

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1134 of 1992

New Delhi, this the 19th day of November, 1997

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. N. Sahu, Member (Admnv)

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Dharam Veer Kapoor
Son of Shri Sohan Chand Kapoor,
Resident of 238 Brixton Road,
Brixton, London SW 9, U.K.

-APPLICANT

(By Advocate Shri D.C. Vohra)

Versus

The Union of India through the
Foreign Secretary, Government of
India, Ministry of External
Affairs, South Block,
New Delhi 110 011

-RESPONDENT

(By Advocate Shri N.S. Mehta)

J U D G M E N T

By Mr. N. Sahu, Member (Admnv):

The applicant in this Original Application prays for payment of interest @ 12% per annum since the date of his retirement till the date of payment of duty pay, accumulated pension, death-cum-retirement gratuity (in short DCRG) and leave encashment, along with costs of these proceedings.

2. The admitted facts are that the respondent allowed the applicant to retire from 24.10.1980 but they had put him on notice regarding the disciplinary proceedings under Rule 9 of the Central Civil Services (Pension) Rules, 1972. By an order dated 24.11.1981 the competent authority after considering the enquiry report conveyed the approval of the President to the penalty of "withholding the entire DCRG and permanently withholding the Pension...". It is against this order that the applicant moved the High Court. The High

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Court dismissed his petition. The Hon'ble Supreme Court by an order dated 7.8.1990 allowed the appeal and quashed the order dated 24.11.1981. As the applicant did not commit any grave misconduct, the exercise of the power of withholding pension and DCRG has been held to be clearly illegal and in excess of jurisdiction because the condition precedent relating to "grave misconduct" has not been established. Thereafter the applicant has been paid his retirement dues. He states no interest was paid on pension or gratuity. By an order dated 21.11.1990 interest has been ordered to be paid on the DCRG as per the statutory rates from 26.8.1980 to 26.11.1990(Annexure-R-2).It is surprising that the rejoinder filed much after this does not acknowledge this fact. We will treat that the grievance against non-payment of interest on gratuity stood settled. There is a note of the Under Secretary (Annexure-R-7) wherein it has been stated that as the applicant did not join duty from 8.11.1978 to 24.10.1980 his claim for duty pay was negatived. This aspect has also not been controverted in the rejoinder. With regard to leave encashment it was clearly stated that as the applicant retired voluntarily prior to 1.10.1981 leave encashment was not admissible under the rules.

3. The only surviving ground for consideration in the O.A. relates to interest on the arrears of pension. The facts indicate that the applicant was allowed to compulsorily retire from 24.10.1980. The orders of withholding pension was from 24.11.1981. The judgment of the Hon'ble Supreme Court quashing the

orders of withholding of pension and DCRG was dated 7.8.1990. Thereafter, on 23.11.1990 the Pension Payment order was issued to the applicant under which his basic pension and family pension were authorised. Thus, it would apparently appear that there were no administrative lapses. The pension was validly withheld under an order and the moment the Hon'ble Supreme Court allowed the appeal, within a reasonable period, pension and DCRG were admittedly remitted. Unlike DCRG, there is no statutory provision brought to our notice for payment of interest on pension. The learned counsel for the applicant, however, relied on the decisions of the Hon'ble Supreme Court in the cases of **State of Kerala and others Vs. M.Padmanabhan, 1985(1)SCC 429** and **R.Kapur Vs. Director of Inspection (Painting & Publication) Income Tax, JT 1994 (6)SC 354** in support of his claim for payment of interest on arrears of pension.

4.. The respondents raised the plea of res judicata. It is stated by them that no doubt the Hon'ble Supreme Court quashed the impugned order authorising withholding of pension and DCRG dated 24.11.1981 but as their Lordships' order did not allow interest on pension, it shall be deemed to have been refused. Secondly, it is stated that the interest was not claimed by the applicant as a relief before the Hon'ble Supreme Court and, therefore, the claim in this O.A. is barred by the principles of res judicata and constructive res judicata.

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5. We shall take up in the first place the claim of res judicata. The questions raised before the Hon'ble Supreme Court were as under : -

"1.Whether an inquiry against an employee can be continued even after he has been allowed to retire?

2.Whether the harsh punishment of withholding entire gratuity and pension and the entire wages due to the petitioner can be imposed in the facts and circumstances of the present case?

6. Section 11, Expl.IV CPC envisages that any matter which might or ought to have been made a ground of defence or attack in a former Suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Applying this principle in **Commissioner of Income Tax Vs. T.P.Kumaran, 1996 (10) SCC 561**, the Apex Court found that the applicant did not claim interest in a Suit for arrears of salary and hence the subsequent claim was held to be barred by res judicata. The questions referred before the Hon'ble Supreme Court in the applicant's case have no relationship with the payment of arrears of pension. The issues before the Hon'ble Supreme Court related to the propriety of the enquiry against the applicant and the correctness of harsh punishment meted out to him. If there was a claim for payment of arrears of pension and arrears of DCRG without claiming interest, it would have been covered by res judicata. The applicant contested only the punishment order and the right of the Government to conduct an enquiry against him although he has been allowed to retire. He never prayed for a direction for pension and DCRG to be quantified and paid. The second point is that the respondents themselves by their order dated 21.11.1990

besides authorising pension and sanctioning DCRG, also sanctioned interest under Rule 68 of the CCS (Pension) Rules, 1972. Thus, when a part of the interest claim was paid the respondents cannot take a plea that interest on the other part can not be raised because of res judicata. Therefore, this plea has no merit.

7. The next point is whether the interest is payable on arrears of pension. In M.Padmanabhan's case (supra) their Lordships held that pension and gratuity are valuable rights in property and any culpable delay in their payment renders the Government liable for payment of interest. As mentioned above, there is no culpable delay on the part of the Government. There is also no statutory provision analogous to Rule 68 ibid authorising payment of interest on pension. Even so, we have to examine in this case whether the applicant still deserves interest on delayed pension.

8. The learned counsel for the applicant has cited several decision in support of his claim for payment of interest on delayed payment of pension. By the order of the Hon'ble Supreme Court dated 7.8.1990 the impugned order dated 24.11.1981 withholding gratuity and pension was quashed. The applicant prayed for interest at 12% per annum on the pension from 25.10.1980 till the date of actual payment.

9. We have carefully considered the submissions and we are of the view that there is no case made out for payment of interest on pension. The applicant had relied on the decision of M.Padmanabhan (supra). In

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that case their Lordships had laid down that interest shall be paid at the market rate for any culpable delay in payment of retirement benefits. We have considered the sequence of events in this case and we find that there is absolutely no delay on the part of the respondents. The facts show that till the order of the Hon'ble Supreme Court the respondents' action was fully justified. They could not pay him the pension because of the order under Rule 9 ibid passed by the respondents for withholding the pension as a measure of penalty. On 24.11.1981 the respondents informed the applicant that entire gratuity and pension would be withheld. On 31.1.1982 the applicant filed an appeal and the same was dismissed. On 7.7.1984 the applicant filed another representation but the same was also rejected. On 24.3.1985 the High Court dismissed his writ petition. He filed a Special Leave Petition on 4.7.1985. It is this Special Leave Petition that was disposed of by the Hon'ble Supreme Court on 7.8.1990. Although their Lordships held that the applicant's right to receive pension is a statutory right and in the absence of a finding of grave misconduct the President is without authority of law to impose penalty of withholding the pension as a measure of punishment, yet till their Lordships pronounced this order the respondents thought that they acted within the framework of the law in withholding the pension. It is true that their Lordships have also held that the exercise of the power by the respondents is illegal and in excess of jurisdiction but still till the date of their Lordships' order the respondents were under the bonafide belief that they had acted in accordance with

the provisions of law. Therefore, till August, 1990 it will not be possible to say there was any delay muchless culpable delay on the part of the respondents in paying the pension. We have only to see whether there is any delay after the order of the Hon'ble Supreme Court. Admittedly, gratuity was paid with interest and arrears of pension were also paid to the applicant by an order dated 23.11.1990. Thus, within a period of three months from the Apex Court's order pension, gratuity and interest on gratuity were ordered to be paid. In this view of the matter we do not find any merit in the claim for interest because as stated above there is absolutely no administrative lapse or delay on the part of the respondents.

10. In the result, the O.A. is dismissed. The parties shall bear their own costs.


(K.M. Agarwal)
Chairman


(N. Sahu)
Member (Admnv)

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