

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

53

R.A. No. 94 of 1999 In
OA 2065 of 1992

New Delhi, this the 14th day of December, 1999

HON'BLE SH. S. P. BISWAS, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

S.C. Jain,
R/o 130, Saket Meerut,
Meerut.

..Review Applicant

(By Advocate: Shri P.P. Khurana)

Vs.

Union of India through

1. Secretary Finance,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Central Secretariat,
North Block, New Delhi-110 011. ..Respondents

By Advocate Shri V.P. Uppal.

ORDER

By Hon'ble Shri Kuldip Singh, Member (J)

This is a Review Application filed by the applicant for review of the order whereby the applicant prays that since he had claimed interest over his pensionary benefits which had been withheld due to the fault of the department and somehow while allowing the OA, the Tribunal had probably overlooked about the relief of grant of interest thus it is prayed that suitable directions be issued to the respondents to make payment of pensionary benefits along with interest at the rate of 18%.

2. The facts in brief are that the applicant who

he

was working as Assistant Director Inspection (Int.) in the office of Commissioner of Income Tax Meerut, had promised one of the assessee to get his case decided to the satisfaction of the assessee and in token of the same, had accepted certain amount as bribe. A departmental enquiry was held and a charge-sheet was issued to him. However, before any Inquiry Officer could be appointed, applicant had retired on superannuation on 31.12.1986 and it was in July, 1988 that an Inquiry Officer was appointed, who submitted his report holding that the charge was proved. Then the matter was referred to the UPSC and in accordance with the rules, punishment order was issued withholding permanently the entire pensionary benefits of the applicant. The applicant then filed an O.A. claiming following reliefs:-

(a) to quash/set aside the order dated 11.2.1992 Annexure A-1 imposing a major penalty of forfeiture of entire pensionary benefits on the applicant.

(b) to issue directions or orders directing the respondent to grant him full pension, as admissible under the rules from 31.12.1986, the date of his superannuation with interest at the rate of 18% on the arrears due till the date of payment.

(c) to pass such order/orders favourable to the petitioners as deemed fit and proper in the interests of justice and circumstances of the case.

/

(d) to award costs in favour of the petitioner and against the respondents.

3. Vide judgment dated 1.3.1999 in O.A. No. 2065 of 1992, the OA was allowed and respondents were directed to pay to the applicant all the pensionary benefits as admissible to him under the rules.

4. Since the Tribunal had omitted to mention about the interest payable on pensionary benefits, so the applicant has come in this Review Application and has made the prayer for interest.

5. The Review Application is being contested by the respondents and they have submitted that the Tribunal had specifically not passed any order about payment of interest, so no interest is payable nor is there any error apparent on the face of the record which could justify review of any order passed by the Tribunal.

6. We have heard the learned counsel for the parties and have gone through the records.

7. The learned counsel for the applicant in review has submitted that the Tribunal after coming to a conclusion had observed that it is of the considered view that the impugned order of punishment awarded to the applicant is not sustainable and had allowed the OA.

h.

8. He further submitted that in paragraph 6 of the judgment, the Tribunal had duly taken note of the reliefs claimed by the applicant and once the Tribunal had allowed the OA, it implies that the Tribunal had allowed relief with regard to payment of interest also. However, there is no operative portion of the judgment regarding payment of interest.

9. It is also stated that once the Tribunal had quashed the impugned order completely, then the employee is entitled to interest on the amount which was due to the employee. Thus it is submitted that there is an error apparent on the face of the record warranting a review of the order of the Tribunal.

10. The learned counsel for the applicant has relied upon a judgment reported in 1985(1) SCC 429 - State of Kerala and Others Vs. M. Padmanabhan Nair wherein the Hon'ble Supreme Court has observed as follows:-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment".

11. The counsel for the applicant also relied upon a judgment reported in (1994) 6 SCC 589 - R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another wherein the Hon'ble Supreme Court has observed as follows:-

"The Tribunal having come to the conclusion that DCRG cannot be withheld merely because the claim for damages for unauthorised

occupation is pending, should have granted interest at the rate of 18% since right to gratuity is not dependent upon the appellant vacating the official accommodation. The DCRG due to the appellant will carry interest at the rate of 18% per annum from 1.6.1986 till the date of payment. Of course this shall be without prejudice to the right of the respondent to recover damages under Fundamental Rule 48-A."

12. So after referring to these two judgments, the learned counsel for the applicant submitted that in this case though the OA had been allowed which implies that all the reliefs had been allowed including interest, but since there is omission in the operative portion regarding grant of interest, so there is an error apparent on the face of the record and the same should be corrected and suitable directions be issued.

13. The learned counsel for the respondents submitted that there is no error on the face of the record. Rather the Tribunal had denied the relief of interest to the applicant, so no review is called for and in support of his contention, he referred to Explanation V to Section 11 of CPC which is reproduced herein under:-

" Explanation V - Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section be deemed to have been refused".

14. The learned counsel for the respondents after laying emphasis on Explanation 5 to Section 11 has submitted that since in this case the relief regarding interest claimed in this O.A. had not been allowed, so it should be deemed to have been refused.

/s/

15. We have given our thoughtful consideration to the submissions raised by the learned counsel for the respondents but we are of the considered view that the contentions raised by the learned counsel for the respondents has no merits and the Explanation V on which a stress has been put up by the counsel for the respondents to buttress his arguments. ^{Let us supply} We may mention that the said Explanation V to Section 11 C.P.C. is not applicable to the present facts of the case. First of all the main section is Section 11 of the CPC to which this Explanation V has been added. Section 11 deals with the principles of res judicata where the matter directly and substantially was in issue in a former suit between the same parties. So Explanation V explains the principles of resjudicata and does not explain the principles of judgment. The principles of judgment are enshrined under Order XX of CPC. Order XX Rule 6-A specifically says that the last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment. So the contention of the learned counsel for the applicant that once the court had observed that the Court is of the considered opinion that the OA is to be allowed and not mentioning about the entire reliefs specifically either rejecting or granting, cannot be meant to say that the prayer regarding the interest had been rejected by omission to discuss the same. Rather on the contrary, Order XX Rule 6(A) gives a mandate to the court to state in precise terms the reliefs which have been granted. In this case since after allowing the OA there is no discussion in the judgment regarding the grant of relief

/s/

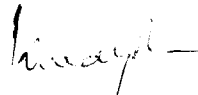
of interest. so it appears that there is an apparent error on the face of record by way of omission to discuss about the prayer of grant of interest.

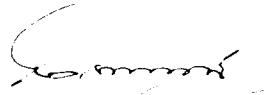
16. By now it is a well settled law that in case where there is a delay on the part of the Government to release the DCRG and the pensionary benefits then the authorities are liable to pay interest and the Hon'ble Supreme Court in the case of State of Kerala and Others (Supra) has specifically held that the pensionary benefits are the valuable rights and if there is a culpable delay in settlement and disbursement thereof, the Government is liable to pay penal interest and in that case court was inclined to grant an enhanced rate of interest but the court did not think it proper to enhance the rate of interest since the employee in that case had not filed a cross appeal before the Hon'ble Supreme Court and the court had held that since the employee had acquiesced to the lower rate of interest so they do not think it proper to enhance the rate of interest though they were otherwise inclined to grant.

17. But as far as the situation in this case is concerned, we find that in this case the applicant had claimed interest at the rate of 18% but the facts and circumstances show that the withholding of the pensionary benefits was not as gross culpable as in the ^{C.C. (S.D. M)} other case is, because in this case the applicant was issued a charge-sheet and departmental enquiry was held after his retirement. So the degree of culpableness on the part of the Government is not to that extent that we should allow as high rate of penal interest as that of 18%.

18. So considering the totality of the circumstances, we think it would be proper if we allow 12% interest on pensionary benefits from the date when the same had fallen due to the applicant.

19. In view of the above, we review the earlier order on the point of interest only and direct the respondents to pay interest at the rate of 12% to the applicant from 31.12.1986 ^{till payment is made} within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.


(KULDIP SINGH)
MEMBER (J)


(S.P. BISWAS)
MEMBER (A)

Rakesh