

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.No.060/00870/2014

Orders pronounced on: 13.3.2015
(Orders reserved on: 16.02.2015)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MR. UDAY KUMAR VARMA, MEMBER(A)

H.R. Bangar S/o Late Sh. Ram Rakha, Addl. Commissioner of Income Tax (Retired), R/o 41, Rameshwar Colony, Nakodar Road, Jalandhar City, Punjab.

Applicant

By : Mr. Madan Mohan, Advocate.

Versus

1. Union of India, through Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001
2. Central Board of Direct Taxes, through its Chairman, North Block, New Delhi-110001.
3. Pr. Chief Commissioner of Income Tax, North West Region, Central Revenue Building, Sector 17-E, Chandigarh.
4. Director General of Income Tax (Inv.), Central Revenue Building, Sector 17-E, Chandigarh.
5. Director of Income Tax (Inv.) SCO 1-6, 1st Floor, Kitchlu Nagar, Opposite BVM School, Ludhiana.
6. Drawing and Disbursing Officer, Office of Director of Income Tax (Inv.) SCO 1-6, IIIrd Floor, Kitchlu Nagar, Opposite BVM School, Ludhiana.
7. Zonal Accounts Officer, CBDT, Ludhiana, Income Tax Office, Dandiswami Chowk, Ludhiana.

Respondents

By: Mr. K.K. Thakur, Advocate.

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking following relief :-

"For issuance of direction to the Respondents to pay interest @18% per annum on the retiral dues with effect from the date the amount became due for delayed payment of pre-retirement service / post retirement periods till the actual date of payment."

2. The facts may be noticed in the first instance. The applicant initially joined service as Inspector on 9.2.1971 and came to be promoted as Deputy Commissioner of Income Tax in 1998. Disciplinary proceedings were initiated against him by issuance of charge sheet dated 8.5.2001. His name was considered for promotion to the post of Joint Commissioner of Income Tax in meeting of DPC held on 25.9.2003. However, his name was kept in sealed cover. The applicant initiated litigation for early finalization of the proceedings which was allowed on 18.2.2005 to complete the proceedings in 3 months. However, extension of time was sought and then

1

CWP No. 3541/2006 was filed which was dismissed on 6.3.2006. Respondents went to Hon'ble Apex Court in SLP (C) No.11722/2007 (CA No.7028/2008) which was disposed of with direction to complete proceedings within six months. The applicant retired from service on 31.10.2008. His junior Sh. Sanjiv had been promoted as JCIT in 2003 and then as ACIT on 1.1.2006. However, the respondents dropped the disciplinary proceedings vide order dated 28.2.2012. Again litigation was initiated for promotion and the applicant was promoted as JCIT notionally w.e.f. 20.10.2003 on vide order dated 28.2.2013 and to selection grade also w.e.f. 1.1.2006. His pay was also fixed on 8.5.2013 and he was released balance encashment amounting to Rs.1,80,610/- vide order dated 8.5.2013. The claim of the applicant in short is that he has been released the retiral dues with delay and as such he is entitled to interest thereon@ 18% per annum from the date the amount became due to the actual date of payment as there was no fault on his part. His prayer to grant him interest on delayed payment of retiral dues has failed to evoke any response from the respondents forcing him to approach this Tribunal.

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3. The respondents have taken objection that there is no fault on their part. The applicant was released only provisional pension on his retirement as vigilance clearance was not given in his favour. The facts are not in dispute at the hands of the respondents. They submit that there was no intentional or wilful delay on their part and sequence of events have been given to explain that whatever delay was caused, was on account of disciplinary proceedings pending against the applicant which came to be dropped on 28.2.2012.

4. We have heard and considered the submissions made by learned counsel for the parties at length and perused the material on the file with their able assistance.

5. A conjunctive perusal of the pleadings of the parties would disclose that the applicant was charge-sheeted on 8.5.2001 and when a direction was issued by this Tribunal to conclude the proceedings within three months, the respondents chose to approach the Hon'ble High Court but they were unsuccessful. Yet not satisfied, they approached the Hon'ble Apex Court in 2007 and vide order dated 17.11.2008 the appeal was disposed of by giving six months time to respondents to conclude the proceedings. The might

12

of the department was used by authorities to ensure that disciplinary proceedings are not completed within fixed time frame and for this they went to Hon'ble High Court and then Hon'ble Apex Court and what they have ultimately done is to drop the proceedings on 28.2.2012. This has resulted in delayed promotion of the applicant and delayed release of retiral dues to him. One thing which is not in dispute is that there has not been any fault on the part of the applicant in delayed release of retiral dues. His intention and prayer was to bring the disciplinary proceedings to a logical conclusion within a fixed time frame. That was a reasonable prayer. It is the respondents who used all their might to delay the proceedings and the applicant has been denied use of working on promotional post at relevant point of time and after retirement he has also been denied retiral dues in time due to pendency of disciplinary proceedings which were ultimately dropped. Thus, the respondents cannot escape from responsibility of paying interest to the applicant for denial of use of amount belonging to him.

6. It is settled proposition of law that interest is compensatory in character and can be recovered for withholding the payment of any amount when it is due and

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payable. It is different from penalty and tantamount to compensation as the person entitled for recovery has been deprived of the right to use the said amount, as held by the Constitution Bench of the Hon'ble Supreme Court in the case of **Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roay**, AIR 1992 SC 732, which has been subsequently followed in the case of **Union of India v. Justice S.S. Sandhawalia**, (1994) 2 SCC 240, where their Lordships of the Hon'ble Supreme Court have held as under:

“Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court. Therefore, we do not see any reason to interfere with the High Court's order directing payment of interest at 12% per annum on the balance of the death-cum-retirement gratuity which was delayed by almost a year.”

7. In the case of **S.K. Dua v. State of Haryana**, (2008) 3 SCC 44, their Lordships have held as under:

“If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of



interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of 'bounty' is, in our opinion, well-founded and needs no authority in support thereof."

8. Following the above, this Court in the case of Rajinder Singh v. Union of India & Others., Original Application No.1033-CH-2012, decided on 05.03.2013 has held that if amount belonging to an employee/pensioner is withheld by the department without any lawful reason by the department, then the authorities are liable to pay interest @9% per annum to make good the loss suffered by him due to non use of money belonging to him. In this case there does not appear to be any plausible reason for delay caused by the respondents in release of payment to the applicant inasmuch as they used their might to challenge the order issued by this Tribunal for conducting of the enquiry within a fixed time frame firstly before the Hon'ble High Court and then in the Hon'ble Apex Court and after such a long deliberations they have decided to drop the disciplinary proceedings against the applicant which gives a reasonable conclusion that since the very beginning there was nothing with

them to proceed against the applicant. Considering the peculiar facts of this case where the department itself has decided to drop the proceedings having opposed conduct of proceedings within a fixed time frame, the applicant is held entitled to interest on delayed payment.

9. Accordingly, the Original Application is allowed. The applicant is held entitled to interest @9% per annum from the date of expiry of two months from the date of retirement, till the actual date of payment.

10. The needful be done within a period of three months from the date of receipt of a copy of this order. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(UDAY KUMAR VARMA)
MEMBER (A)**

Place: Chandigarh
Dated: 13.3.2015

HC*