

(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No.164/98

199

T.A.No.

DATE OF DECISION 7-12-99

V.B.Saran

..... Applicant

Sh.C.B.Pillai

..... Advocate for the  
Applicant(s)

VERSUS

UOI & Ors

..... Respondent(s)

Sh.V.S.R. Krishna

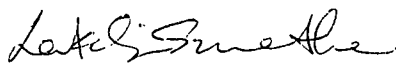
..... Advocate for the  
Respondents.

CORAM

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

The Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

  
(Smt.Lakshmi Swaminathan)  
Member(J)

28

Central Administrative Tribunal  
Principal Bench

O.A. 164/98

New Delhi this the 7 th day of December, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).  
Hon'ble Shri S.P. Biswas, Member(A).

V.B. Saran,  
S/o Shri Mahabir Saran,  
R/o E-74, Sector 21,  
Noida (UP). ... Applicant.

By Advocate Shri C.B. Pillai.

Versus

Union of India through

1. The Secretary,  
Department of Animal Husbandry  
and Dairying,  
Ministry of Agriculture,  
Krishi Bhawan,  
New Delhi.
2. The General Manager,  
Delhi Milk Scheme,  
West Patel Nagar,  
New Delhi-110 012. ... Respondents.

By Advocate Shri V.S.R. Krishna.

O R D E R

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

The applicant is aggrieved by the action of the respondents in not granting him the pensionary benefits, namely, gratuity and commuted value of pension in time after his retirement on 28.2.1993 and he has claimed 24% interest on these amounts from that date.

2. The applicant had filed an earlier application before the Tribunal (OA 2134/93) in which he had also filed MA 960/94. That O.A. was disposed of by Tribunal's order dated 29.7.1994. In that order, reference had been made to the question of release of the applicant's gratuity and commuted value of pension with interest thereon and after considering the pleadings in that case it was observed that:

B.

3  
Y  
(2)

"it appears that gratuity and commuted value of pension has been held up owing to departmental proceedings which are pending against the applicant and for that reason only provisional pension, equal to the maximum pension which would have been admissible to the applicant on the basis of qualifying service upto his date of retirement from the Government service under the Central Government has been paid to him".

It was further observed that in the circumstances of the case, there was merit in the contention of the learned counsel for the respondents that only provisional pension has been sanctioned and gratuity and commuted value of pension shall be regulated on conclusion of the departmental proceedings and on that score no further directions are warranted. Finally the application was dismissed by this order. R.A. 283/94 filed against the order in O.A. 2134/93 was also rejected. In Para 4 of this order regarding the claim of the applicant for a direction to the respondents to release gratuity and commuted value of pension after including his service in U.P from 20.11.1959 to 19.11.1973, it was observed that:

"...For securing this relief, it is open to the applicant to work out his rights separately in accordance with law".

J  
Shri C.B. Pillai, learned counsel, has submitted that by virtue of this order, the applicant has filed the present O.A. 164/98 claiming interest on the gratuity and commuted value of pension from 28.2.1993. The Tribunal's order in OA 2134/93 was challenged by the applicant by filing SLP in the Supreme Court (SLP (Civil) Nos. 22280-81/94). The Supreme Court by order dated 4.1.1995 has held as follows:

82

(3)

"In view of the fact that there is a disciplinary proceeding pending against the petitioner, grant of provisional pension at this stage cannot be assailed. However, if there be any grievance surviving to the petitioner about the amount of pension finally fixed, it would then be open to the petitioner to challenge the fixation of the amount before the appropriate forum since that question has not been examined at this stage".

Learned counsel also relies on the aforesaid order of the Supreme Court, that he had been given liberty to challenge the subsequent orders passed by the respondents. This, however, has been disputed by the learned counsel for the respondents, who has stated that it was only relating to the final amount of pension which has been fixed by the respondents which is open to challenge, in case the fixation was incorrect.

3. Shri V.S.R. Krishna, learned counsel, has submitted that the applicant cannot reagitate the same issues which have been adjudicated upon right upto to the Apex Court, where the fact that the disciplinary proceedings were pending against the petitioner had been noted resulting in the grant of provisional pension at that stage which the Supreme Court has stated cannot be assailed. Learned counsel has, therefore, submitted that the O.A. is not maintainable as the issues agitated in the present case have already reached finality in the form of the Supreme Court order dated 4.1.1995. The respondents have also submitted that even when the applicant had filed RA 284/94 and he took a number of grounds to assail the Tribunal's order, nowhere he had stated that the respondents have deliberately misled the Tribunal which is the issue agitated in the present O.A. They have also submitted that in the Special Leave Petition filed by the applicant, he had also claimed interest on the gratuity amount which has not been allowed. The respondents have submitted that they have always maintained that the

(4)

Vigilance Clearance Certificate which was necessary for release of the pensionary benefits was awaited from the Ministry. This was precisely the reason why they had only allowed provisional pension to the applicant. Shri V.S.R. Krishna, learned counsel, has submitted that the vigilance case pending against the applicant was dropped in 1998 and soon thereafter the regular pension was sanctioned and paid to the applicant. He has, therefore, denied that any interest is payable to the applicant on the amounts claimed, as not only the Supreme Court by order dated 4.1.1995 had denied the same but also that there has been no delay. Shri C.B. Pillai, learned counsel has reiterated his arguments in the O.A. that the respondents had made false statement which had misled the court to deny the petitioner his pensionary benefits on which he is, therefore, entitled to interest.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. The main argument advanced by the learned counsel for the applicant is that no departmental or judicial proceedings have been instituted against the applicant while he was in service nor were any such proceedings continued after his retirement under Rule 9 of the CCS(Pension) Rules, 1972. He has, therefore, submitted that the regular pension, gratuity and commuted value of pension could not have been withheld for the intervening period which he claims was for no tangible reasons. It is on this basis that the applicant has filed this second application claiming 24% interest on gratuity and commuted value of pension from 28.2.1993, that is the date of his retirement, till the date of the payment. Having regard to the order of the Tribunal dated 29.7.1994 in O.A.2134/93

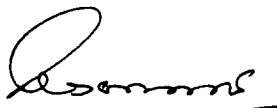
which on appeal by the applicant has been upheld by their Lordships of the Supreme Court in their order dated 4.1.1995, we find that the applicant is reagitating the same issues in the present O.A. which has already been adjudicated upon, and that too by the Apex Court of the country. We find force in the contentions of Shri V.S.R. Krishna, learned counsel for the respondents that in the facts and circumstances of the case, the O.A. is not maintainable. We find no merit in the contentions of Shri C.B. Pillai, learned counsel that this O.A. is maintainable because of the observations of the Tribunal in RA 283/94 because what has been stated there relates to the counting of applicant's service in U.P. from 20.11.1959 to 19.11.1973 and not to that part of the relief claiming full pension on regular basis on which a finding has already been recorded.

6. In any case, in the light of the Supreme Court order dated 4.1.1995, where it has been stated that "in view of the fact that there is a disciplinary proceeding pending against the petitioner grant of provisional pension at this stage cannot be assailed", the applicant cannot reagitate the same question of fact before this Tribunal regarding his contention that there was no disciplinary proceedings or any other case pending against <sup>13</sup>him. ~~applicant~~. It is on this basis that he is claiming the interest on the pensionary amounts paid to him from the date of his retirement in Feb, 1993. The question of fact has been finally settled by the Hon'ble Supreme Court <sup>which 13</sup>and their Lordships order, is binding on the parties. It would, therefore, not be appropriate for

23

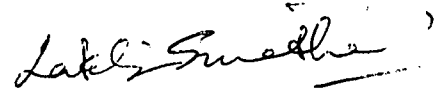
this Tribunal to reconsider the same issue which has already been settled. We are also unable to agree with the contentions of the learned counsel for the applicant that the Supreme Court itself had allowed the applicant to reagitate this issue. That order left it open to the petitioner to challenge the fixation of the amount of pension, which, however, is not the issue raised here.

7. In the result, for the reasons given above, O.A. fails and is dismissed. No order as to costs.



(S.P. Biswas).  
Member(A)

'SRD'



(Smt. Lakshmi Swaminathan)  
Member(J)