

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 187/2013

Jodhpur, this the 16th April, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)

Chander Singh S/o Shri Daulalji, aged 61 years, R/o. New Kalka Mandir, Maderna Colony, Jodhpur. Ex.P.No. 6960843 Asstt. 224, Advance Base Ordnance Depot C/o 56 APO.

.....Applicant

Mr B.K. Vyas, counsel for applicant.

Vs.

1. Union of India through Secretary to the Government of India, Ministry of Defence, New Delhi.
2. Pr. CDA SC Southern Command, Pune 411001.
3. LAO (B) Banar (Jodhpur), 224, ABOD C/o 56 APO.
4. Major, Admn. Officer, Commandant, 224, Advance Base Ordnance Depot C/o 56 APO.

...Respondents

Mr Aditya Singhi, proxy counsel for Ms K. Parveen, counsel for the respondents.

ORDER (Oral)

The applicant Shri Chander Singh has filed this application under section 19 of the Administrative Tribunals Act, 1985 seeking following relief:

- (i) by an appropriate order or direction, the respondents be directed to settle the outstanding claims of leave



encashment within reasonable period fixed by Hon'ble Tribunal.

- (ii) by an appropriate order or direction, the respondents be directed to pay interest @ 10% per annum on the outstanding amount from 01.05.2010 till the date of actual payment.
- (iii) Any other order or direction, which this Hon'ble Tribunal, deems fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of the applicant.)

2. The short facts of the case are that the applicant earlier filed Original Application bearing No. 322/2011 before this Tribunal for settling his outstanding claims of CGEIS and leave encashment within reasonable period fixed by this Tribunal and pay interest @ 10% p.a. on the outstanding amount from 01.05.2010 till the date of actual payment, the said OA was rendered infructuous vide order dated 16.03.2012 on account of final payment of CGEIS amounting to Rs 33,471/- and leave encashment amounting to Rs 1,73,235/- on 23.07.2011 & 05.01.2011 respectively by the respondents. According to the applicant the actual payment of leave encashment, which was made after 15-18 months and 78.5 days' less payment has been paid without any interest. The applicant preferred Review Application bearing No. 07/2012 averring that as per the applicant's version, 300 days E.L. and 71 days of HPL were at his credit at the time of his retirement i.e. on 30.04.2010 whereas the respondent-department paid him while taking into account only 221 days' E.L. and 01 day's HPL as on 01.04.2010. Thus,

encashment of 78.5 days' E.L. amounting to Rs 61,395 has not been paid so far. The applicant claimed to have an amount of Rs 1,03,320/- outstanding with the respondents. The respondent-department filed reply to the RA and after hearing both parties, this Tribunal has modified its order dated 16.03.2012 with the following directions passed on 21.12.2012:

- (i) The applicant shall be paid an interest of 10 % p.a. at simple rate on the delayed payment of pension and gratuity but not on leave encashment;
- (ii) The applicant will submit representation to the respondent putting forth full details of his claim and the mode of calculation of the same within a month of the receipt of this order.
- (iii) The respondents will consider the same and grant a hearing to the applicant on the matter. They will pass a reasoned order reconciling the claim with what has been paid and if there is any amount outstanding, the same shall be paid within two months of the representation being filed within the principles enunciated in these orders.
- (iv) There shall be no order as to costs.

After receipt of order dated 21.12.2012, the applicant filed a detailed representation dated 10.01.2013 to the respondent-department and requested to pay dues along with copy of the order of this Tribunal. But, the respondent-department without going through the root of the case or giving any proper opportunity of hearing decided the representation of the applicant in cursory manner vide its order dated 15.03.2013 (Annex. A/1). Therefore, the applicant has filed this OA seeking relief as mentioned in para No. 1.

3. By way of reply the respondents denied the claim of the applicant and have averred that in compliance of the order of this Tribunal dated 21.12.2012, the case of the applicant was re-

examined and re-considered in detail with service record available with the Depot and it has been observed that the applicant on attaining the age of superannuation was retired from service on 30.04.2010. It has been submitted that his payment of pension, gratuity and commutation have been made through PPO forwarded by PCDA (Pension) Allahabad on 17.02.2010 and the PPO of the applicant was sent to the Punjab National Bank, Jodhpur on 23.02.2010 for further necessary action, which was in two months advance. The pension and gratuity have been paid to the applicant well within time frame provided under the Rules, therefore, the applicant is not entitled for interest. In the light of Para 9 (i) of the order dated 21.12.2013 passed by this Tribunal, no interest is payable on delayed payment of leave encashment and CGEIS. The leave encashment of 78.5 days E.L. is not admissible to the applicant as per final audit by the Audit Authority i.e. LAO (B) Jodhpur vide its letter dated 07.10.2011 and there is no provision under the CCS (Leave) rules for payment of interest or fixing responsibility as per DoPT Note dated 02.08.1999 as leave encashment does not fall under pensionary benefit. The service book along with leave account card of the applicant was forwarded to LAO (B) Jodhpur after his retirement for carrying out the final audit. The audit authority while carrying out the final audit, shown the earned leave of 221 days' and 01 day's HPL balance at the credit of the applicant and the respondents are not responsible with regard to calculation of leave of the applicant at any stage and the calculation made by the applicant for outstanding

amount for Rs 1,03,320 is incorrect and nothing is outstanding against the payment of leave encashment to the applicant. Therefore, the respondents have prayed to dismiss the OA.

4. By way of rejoinder the applicant reiterated the same facts as averred in the OA.

5. Major S.K. Chandel, Administrative Officer has filed additional affidavit in the matter reiterating the same facts as averred in the reply.

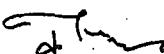
6. During course of arguments, counsel for the applicant by making a statement at Bar submitted that he is not pressing for interest on pensionary benefits, however, he contended that on remaining delayed payment of leave encashment, it should be directed that the interest may be paid by the respondent-department. He further contended that although earlier in R.A. vide order dated 21.12.2012, it has been ordered that there is no provision for payment of interest on the delayed payment of leave encashment but the way in which the amount was retained by the respondent-department for more than a year, interest on such delayed payment ought to have been awarded to the applicant.

7. Per contra, counsel for the respondents contended that it has been finally decided by way of Review Order dated 21.12.2012 that the applicant is not entitled to have the interest on the

remaining/less payment of leave encashment and the applicant cannot re-adjudicate this issue again. He further contended that the leave encashment has been calculated by the audit authority, therefore, payment of leave encashment etc. has been made as per rules.

8. Considered rival contentions. In the review application as well as order dated 21.12.2012. It has been specifically ordered by this Tribunal that for delayed payment of leave encashment, no interest is payable to the applicant as per rules, therefore, in my considered view this point cannot be reagitated by the applicant. Consequently, the applicant is not entitled to get any interest on delayed payment of leave encashment. So far as calculation part of leave encashment is concerned, it has specifically been averred by the respondents that at the time of applicant's retirement after attaining the age of superannuation, he had only 221 days' E.L. and 01 days HPL at his credit after audit whereas the applicant has not filed any documents in support of his contentions, therefore, there is no reason to interfere with the order of the respondents.

9. Accordingly, the OA is dismissed with no order as to costs.


(JUSTICE K.C.JOSHI)
Judicial Member

SS/

Reem
Ka
25.4.14

Ch
beehive
28 MM
for 8, K yes