayed payment of pension/commuted value of pension in the light of the DoPT's OM dated 05.10.1999 which provides that as per CCS(Pension) Rules, 1972, no interest is payable on delayed payment of pension/commuted value of pension and as regards the interest on delayed payment of leave encashment, the said OM provides that encashment of leave is a benefit granted under the Leave Rules and not a pensionary benefit.

12. It is also to be noted that though the applicant has challenged the provision of DoPT's OM dated 05.10.1999 being illegal but the he has not stated as to why the said OM is illegal. In his relief clause, the applicant has asked to set aside the provision of OM dated 05.10.1999 of Govt. of India denying interest on any of the delayed payments especially for leave encashment being illegal. However, in the ground for relief in Para 5f, he has contradicted his stand by stating that OM dated 05.10.1999 of Govt. of India is not applicable to his case. In view of the contradictory stand taken by the applicant both in his OA and in his oral arguments before the Tribunal, I do not find any merit in this claim. As such, there is no ground to interfere with the DoPT's OM dated 05.10.1999 and all the compliance done by the respondents is in accordance with the same. Hence, I find no ground to set aside the said OM.

13. Thus seen from all angles, I do not find any merit in the OA and the same is accordingly dismissed. No order as to costs.