

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 129

1992

T.A. NO:

DATE OF DECISION 23-7-92.

Shri K. Mayachari

Petitioner

Mr. G.S. Walia

Advocate for the Petitioners

Versus

Union of India Through, C.Rly. Respondent

Mr. P.R. Pai

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. T.C.Reddy, Member(J)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

T.C.Reddy
(T.C.Reddy)
Member(J)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

BOMBAY

OA 129/92

Shri K. Mayachri, Bombay .. Applicant

Vs

Union of India, Through,
Central Railway, Bombay .. Respondent

Coram: Hon'ble Mr T. Chandrasekhara Reddy, Member (Judl.)

Appearance:

Mr G.S. Walia, Advocate for the Applicant

Mr PR. Pai for the respondent

ORAL JUDGEMENT

Dated: 23.7.92

(PER Mr T. Chandrasekhara Reddy, Member (Judl.))

This application has been filed under Section 19 of the Administrative Tribunals Act, to direct the respondent to release pensionary benefits which include the pension, DCRG, leave salary to the applicant with 18% interest thereon from 13.7.91 to the date of final payment and pass such orders as may deem fit and proper in the circumstances of the case.

Counter is filed by the respondent opposing this OA.

The date of birth of the applicant is 1.7.1932. In the normal course, he should have retired on 1.7.90 on attaining the age of superannuation. But the applicant actually retired on 12.7.91. All the pensionary benefits are claimed by the applicant on the basis of that date, i.e. 1.7.90 which is the correct date of superannuation of the applicant.

Today we have heard MrGS Walia applicant's advocate and Mr Pai, learned counsel for the respondent.

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This OA relates to the payment of DCRG and leave encashment and commutation value of pension which are all retirement benefits due to the applicant. First, we will deal with commutation of pension. In the course of hearing ^{of} this OA, it was brought to our notice that the respondents intend to pay to the applicant, the commuted value of pension, only if the applicant subjects himself for medical examination. We do not see any justification on the part of the respondents to insist the applicant to subject himself to any medical examination for paying commuted value of pension. Hence, we direct the respondents to pay commuted value of the pension to the applicant within two months from the date of receipt of this order without insisting him for medical examination.

Provident Fund: As already pointed out, the actual date of superannuation of the applicant was 1.7.90. The applicant retired on 12.7.1991. We are informed that the Provident fund that is due to the applicant had actually been paid to the applicant on 10.1.1992. As the applicant had actually retired on 12.7.91, it was the responsibility of the respondents to pay the said Provident Fund due to the applicant before 12.9.91. So, there is delay on the part of the respondents in paying the Provident Fund dues to the applicant in time. In view of the delay, we hereby direct the respondents to pay 7% interest per annum w.e.f. 13.9.91 to 9.1.92 on the said Provident Fund that was due to the applicant.

D.C.R.G.: It is brought to our notice during the course of hearing this OA, that DCRG had actually been paid to the applicant on 10.6.92. Here also, DCRG should have been paid to the applicant before 12.9.91. So, we see delay on the part of the respondents in paying DCRG

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to the applicant. So for the said delayed payment of DCRG, the applicant is entitled for payment of interest and we direct the respondent to pay 7% interest per annum on the value of DCRG from 12.9.91 upto 9.6.92.

Leave Encashment: As already indicated above, the applicant had actually retired on 12.7.91. So, the leave encashment became due to the applicant on 31.7.91. But leave encashment was actually paid to the applicant on 10.6.92. So, for the delayed payment of leave encashment, the applicant is entitled at the same rate of interest i.e. at 7% interest on the value of leave encashment. Hence, we direct the respondents to pay interest on leave encashment at 7% per annum from 13.7.91 up to 9.6.92.

6. Mr Pai learned counsel appearing for the respondents vehemently contended that interest in this case cannot be awarded to the applicant, as correspondence was pending for regularisation of service of the applicant upto 12.7.91. The applicant seems to have not approached the respondent to regularise his service from 1.7.90 to 12.7.91. As a matter of fact, the applicant seems to have completed his qualifying service of 33 years by 1.7.90. So, the retirement of the applicant on 12.7.91 was immaterial for the purpose of calculating pensionary benefits to the applicant. So, interest cannot be refused to the applicant. Mr Pai contended that the applicant vacated the quarter on 14.2.92 and certain amounts towards rent, are yet due to the respondent, and in view of this fact, no interest can be awarded to the applicant. If any penal rent is due from the applicant, it is open always for respondents to take such legal action as is necessary as against the applicant for recovering the penal rent. We do not think

that the recovery of penal rent would be aground for the delayed payment of pension. Hence, we do not see any force in Mr Pai's contention.

7. Mr Pai contended that it may not be proper to award interest to maintain good relationship between employer and employee, and as the respondents are also in difficult position as ^{is} the applicant. Whatever might be relationship, whatever might be difficulties of the respondent, law casts an obligation on the respondents to pay interest to the Government employee for ^{the} delay in payment of pensionary benefits when the said delay is not satisfactorily explained. Hence, this ground does not appeal to us.

8. In the circumstances of the case, the OA is liable to be allowed as indicated earlier and accordingly it is allowed. Parties to bear their own costs.

T. Chandrasekhara Reddy
(T. CHANDRASEKHARA REDDY)
Member (Judl.)

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

R.P.No.11/93

in

O.A.No.129/92

Date of Order: 19.2.1993

BETWEEN:

Shri K.Mayachari

.. Applicant.

A N D

1. Union of India,
through the General Manager,
Central Railway, Bombay V.T.
Bombay - 400 001.

2. The Divisional Railway
Manager, Central Rly.,
Bombay V.T. - Bombay.

.. Respondents.

Counsel for the Applicant

.. Mr.G.S.Walia

Counsel for the Respondents

.. Mr.P.R.Pai

CORAM:

HON'BLE SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

T. Chandrasekhara Reddy

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Order of the Single Member Bench delivered by
Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.).

This Review Petition is filed by the Petitioner herein in O.A.129/92 under Section 22(3)(f) of the Central Administrative Tribunals Act, read with Rule 17 of the Central Administrative Procedures Rules, 1987 to review our judgement dated 23.7.1992 passed in O.A.129/92. We proceed to decide this Review Petition by circulation under Rule 17(3) of Central Administrative Tribunals (Procedures) Rules.

2. The O.A. had been filed by the applicant therein under Section 19 of the Administrative Tribunals Act to direct the respondents to release pensionary benefits which include the pension, DCRG, Leave Salary to the applicant with interest ~~at~~ 18% thereon from 13.7.1991 upto the date of payment and pass such other order ~~or~~ orders as may deem fit and proper in the circumstances of the case.

3. As per our judgement dated 23.7.1992, we have directed the respondents to pay 7% interest per annum w.e.f. 13.9.1991 to 9.1.1992 on the Provident Fund that was due to the applicant, 7% interest per annum on the value of DCRG from 12.9.1991 to 9.6.1992, interest on leave encashment at 7% per annum from 13.7.1991 to 9.6.1992.

4. Now the present Review Petition is filed by the respondents in the O.A. to review our judgement with regard to the payment of interest on DCRG and leave encashment on average pay. According to the respondents there is no provisions to pay interest on DCRG, Leave Encashment and so, the respondents have contended the Review Petition that no interest is liable to be paid to the applicant in the O.A. for the delayed payment of D.C.R.G. and Leave Encashment (leave on average pay). The Bench has not directed any

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payment of interest on commuted value of pension. So, there is no liability on the part of the respondents in the O.A. to pay any interest to the applicant on the commuted value of pension. So far, the awarding of interest on other items namely Provident Fund, D.C.R.G., and Leave Encashment was done on merits and after hearing fully, the learned counsel for the applicant and the Standing Counsel for the respondents in the O.A. We have gone through the grounds urged in the Review Petition. The very same points urged in the O.A. are again sought to be raised in the R.P. with regard to the payment of interest. The power to review the judgement is to be exercised where some mistake or error apparent on the face of the record is found. We do not find any mistake or error apparent on the face of the record. We may point out a court reviewing a judgement cannot act as a court of appeal and re-appraise the entire material before it.

5. In this context it will be pertinent to refer to a decision reported in AIR 1979 SC 1947 Arbham Tuleswar Sharma Appellant, Vs Aribham Pishah Sharma and other respondents wherein it is laid down as follows:-

"It is true there is nothing in Art 226 of the Constitution to preclude the High Court from exercising the power of review which inheres every court of plenary jurisdiction to prevent mis-carriage of justice or to correct grave and palpable errors committed by it. But there are definite limits to exercise of the power exercised on the discovery of new and important of diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found. It may also be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the sub-ordinate court."

The above decision applies on all fours to the facts of this R.P. If the respondents in the O.A. (Review Petitioners herein

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16

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are aggrieved by the order passed in O.A.129/92, the remedy of the Review Petitioners herein lies by way of an appeal to the Supreme Court. So, absolutely we see no grounds to interfere with our judgement. Hence, this Review Petition is liable to be dismissed and is accordingly dismissed, leaving the parties to bear their ~~own~~ own costs.

T. Chandrasekhara Reddy
(T.CHANDRASEKHARA REDDY)
Member(Judl.)

Dated: 12th February, 1993