

Central Administrative Tribunal
Principal Bench

(16)

O.A. 1307/99

New Delhi this the 19th day of July, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

R.S. Kundu,
S/o Shri Shiv Dhan Kundu,
30-N, Central Government Housing Complex,
Vasant Vihar,
New Delhi. ... Applicant.

(By Advocate Shri K.B.S. Rajan)

Versus

1. Union of India through
the Secretary,
Department of Defence Production,
Ministry of Defence,
South Block,
New Delhi-110011.
2. The Joint Secretary (Training),
& Chief Administrative Officer,
Ministry of Defence,
C-II, Hutmants,
Dalhousie Marg,
New Delhi.
3. Director General,
Dte. General of Quality Assurance,
Ministry of Defence,
South Block,
New Delhi. ... Respondents.

(By Advocate Shri P.H. Ramchandani)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application against the rejection of his representation dated 17.3.1998, in which he had made a request for payment of interest on the delayed payment of arrears, pay and allowances and increments across the Efficient Bar (EB). No copy of the rejection order has been placed on record by Shri K.B.S. Rajan, learned counsel and no rejoinder has been filed. He has submitted that there was no order as such, rejecting the representation dated 17.3.1998 but after having waited for sufficient time, this OA has been filed on 31.5.1999.

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2. The main prayer in the OA is that a finding may be given that the respondents are liable to pay interest on the delayed payment of increment across the EB from 1.12.1988 till the date of payment of the amount of Rs.62026/- by cheque dated 29.5.2000. The applicant has also claimed interest @ 18% per annum on the aforesaid amounts. Shri K.B.S. Rajan, learned counsel has submitted that the Courts/Tribunal have power to grant interest on the delayed payments. He has relied on the judgement of the Supreme Court in State of Punjab and Ors. Vs. Krishan Dayal Sharma (AIR 1990 SC 2177).

3. I have heard Shri K.B.S. Rajan, learned counsel for the applicant and Shri P.H. Ramchandani, learned Sr. Counsel for the respondents and perused the records carefully.

4. It is seen that the applicant had filed earlier an application (OA 739/96) in the Tribunal, which was disposed of by the order dated 1.1.1997. Against this order, the applicant had filed a Review Application (RA 65/97), which was disposed of by the same Bench vide order dated 29.5.1997. During the hearing, both the learned counsel have referred at great length to these orders, emphasising the different aspects of the matter. In the Tribunal's order dated 1.1.1997 in OA 739/96, reference has been made to the claim of the applicant for crossing the EB in the pay scale of Rs. 1640-2900 on 1.12.1988. The applicant had claimed that as there were neither adverse remarks nor any charge-sheets issued to him at the relevant time, he should have been allowed to cross the EB and had

submitted a representation in this regard dated 14.3.1991, which has been noted by the Tribunal. It has also been stated in the order that by 14.3.1991, the applicant had also come to know that a DPC had, in fact, been convened and it had recommended his crossing the EB.

5. The main contention of Shri K.B.S. Rajan, learned counsel is that a decision of the Tribunal dated 1.1.1997 is purely on a technical matter and has not dealt with the question of payment due to the applicant of crossing the EB, for the delay in such payment and other related questions. I am unable to agree with the contentions for the reasons that in this order the Tribunal had not only referred to these relevant issues, but had also noted ^{the} contentions of the respondents regarding why they have withheld the amounts due to the applicant of crossing the EB, namely, as they were contemplating initiating the disciplinary proceedings against the applicant. It is an admitted fact that two charge-sheets were subsequently issued against the applicant on which penalty orders were issued on 24.9.1992 and 9.5.1997, respectively. In the Review Application (RA 65/97), the applicant had sought review of the order dated 1.1.1997 in OA 739/96, wherein the submissions made by Shri K.B.S. Rajan, learned counsel, on the question of limitation and other issues which had been argued were dealt with by the Hon'ble Member. After hearing the learned counsel for both sides on the review application, the Tribunal was of the view that there was no good ground to review the earlier order of 1.1.1997. It is also relevant to note that in the order dated 29.5.1997, it has been stated that it is clear that the decision of the respondents not to allow the

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applicant to cross the EB when otherwise due, on whether good or bad grounds is a one time action. Shri P.H. Ramchandani, learned Sr. Counsel has also relied on a subsequent order filed in the Tribunal in MA 2081/97 in another application (OA 2447/93) dated 9.12.1997. This order had been passed in connection with the implementation of the penalty order dated 24.9.1992 which was linked with the ^{re} release of the increments of EB w.e.f. December, 1998, which fact has also been recorded in this order. Shri P.H. Ramchandani, Sr. Counsel does not dispute the fact that there is power in the court/Tribunal to award interest in proper cases. However, he submits that this is not one of ^{re} these cases.

6. Having read and re-read the relevant portions of the orders of the Tribunal in the aforesaid applications filed by the applicant, it would not be open to the applicant to re-agitate the matter regarding payment of ^{re} interest on ^{re} arrears of increment due to crossing of the EB at this stage. The aforesaid orders of the Tribunal dated 1.1.1997 read with the order dated 29.5.1997 have become final and binding and this Bench, as a co-ordinate Bench cannot again reopen the issues which have already been dealt with in those orders.

7. Taking into account the totality of the facts and circumstances of the case, and the decisions relating to the issue of payment of increment ~~at~~ crossing of the EB, which no doubt ^{re} has ~~re~~ been agitated by the applicant previously, ^{it} cannot be the subject matter of a fresh O.A. like the present one, in which he has claimed interest for the delayed payment. The applicant was well aware of the ^{re}

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stand taken by the respondents. In this regard Shri K.B.S.Rajan, learned counsel has submitted that since the respondents have paid the amount of Rs.62026/- as arrears of increment on crossing of the EB prior to the passing of the second penalty order of 9.5.1997, the claim is still open to him. He has also relied upon the observations of the Tribunal in the order dated 1.1.1997 that it would be open to the applicant, in case he is aggrieved, to agitate the matter in accordance with law. In the present case, the second disciplinary proceedings which were initiated against the applicant, culminated in the penalty order dated 9.5.1997 imposing on him the reduction of pay by two stages in the pay scale of Rs.1640-2900, for a period of one year with cumulative effect. In the circumstances, the stand taken by Shri Ramchandani, learned counsel, that the respondents had taken a decision to have the withheld amount of the increment on crossing of EB released so as to compute the amounts, neither appears to be arbitrary nor unreasonable to justify interference in the matter. If the applicant was aggrieved by the fact of with-holding of the increment due to him on crossing of the EB, which admittedly he had known as early as on 14.3.1991, as recorded by the Tribunal, he could have agitated the same at that time. Therefore, I am unable to agree with the contentions of the learned counsel for the applicant that merely because the Tribunal had given a liberty to the applicant to agitate the matter, that could be done at this stage by way of the present application. Therefore, it cannot be stated that the

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applicant can agitate his grievance for the above claim without regard to the provisions of the law of limitation which is fully applicable to the case, or taking into account the previous orders passed by the Tribunal in his several applications earlier.

8. For the reasons given above, I find no merit in this application. The same is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'