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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. NO. 1286-2001

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

15th March 2001

Sh. P R Toora S/o Late Sh. Dewan Chand,
R/o E-14/F, DDA Flats,
Munirika,
New Delhi

.....Applicant

(By Shri M L Ohri, Advocate)

VERSUS

1. Union of India
through Secy. to the Govt of India
Min. of Finance, (Deptt. of Revenue)
North Block, New Delhi
2. The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi
3. Chief Commissioner of Income Tax,
IT Department,
Central Revenue Building,
IP Estate, New Delhi
4. Chief Accounts Officer,
Central Pension Accounting Office,
Trikoat, II, Bikaji Cama Place,
New Delhi

.....Respondents

(By Sh. V.P. Uppal, Advocate)

O R D E R

Order impugned in this OA is the respondents' order dated 22.11.99, denying grant of interest to the applicant on delayed payment of commuted value of pension and arrears of pension.

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2. During the oral submissions, S/Shri M.L. Ohri and V.P. Uppal, learned counsel represented the applicant and respondents respectively.

3. The applicant who joined Govt. service in 1954, retired on 31.7.91 on superannuation as Assistant Commissioner of Income Tax following the applicants approaching the Tribunal ~~is~~ OA disposed on 24.10.91, leave encashment, gratuity and G.P.F. ~~amount~~ were released. However, the commuted value of pension at Rs.83095/- was paid only as late as on 19.11.99, after eight years from the date of the retirement. The above delay was solely due to the respondents. The applicant had been subjected a lot of harassment in the organisation culminating in enquiry proceedings in '91. I.O.'s report dated 13.3.92 holding that the charge was not proved, was not agreed to by the Disciplinary Authority. He also declined to consider the applicant's representation, dated 14.8.92 and held back the decision. OA No.1390/91 filed by the applicant was finally disposed of by the Tribunal on 3.8.95, holding it to be premature leaving the matter for respondents to decide. The matter was referred on 21.11.95 to the UPSC, who on 17.5.96 agreed with the I.O.'s report and recommended that the proceedings be dropped. The matter was further referred to DOPT. In the meanwhile, disposing of the respondents SLPs, the Hon'ble Supreme Court on 3.4.97 directed the finalisation of the proceedings within six months from the said date. Thereafter when the applicant filed contempt petition, alleging non-implementation of the Hon'ble Supreme Court direction, respondents dropped the proceedings on 21.10.99. Thus, after nearly 13 years, his position has been vindicated and he has been

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exonerated on 21.10.99, showing that the proceedings were ab initio void and false. On that day, his commuted value of pension of Rs.83,095/- as well as arrears of increase in pension of Rs.50,125/- were ^{long overdue} to be paid. On 19.11.99 a cheque of Rs.83,095/- towards the commutation of pension. Applicant's representation for interest was not granted by the respondents, Same was the fate of his further representations of 29.11.99 and 9.12.99. Amounts of Rs.42,914/- towards revised monthly pension between 1.11.99 and 30.4.2001 and Rs.50,125/- being arrears of revised pension from 1.1.96 to 31.10.99, were released to him by the Bank on 1.5.2000. These delays called for payment of interest @ 18% p.a. Besides, interest was also payable on pension for November-December, 1999 as well as ^{for} January-March, 2000 paid only on 1.5.2000. All these amounts of interest ^{together} came to Rs.1,42,320/-. These have not been paid inspite of the ^{applicant's repeated} representations. Hence, this OA seeking the above relief on the grounds that the ^{respondents or} had acted in a mala fide and arbitrary fashion by delaying to him the payments, which rightly should have been made over to him on time. During the personal hearing it was submitted by Shri M.L. Ohri, learned counsel for the applicant that ^{as} the proceedings against the applicant had been dropped, it is as if they had not existed and therefore release of the amounts due to him, should have been with interest, as the same was quite delayed i.e. over eight years in the case of commutation value of pension and over four years in respect of revised pension.

4. In the reply filed on behalf of the respondents, strongly reiterated by their learned counsel Shri V.P. Uppal, it is pointed out that the applicant

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was granted a provisional pension of Rs.1988/- p.m., on his date of retirement on 31.7.91, which he continued to draw, till it was revised and re-validated on 18.11.99, after the conclusion of the proceedings against him, for Rs.83095/-. This amount was released on 19.11.99 Revised Pension was released on 8.12.99. His leave encashment and DCRG had been released on 15.11.91 itself. Further, the applicant had been paid provisional pension at full rates without reducing commuted value, during 1991-99 and the commuted amount was paid in 1999, as determined in 91. According to the respondents, as the commuted portion of pensions had not been deducted, from the rule pension drawn by the applicant during the intervening period, he is required to refund an amount of Rs.20,735/- which had been drawn in excess by him. The OA is also barred by limitation, having been filed as late as in May, 2001 for a matter relating to July 1991. Disciplinary proceedings had been initiated against the applicant in terms of rules and procedure correctly, on 7.3.89 with regard to his work during 85-86. While the I.O., felt that the charges were not proved, CVC disagreed with the above. The applicant was duly furnished the report and reasons for disagreement with it, After obtaining his views, the matter was referred to UPSC, who were disagreement with CVC. DOPT was thereafter consulted and after the reference was returned by them, Disciplinary Authority dropped the proceedings. Delay, if any, was due to procedural requirements of handling Disciplinary Procedure Cases. The commuted value of pension calculated on the date of the applicants retirement, on 31.7.91, which was Rs.83095/- who had been paid to him, though it was done only after the finalisation of the disciplinary proceedings and it was

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correctly done, in terms of Rule 13 of CCS(Pension)Rules. No interest was payable as the respondents had correctly granted the commutation after completion of the pending proceedings but w.e.f. his date of actual superannuation, from his date he started drawing provisional pension at full rate. He should therefore have refunded Rs.20,735/-, which was the excess ^{amount} of pension. Respondents also rely upon the decision of the Principal Bench of the Tribunal in OA No.601/98 filed by G.C. Jain, pronounced on 1.5.2000, which the learned counsel feels would totally cover this OA as well. This OA should merit dismissal, is what he prays.

5. I have carefully deliberated upon rival contentions and perused the papers brought on record. The respondents had also raised a preliminary objection of limitation in this case, which is not at all sustainable as this relates to pension and arrears thereto which is a continuing cause of action and is well covered by the decision of the Hon'ble Supreme Court in the case of M.R. Gupta Vs UOI [1995(5) SCALE 29].

6. By this OA the applicant, a retired Asstt. Commissioner of Income Tax is claiming interest on the delayed payment of commute value of pension as well as on revised pension, held back on account of disciplinary proceedings initiated against him which ultimately ended in acquittal. On the other hand the respondents hold that no interest at all is payable as they had acted correctly and in tune with the instructions and had themselves passed the Provisional Pension to the applicant at full rates without reducing value of commutation from the date of his superannuation and that their decision is fortified by the decision of Principal Bench in OA 601/98 (supra). They in fact also state that the applicant is required to refund to them an amount of Rs.20,735/- which had been drawn in excess

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by him during the intervening period. The undisputed facts in this case are that disciplinary proceedings were initiated against the applicant in 1989 relating to certain irregularities in the performance of his duties during 1985-86 which culminated in the dropping of the proceedings on 21.10.99. In between he retired on superannuation on 31.7.1991 and was permitted to draw provisional pension at the old full rates without reducing the commutation value. After the proceedings were dropped the commutation amount has been made over on 18.11.99 but without any payment of interest. It is seen that the disciplinary proceedings had taken considerably long time in completion. The I.O. in his report dated 13.3.1992 had held charge as not proved, which was disagreed to by the CVC on account of which the respondents took up the case with the UPSC who also agreed with the I.O. that proceedings should be dropped. Thereafter, DoPT was addressed and on return by the said reference by the DoPT, the proceedings were finally dropped on 20.10.99. It is also seen that the OA No. 1390/91 filed by the applicant was disposed of on 3.8.95 holding it to be premature and permitting the respondents to deal with the proceedings in accordance with the law. In between the respondents had gone against the interim reliefs granted by the Tribunal in said OA which was decided by the Hon'ble Supreme Court on 3.4.97 directing the respondents to pass final orders in the case within six months from the said date. Even then the proceedings had not been completed and only when the applicant filed contempt petitions Nos. 253 and 254 of 1999 before Hon'ble Supreme court, the respondents through Secretary Ministry of Finance apologised for the delay and issued orders exonerating the applicant. It is therefore evident that the delay which had occurred in the finalisation of the proceedings, had resulted only on

account of in-action and / or the reluctance on the part of the respondents to finalise action at the earliest. The matter had thus got dragged on for quite some time, and in fact more than seven years had elapsed after the IO's report exonerating the applicant had been received when the proceedings were finalised. That being the case the applicant's allegations that the delay in granting commutation of pension on account of the said proceedings, which ended his exoneration, was inexcusable and that he should be compensated for the same by way of payment of interest is justified and deserves endorsement. The same would be the position in respect of the delay in payment of his revised pension for the period of November 99 to March 2000. The commutation value of pension and the revised pension are amounts which rightly belong to the applicant and the respondents are therefore bound to compensate him for the denial of the same for quite some time after the said payments became due. As the proceedings had been ultimately dropped and in tune with the findings of the IO and the recommendations of UPSC, it would be taken as they had never taken place and the applicant was entitled for getting the retiral benefits from the date of his retirement. The fact that he was granted Provisional pension "at full rates" does not answer the applicant's plea as the said 'full rate' was of a much lower value and had been revised by the respondents themselves by nearly 2 1/2 times on a subsequent date. The applicant is rightly entitled for getting this benefit. The reliance placed by the respondents in the order of the Principal bench in OA 601/98 filed by G.C. Jain, pronounced on 1.5.2000 does not come to their assistance as the facts can be distinguished. In the said order it is clearly indicated that though there was delay, applicant had not filed any contempt petition

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against the respondents for the delay thereby acquiescing in the delay. The same is not the case in this OA. This applicant had been agitating for the finalisation of the proceedings before the Tribunal from the very beginning and had even filed the contempt petition before Hon'ble Supreme Court forcing the respondents to take action. In fact but for his filing the contempt petition before the Hon'ble Apex court and the notices being issued therein respondents would have taken the issue in a still more lackadaisical manner and permitted it to languish for some more time, and none knows for how long more. It is also clear that the applicant had not concealed any facts from the Tribunal as has occurred in the previous case. ^{Thus} the findings and conclusion in that OA ^{No 601/98} is not at all applicable in this OA. Decision in this OA has therefore to be different and has to be in favour of the applicant. However, the fact remains that when provisional pension was granted, which was revised only after the proceedings were over, the commutation value of Rs.662/- p.m. had not been reduced leading to the over payment of Rs. 20,735/- to the applicant. This was clearly a mistake committed by the respondents but still the applicant cannot take the advantage of the same and this amount has to be refunded with the finalisation of commutation of pension. As the applicant had been dragged to the Tribunal and to the Courts repeatedly totally on account of delay and recalcitrance on the part of the respondents, they are also liable to compensate the applicant by way of cost towards this litigation.

7. In the above view of the matter the application succeeds to a substantial extent and is accordingly disposed of. The respondents are directed to grant to the applicant interest @12% on the commutation value of pension from the

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date it became ^{due - 9} ~~due~~ i.e. 31.7.1991 to the date of its actual release i.e. 19.11.99. They are also directed to grant interest at the same rate of 12% on the arrears of provisional pension for the period 1.1.96 to 30.4.2000 as well as on the monthly revised pension for the period November 99 till March 2000. While effecting the above payment of interest the respondents can adjust the amount of Rs.20,735/- which had been paid in excess to the applicant while he was drawing the provisional pension, by not deducting the commuted portion. They are also directed to pay to him cost of this litigation worked out at Rs. 3,000/-(Rupees three thousand only). All these payments shall be effected within 3 months from the date of receipt of this order or in any event by 30th June 2002.

(Govindan S. Tampi)
Member (A)

Patwal/