

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.580/1998

Mumbai, this the 19th day of June, 2002

Hon'ble Smt. Shanta Shastry, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

R.B. Sharma
Command House, SRPF Campus
Ramtekdi, Pune .. Applicant

(Shri R. Ramamurthy, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Chief Secretary
Government of Maharashtra
Mantralaya, Mumbai .. Respondents

(By Shri V.S. Masurkar, Advocate)

ORDER (ORAL)

Shri Shanker Raju, Member(J)

Applicant has sought 18% interest on the delayed payment on account of late promotion order on 7.12.93 and also delayed payment on account of order dated 22.2.83 alongwith arrears of HRA and CCA with similar interest.

2. Applicant joined Indian Police Service on 3.7.1968 as a Released Emergency Commissioned Officer and was appointed on probation for a period of two years. He was discharged from service by an order dated 23.4.73, which was challenged in Writ Petition No.136 of 1974. The said Writ Petition was allowed by a single Judge on 11.1.79. Later on LPA No.63/79 filed by the Union of India was rejected on 24.7.81. Applicant was reinstated by an order dated 27.1.82 and joined his duties. Government of Maharashtra issued GR dated 22.2.1983 promoting the applicant to senior scale of IPS with retrospective effect from 29.7.72 but has not fixed his pay and consequential monetary benefits flowing from re-instatement were denied to him, despite making several

representations. A contempt was filed before the High Court of Delhi on 25.10.89 and in pursuance of an order dated 7.12.93 respondents promoted the applicant to the selection grade of IPS w.e.f. 1.1.1978 and further promoted as Deputy Inspector General of Police w.e.f. 5.9.1981. He took charge of the post of DIG on 10.12.93 and sought further promotion.

3. Applicant was compulsorily retired from service on 2.2.94 which was challenged in OA-131/94 along with other benefits. By an order dated 27.4.98 OA was dismissed. By an order dated 6.5.98 in an MP applicant was accorded liberty to pursue his remedy for claiming financial benefits regarding previous promotion. In reply to MP-1038/94 respondents stated that payment of interest was under consideration as such the MP was withdrawn. Another MP-726/95 was filed in which a reference was made through an order dated 2.12.96 to the statement of accounts furnished by the respondents and the applicant was directed to file his reply. Accordingly, applicant filed his calculations on 14.3.97 but the interest has not been paid. In Contempt Petition before the High Court respondents have made certain statements.

4. Learned counsel for the applicant by taking resort to the decisions in State of Kerala & Ors. v. M. Padmanabhan Nair, AIR 1985 SC 356, Vijay L. Malhotra v. State of U.P. (Civil Appeal No.689 of 2000 decided on 31.1.2000) and Uma Aggarwal v. State of U.P., AIR 1999 SC 1212, stated that in case the retiral dues are delayed Government is liable to pay interest at the rate of 18%. It is also stated that the applicant has been accorded liberty to approach this court in OA-131/94 and stated that the applicant was entitled for promotion at due time but denied the same and having been directed to be reinstated and accorded all the benefits the respondents by their own letter dated 7.12.93 entitled the

applicant for all financial benefits. The delay in according the same and not calculating interest on it have acted in contempt of the directions.

5. It is stated that computation of interest on arrears of pay and allowances for the period January, 1978 to January, 1982 is not correct. The said amount carries interest from 1978 and not from 1982.

6. On the other hand, respondents denied the contentions and by referring from their record the due and drawn statement showing the rate of interest contended that right from January, 1978 till May, 1994 interest due and entitled as per the rules amounting to Rs.1,56,946/- has already been calculated and the same has been acknowledged by the applicant. It is further stated that before the High Court applicant has raised the issue of interest and the same has not been accorded to him. As such his claim for interest in a separate proceeding cannot be countenanced and in view of the decision of Apex Court in Commissioner of Income Tax, Bombay v. T.P. Kumaran, 1996 (2) ATJ 665 the liberty accorded to the applicant by the Tribunal in order dated 6.5.98 cannot be read in isolation and this liberty is in accordance with law. As the law precludes claim of interest in a separate proceeding as barred by the constructive res judicata the same cannot be accorded to him.

7. Learned counsel for the respondents Sh. Masurkar stated that applicant cannot seek the relief in piece meal. The interest has been correctly worked out despite the same it has not been allowed by the High Court and a payment of Rs.1,56,946/- has already been disbursed to him. As such his interest no more survives. As earlier promotion was granted upto the rank of DIG as a consequential benefit the claim for promotion as IGP is not tenable. It is further stated that the payment is made at the

rate of interest fixed by the State Government for such delayed payments for which he has already been informed through letter dated 21.11.95. The interest has been claimed from 1.1.78 till January, 1987 and June, 1984 to July, 1995 which has been rejected by the Government.

8. We have carefully considered the rival contentions of the parties and perused the material on record. Applicant has approached the High Court against his discharge where he has prayed for his reinstatement and consequential benefits. The High Court has allowed the claim but in contempt has not allowed interest to the applicant. His plea that in OA-131/94 he has been accorded liberty cannot give him a fresh cause of action, as this liberty and the right of the applicant to approach this court is in accordance with law as doctrine of res judicata as laid down in Kumaran's case (supra), clearly bars such a relief by constructive res judicata, Applicant has no legal or vested right to assail the claim of interest in the present proceeding. As such the OA is liable to be rejected at the outset on this ground alone.

9. In so far as the rulings of the Apex Court cited by the applicants, the same would have no application to the present case as those pertain to accord of interest as a result of delayed payment on retirement. As the facts are different these cases would be of no help to the applicant.

10. However, finding no merit in the present OA, as the applicant has raised the issue that the appropriate interest has not been paid, we dismiss this OA with an observation that the respondents shall furnish to the applicants all due and drawn statements as to how they have worked out the interest of the applicant and specified the rate of interest. No costs.

S. Raju
(Shanker Raju)
Member (J)

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Shanta Shastray
(Smt. Shanta Shastray)
Member (A)