(2010) 03 DEL CK 0309

In the Delhi High Court

Case No : WP (C) No. 1855 of 2010

State of Haryana and Another APPELLANT

Vs

A.C. Aggarwal, IAS (Retd.) and Another RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) 169 DLT 58

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Arunabh Choudhury, Anupam Lal Das, Raktim Gogoi and Gainilung Panmei, for the Appellant; A.K. Bhardwaj, for the Respondent

Judgement

Anil Kumar, J.—The State of Haryana has challenged the order dated 28th August, 2009 passed by the Central Administrative Tribunal, Principal Bench in O.A No. 1485/2009 titled as A.C. Aggarwal, IAS (Retd) v. Union of India and Ors. allowing the original application of the respondent No. 1 to grant him simple interest at the rate of 10% per annum on the amount due to him with a cost of Rs. 5000/-.

2. The respondent No. 1 had filed an original application being O.A No. 1485/2009 praying inter-alia that a direction to State of Haryana be given to pay simple interest on the amount retained unauthorisedly by them from 27th June, 1999 to 7th October, 2008 at 10% per annum.

3. The respondent No. 1 had contended that he retired from IAS (Haryana) Cadre on 30th June, 1987 at the age of 58 years and before his retirement he was Commissioner and Secretary of Government of Haryana. The respondent No. 1 was authorized to draw pension at the rate of Rs. 2709/- plus AR from 1st July, 1987. The respondent No. 1''s pension was modified with effect from 1st July, 1987 and 1st January, 1996 and on the recommendation of 6th Pay Commission he was granted pension at the rate of Rs. 23,341/- per month with effect from 1st January, 2006.

4. After retirement in 1987 the respondent No. 1 had applied for commutation of 1/3rd of his pension which was allowed by letter dated 28th January, 1988 when the pension of the respondent No. 1 was Rs. 2709/- and an amount of Rs. 1,13,344.55/- was paid to him on 5th December, 1988.

5. After the pension of the respondent No. 1 was revised from Rs. 2709/- per month to Rs. 2906/- the commuted pension payable to the respondent No. 1 became Rs. 1,21,503.35/- which was already paid, therefore, the balance amount of Rs. 8,158.80/- was paid to him in 1990.

6. According to the respondent No. 1 commuted pension was to be restored to him after completion of 70 years of age by him which the respondent No. 1 attained on 27th June, 1999. For this the respondent No. 1 relied on the fact that there was no specific provision in All India Services (Commutation and Pension) Regulations, 1959 regarding the restoration of the commuted portion of pension of All India Service Pensioners.

7. Since the commuted portion of the pension of the respondent No. 1 on attaining the age of 70 years was not restored, relying on similar cases also which were pending in Courts, respondent No. 1 sought restoration of his commuted pension. The representation of the respondent No. 1 was however, rejected by the petitioner.

8. The respondent No. 1 challenged the rejection of his representation for full pension at the age of 70 years and filed an original application being O.A No. 2969/2004 before Central Administrative Tribunal, Principal Bench, New Delhi which was disposed of by order dated 8th September, 2005 and the pleas of the respondent No. 1 were allowed and the petitioners were directed to release full pension to the respondent No. 1 with effect from the date he completed 70 years of age. The petitioners were also directed to pay arrears from the date pension payable, within a period of three months from the date of receipt of the copy of order dated 8th September, 2005.

9. The petitioners challenged the order dated 8th September, 2005 by filing a writ petition being W.P(C) No. 3934-35/2006 which was also dismissed by order dated 19th September, 2007 and the order dated 8th September, 2005 of the Tribunal was upheld. While dismissing the writ petition the High Court directed for restoration of pension and release of arrears of pension within eight weeks from 19th September, 2007.

10. Despite the specific order dated 19th September, 2007 for restoration of pension and release of arrears of pension within eight weeks, the petitioners did not either restore the pension nor released the arrears of pension entailing filing of a contempt petition. After the contempt petition was filed the amount was credited in the account of the respondent No. 1 on 7th October, 2008, however, on the amount which was retained without any justification, no interest was paid.

11. Since the restoration of the pension and release of arrears was delayed, the

respondent No. 1 claimed interest which was also not agreed to by the petitioners leading to filing of another original application being O.A No. 1485/2009 titled as A.C. Aggarwal, IAS (Retd) v. Union of India which has been disposed of by the Tribunal holding that the petitioners are liable to pay simple interest at the rate of 10% per annum and also awarded a cost of Rs. 5000/- on the petitioners and in favor of respondent No. 1 which is challenged by the petitioners in the present petition.

12. The Tribunal rejected the contention of the petitioners that the claim of the respondent No. 1 was belated. The Tribunal also referred to the case of P.C. Wadhwa who had sought full commutation of pension which was allowed and the petitioners were also directed to pay interest at the rate of 18% per annum. The Tribunal also relied on Hyderabad Municipal Corporation Vs. M. Krishnaswami Mudaliar and Mudaliar and Another, holding that in such circumstances as in the case of respondent No. 1, the claim for payment of interest would be justified.

13. The Tribunal has categorically held that the petitioners ought to have granted appropriate amount to the respondent No. 1 at their own at the right time which was not done and there was no justification for the same. It was further held that the omission on the part of the petitioners was further compounded when the representations of the respondent No. 1 remained unheeded, despite the elaborate order of this High Court that the interpretation by the petitioners was not in consonance with the rules and directing the petitioners to pay the full commuted pension and arrears which was denied on one pretext or the other till October, 2008. The Tribunal also relied on the decision of the Supreme Court in S.K. Dua v. State of Haryana and Ors. (2008) 3 SCC holding that even where there is no specific rule or order providing interest, an employee can claim interest as the retiral benefits are not in the nature of booty but are the rights of an employee.

14. The learned Counsel for the petitioners has raised the similar points as raised before the Tribunal. It is contended that there is no rule to grant interest. However, it cannot be denied that despite the order of the High Court upholding the order dated 19th September, 2007 and upholding the order dated 8th September, 2005 in O.A No. 2969/2004 directing payment of full pension and release of arrears, till October, 2008 the payments were not made and the payments were made only after a contempt petition was filed. The amount which was legally due to the respondent No. 1 if was not paid by the petitioners without any valid justification, the interest at 10% as awarded by the Tribunal cannot be held to be illegal or based on such irregularity which is liable to be interfered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

15. The Tribunal on the basis of calculation sheet filed before it has awarded a total amount of Rs. 31,976.33/- which cannot be disputed by the learned Counsel for the petitioners. The Tribunal by order dated 28th August, 2009 had directed the petitioner to credit the said amount in the account of the respondent

No. 1 within two months. The learned Counsel for the petitioner is unable to give any satisfactory reason as to why the order of the Tribunal dated 28th August, 2009 has not been complied with within the time granted, as even the present writ petition was filed on 8th March, 2010. In case there was no stay granted by any competent Tribunal and Court, the order ought to have been complied with. In anticipation of filing a writ petition, the petitioners could not delay the implementation of the order. No justifiable and cogent reason has been disclosed for not filing the writ petition within the time which was granted by the Tribunal for compliance of order, in case the petitioners wanted to challenge the same. In the circumstances, it is a fit case where further cost should be imposed on the petitioners. Consequently, the writ petition is dismissed with a cost of Rs. 15,000/- which be paid to the respondent No. 1 within two weeks. The amount as awarded by the Tribunal amounting to Rs. 31,976.33/- with a cost of Rs. 5,000/- be also credited in the account of the respondent No. 1 within two weeks.

