

(2018) 10 CAT CK 0124

In the Central Administrative Tribunal

Case No : Original Application No. 3419, 880, 881, 882 Of 2012, Miscellaneous Application No. 2385, 2386 Of 2015, 3606 Of 2016, 333, 334, 335, 336, 337, 338 Of 2013

T.R.K.R. Kumhar And Ors

APPELLANT

Vs

Chairman & Managing Director And Ors

RESPONDENT

Date of Decision : 08-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0124

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Puneet Verma, Saiful Islam, Sarfaraz Khan

Judgement

V. Ajay Kumar, Member, J

1. Shorn of the unnecessary details, the brief facts necessary for the purpose of disposal of the batch of OAs are that the 4th applicant in OA No.3419/2012, namely, Shri Rajender Singh Tushir originally belonged to the Department of Posts as a regular appointee. He was brought to the Department of Telecommunications as a Junior Accounts Officer vide order dated 12.03.1999 and subsequently in 2005, he was permanently absorbed in BSNL on the basis of an Examination. While the applicant was working in MTNL, the respondent-MTNL, vide its proceedings dated 05.06.2000, took a decision to grant compensation of Rs.3,000/- per month to all Group 'A' and 'B' officers working in MTNL. The applicant contending that previously he was enjoying all the benefits like the incentive allowance etc., though on deputation with the MTNL, at the relevant point of time, on par with the regular MTNL employees but not extending the grant of the compensation amount in terms of the said proceedings dated 05.08.2000 is illegal, filed W.P. (C) No.2100/2007 before the Hon'ble High Court of Delhi, which was transferred to this Tribunal and numbered as TA No.181/2009. This Tribunal, by its order dated 09.07.2010, after hearing both sides and after making certain observations on the merits of the case disposed of

the said TA.

2. The relevant paragraphs of the order dated 09.07.2010 in TA No.181/2009, filed by the applicant No.4 in the instant OA, read as under:-

"5.1 From a perusal of the records before us, we find that the decision of payment of consolidated compensation amount had been given in lieu of certain incentives being paid previously to the employees. Further, while this was made subject to several conditions, no distinction had been made between the deputationists from other Departments. Thus we hold the view that the attempt on the part of the respondents to draw such a distinction is not supported by a bare reading of their own office order. In the matter of deputation allowance, the plea of the applicant about his not being in receipt of such an allowance has not been rebutted by the respondents. As regards the admissibility of allowances and benefits while on deputation, Appendix 5, para 7.6 of Swamys Compilation of FRSR, while prescribing the guidelines on the subject states the following:-

Allowances not admissible to regular employees of corresponding status in the borrowing organization, shall not be admissible to the officer on deputation/ foreign service, even if they were admissible in the parent organization.

Certain allowances such as HRA/CCA; Joining Time and Joining Time Pay, Travelling Allowances and Transfer T.A, Children Education Allowance and LTC being regulated with mutual consent of the lending and borrowing organizations; and Certain Allowances and Facilities such as Dearness Allowance, Medical Facilities and Leave to be regulated in accordance with the relevant Rules. In the matter of Dearness Allowance, it is specified that this would be dependant upon whether the employee has opted to draw pay in the time scale of ex-cadre post or his own grade plus deputation allowance.

From a holistic reading of the above rules it would follow as a logical corollary that the allowances other than those mentioned in Rule 7.6 as are made admissible in the borrowing organizations would also be admissible for the deputationists.

5.2 On the subject of compensation, we, therefore, do not find any reason as not to make the same admissible to the applicant as well, which, of course, would be subject to fulfillment of the conditions stipulated in the relevant order. In this context, it is noted that this compensation amount was made payable till IDA pay scale became operative for Group 'A' and 'B' Officers. It is also relevant that as submitted by the respondents, the adhoc payment on this account had been recovered from the arrears of pay on operation of the IDA pay scales as per their OM dated 23.2.2004. The applicant has contended about his having opted for the ex-cadre pay scale. However, whether he was already in the IDA pay scale or not would need to be determined by the respondents and subject to that payment of such amount would have to be considered. Needless to say such an exercise would also take into account the terms and conditions of the deputation in this case.

6. As regards Newspaper Allowance, the contention of the applicant is that there were no Gazetted Officers in MTNL and all the officers are designated as Executives. Besides, the Newspaper Allowance had been given even to 'C' Grade officials. In support an order dated 7-10.2.2003 from the MTNL has also been enclosed along with MA No.2595/2009. On the subject of Newspaper Allowance, the learned counsel for the applicant would produce before us a representation dated 15.1.2000 submitted by him to the Director (Finance), MTNL which in response vide their letter dated 12.4.2010 shows that the matter is under consideration of the administrative authorities.

7. In view of the foregoing, we dispose of this TA with a direction to the Respondents to pass speaking orders separately on the subject of grant of monthly compensation amount as well as the Newspaper Allowance. Needless to say, while doing so they would bear in mind our observations on various aspects in the body of the order. While making payment of compensation amount, the respondents would consider the exact terms and conditions of deputation and particularly the pay scale which the applicant had been drawing during his tenure in the MTNL. This has to be done within a period of three months from the date of receipt of a copy of the order. No order as to costs."

3. In compliance of the aforesaid orders in the TA, the respondent-MTNL issued Office Order dated 30.04.2011 and the said proceedings read as under:-

"Sub: Implementation of orders dated 09.07.2010 of Hon'ble CAT (Principal Bench) in TA No. 181/2009 (MA No. 712/2010) Shri R. S. Tushir Vs. MTNL and others.

Shri. R. S. Tushir an erstwhile employees of Department of Posts, who while on deputation to Department of Telecommunications, was allotted to Mahanagar Telephone Nigam Limited by DoT during 1999 to 2005. The Official is now permanently absorbed employees of BSNL.

2. The said employee had filed a Civil Writ Petition No. 2100/2007 before the Hon'ble High Court of Delhi which was later transferred to Hon'ble CAT (PB) vide the above mentioned TA which sought for the following reliefs from MTNL.

(a) Payment of compensation @ Rs. 3000/- per month for the period 08.04.1999 to 07.05.2005 along with 12% interest thereon;

(b) Bonus for the year 2003-04 and 2004-05 amounting to Rs. Rs. 21,000/-; and

(c) Reimbursement of Newspaper allowance for 41 months amounting to Rs. 4100/- along with 12% interest thereon.

During the pendency of the case the relief sought for at (b) above stands settled, in respect of prayers (a) & (c) above, the Hon'ble Tribunal have delivered order with directions to MTNL to pass speaking order after keeping in mind their observations in the body of the orders, after keeping in mind their observations in the body of the order after considering the exact terms and conditions of the

deputation and pays scales held by him.

3. The matter has been carefully examined and it has been decided that the aggrieved erstwhile deputationist be paid with the compensation of Rs. 3000/- p.m. for his deputation period in MTNL, even though it was paid to the employees of DoT only who then had the prospects of permanent absorption into MTNL. It has also been decided that the cost of reimbursement Newspaper also be effected in his case on par with any other JAO in MTNL. With regard to his prayer for payment of interest on these two sums, it has been decided not to accede to the request as there was no justification in the claim and also on the grounds that there is no specific directions in the conclusions of the Hon'ble Tribunal in this regard.

4. Accordingly, Shri R. S. Tushir shall prefer his claims along with a copy of this order, to the Pay and Accounts Officer concerned in MTNL under whose jurisdiction his unit of working was falling during the above mentioned deputation period. The Pay and Accounts Officer concerned shall arrange payment to the said Shri R. S. Tushir through cheque. It shall be ensured that payments are released within 15 days of receipt of the claim in the respective Pay and Accounts Officer.

This has the approval of the Competent Authority".

4. The other applicants in OA No.3419/2012 and the applicants in other OAs also approached this Tribunal seeking identical reliefs and this Tribunal disposed of the said OAs directing the respondents to consider the claim of the applicants therein and to pass appropriate speaking orders. Accordingly, the respondents have considered the claims of the other applicants also and granted the benefits identical to that of the Office Order dated 30.04.2011 passed in respect of the 4th applicant in OA No.3419/2012. The instant OAs have been filed by the applicants seeking a direction to the respondents to pay interest on the delayed payment of monthly compensation, News Paper allowance and Bonus for the delayed period, i.e., from due date to the date of actual payment at the rate of 12% per annum.

5. Heard Shri Puneet Verma, learned counsel for the applicants in all the OAs and Shri Saiful Isla and Sheri Srfaraz Khan, learned counsel for the respondents in all the OAs and perused the pleadings on record.

6. Shri Puneet Verma, learned counsel appearing for the applicants in all the OAs submits that this Tribunal while disposing of the TA No.181/2009 gave a categorical finding that the applicants were entitled for granting of the compensation in terms of proceedings dated 05.06.2000 and accordingly, the respondents have granted and paid the same to the applicants by issuing various orders. Once the entitlement was upheld, the applicants were entitled to the same, month after month, along with the salary. The respondents having illegally detained the said money of the applicants till they actually paid the same, are liable to pay interest on the said delayed amount for the said delayed period.

7. The learned counsel further submits that the amount was payable during the period 1999 to 2005 along with the salary and non-payment of the same is a continuous cause of action, the respondents cannot deny payment of interest on the same on the ground of limitation. The learned counsel further submits that though the amounts were paid to the applicants during the years from 2011 onwards and since the applicants filed the instant OAs during 2012, there is no delay in filing the OAs.

8. On the other hand, Shri Saiful Islam, learned counsel appearing for the respondents in all the OAs would submit that though this Tribunal while disposing of TA No.181/2009 filed by the 4th applicant in OA No.3419/2012 and also other OAs filed by other applicants, only directed the respondents to consider the claim of the applicants for granting of the compensation and other amounts, and the respondents by passing various orders, granted the same to them and also paid resultant amounts on various dates to all the applicants. Since the respondents have passed the orders and paid the amounts within a reasonable period from the date of passing of the orders by this Tribunal in the earlier set of TAs/OAs filed by the applicants, they are not liable to pay any interest on any amount to the applicants.

9. The learned counsel for the respondents further submits that in respect of the 4th applicant in OA No.3419/2012, the respondents have passed the order granting the compensation amount on 30.04.2011, wherein they have specifically denied to pay any interest and whereas he filed the OA on 05.09.2012, i.e., after the expiry of the period of one year from the date of passing of the order dated 30.04.2011. The learned counsel further submits that the claim of the other applicants in seeking interest should also be denied on the same ground.

10. It is true that the payment of compensation was pertaining to the period from 1999 to 2005, but the applicant no.4 in OA No.3419/2012 filed the first W.P. (C) 2100/2007 claiming the said compensation in the year 2007 itself, which was later transferred to this Tribunal and numbered as TA No.181/2009, as referred above, and the order passed therein, clearly shows that this Tribunal held that the applicants were entitled for the said compensation amount on par with other regular MTNL employees. Accepting the said verdict and the other judgments passed following the said judgment, the respondents have granted and paid the compensation amount on various dates during 2011 and later. The applicants filed the instant OAs during the year 2012. Hence, we do not find any merit in the submission made on behalf of the respondents on the point of limitation in filing the present OAs.

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.

Let a copy of this order be placed in all the OA files.