

Central Administrative Tribunal
Principal Bench

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O.A.No.3287/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 18th day of August, 2003

Shri Diwakar Sharma
s/o Shri N.D.Sharma
Retired Principal
r/ C-105 Surajmal Vihar
I.P.Extn. Part. II
Delhi - 110 092.

... Applicant

(By Advocate: Sh. B.S.Maine)

Vs.

1. The Lt. Governor
Government of NCT Delhi.
through
The Chief Secretary to the
Government of NCT
Alipur Road
Delhi.
2. The Director of Education
Government of N.C.T.,
Old Secretariat
Delhi.
3. The Deputy Director
(Education)
District North East
'E' Block, Yamuna Vihar
Delhi.

.. Respondents

(By Advocate: Ms. Rashmi Chopra)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant, through this OA, has sought the following reliefs:

"8.1 That this Hon'ble Tribunal may be graciously pleased to allow this application and direct the Respondents to pay interest on the following amounts at the rate of 18% P.A. from the dates these amounts were due to be paid till the date of payment:

- (i) DCRG ... Rs.1,56,954/-
(ii) Leave Encashment ...Rs.69,471/-

8.2 That the Hon'ble Tribunal may be further pleased to direct the Respondents to recalculate the amount of commutation according

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to the formula which is applicable to the Applicant at the time of his age of 60 years and pay the balance to the Applicant with interest.

- 8..3 That the Hon'ble Tribunal may be further pleased to direct the Respondents to calculate the amount of interest on the House Building Advance upto 30.6.1997 and the amount which has been recovered in excess should be refunded to the Applicant.
- 8.4 That any other or further relief which the Hon'ble Tribunal may deem fit and proper on the facts and circumstances of the case may kindly be awarded in favour of the Applicant.
- 8.5 That the cot of the proceedings may kindly be granted in favour of the Applicant."

2. In so far as the relief on interest on HBA is concerned as the same has been redressed, applicant foregos this part of relief, while working as Principal, Applicant retired on superannuation on 30.6.1997. A day before applicant was placed under suspension and contemplation of the disciplinary proceedings, retiral benefits have been withheld leading to filing of OA 1990/1998.

3. By an order dated 10.11.1999, respondents were directed to complete the disciplinary proceedings ^Wnot later than six months.

4. In CCP No.222/2000, by an order dated 4.8.2000, directed the department to pay within two months the legitimate dues to the applicant. His relief of payment of interest has been left open to ^hagitate the same separately in accordance with law.

5. Applicant represented for interest on account of dropping of the contemplated proceedings. Commutation has been worked out at the age of 63 years instead of 60 years, but interest on DCRG and leave encashment has not been paid, his request for interest has been rejected by the impugned order, giving rise to the present OA.

6. Shri B.S.Mainee, learned counsel states that on retirement, suspension resorted to automatically comes to an end and lapses. In so far as the commutation is concerned, it is stated that as per Rule 12 eligibility for commutation is on finalisation of the disciplinary or judicial proceedings referred to under Rule 9 of the Pension Rules. In case of commutation without medical examination and as no proceedings have been undertaken by issuance of charge-sheet on superannuation to the applicant on dropping of the inquiry by an order dated 26.7.2000 applicant has been obliterated and is to be deemed that no disciplinary proceedings were pending as such he is entitled for pension on the date of his superannuation worked out formally at the age of 60 years.

7. In so far as the interest on DCRG and leave encashment is concerned, it is stated that as the applicant has been exonerated and no stigma is attached on account of disciplinary proceedings, the payment is relate back on the date of retirement and as such he is entitled for interest as the amount has been paid to him on after three years.

8. On the other hand, respondents' counsel, Ms. Rashmi Chopra contended that applicant was under suspension and on account of disciplinary proceedings commutation of pension and other retiral dues were not paid in view of Rule 12 of the CCS (Commutation of Pension) Rules, 1981 on finalisation of proceedings in 2000, the amount has been paid which does not attract any interest admissible.

9. I have carefully considered the rival contentions of the parties and perused the material on record. Though the applicant was placed under suspension but the same has lapsed on his superannuation as per the settled position of law. However, on my pointing out to the respondents' counsel as to any evidence on record to suggest that on contemplated proceedings whether any charge-sheet has been issued or not? The respondents have failed to produce any material to show that any disciplinary proceedings were initiated by issuance of charge-sheet to the applicant.

10. In this view of the matter in absence of any charge-sheet, the contemplated proceedings remained contemplated and what has been dropped is the action to proceed against the applicant in a disciplinary proceedings. The delay in disbursement of terminal benefits cannot be attributable to the applicant. As no reasonable explanation as to delay has been given and the fact that applicant has been obliterated of all the allegations by dropping of the proceedings which had remained contemplated in view of the decision of the Apex Court in Vijay L. Mehrotra

v. State of U.P. & Others, ATJ 2001(1) SC 215
applicant is entitled for interest on the delayed
payment of leave encashment and on the DCRG at the
rate of 9 per cent simple interest from 3 months from
the date of the retirement till the date of actual
payment.

11. In so far as the commutation is concerned
as per Rule 12 of the CCS (CCA) Pension Rules 1981, a
Government servant is eligible to commute the fraction
of the pension without medical examination and with
the eligible to commute the pension whole or part on
finalisation of disciplinary proceedings. However, as
the proceedings had never taken shape, no charge-sheet
has been issued and the contemplated proceedings had
been dropped, the respondents should calculate the
commutation deeming it from the date of
superannuation, i.e., at the age of 60 years and
formally to calculate pension on finalisation of
proceedings shall not apply.

12. In this view of the matter, OA is
allowed. Respondents are directed to recalculate the
commutation of pension applying the formula at the
time of superannuation, i.e., 60 years in that event,
applicant shall be entitled for the consequential
benefits along with an interest of 9 per cent.

13. In so far as the DCRG and leave
encashment are concerned, respondents are directed to
pay to the applicant an interest at the rate of 9 per
cent from three months after the superannuation till
the actual date of payment. The aforesaid directions

shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

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