

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 175/2015

Reserved on: 16.09.2016
Pronounced on: 07.10.2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Mrs. Veena Sabharwal
W/o Late Shri M.K. Sabharwal
(Retired Income Tax Commissioner
in SAG Scale),
R/o 41, Pushpanjali,
Vikas Marg, Extension,
Delhi – 110 092.

...Applicant

(By Advocate: Ms. Raman Oberoi)

Versus

Shri R.C. Sharma,
Zonal Account Office,
O/o the Principal Chief Controller of Accounts,
C.B.D.T., Vikas Bhawan,
'N' Block, I.P. Estate,
New Delhi – 110 002.

...Respondent

(By Advocate: Mr. Hilal Haider)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

In the instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved with the impugned order dated 19.12.2014 (Annexure A-1) whereby not awarding interest to her from 01.09.2008 till the date of actual payment of full interest in terms of the decision of the Constitutional Bench of Hon'ble

Supreme Court in **Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy** [AIR 1992 (SC) 732].

2. The applicant, by means of this OA, has prayed for the following relief(s):-

- “(a) *Allow interest at compounding rates applicable to GPF deposits for the period from 01.09.2008 till April, 2013 on Rs.4,70,372.*
- (b) *Allow interest at compounding rates applicable to GPF deposits for the period from 1st May, 2013 till the actual date of payment after the present OA is decided on the sum of rupees calculated as per paragraph 1 above.*
- (c) *Award the cost of the proceedings to the applicant as she has to continue legal proceedings for over a period of about four years.*
- (d) *Court record of OA No.3822/11 and CP No.98/11 may kindly be annexed with the OA by the Registry.*
- (e) *Pass/make such other appropriate orders and/or directions as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

3. The facts of the case, in very brief, are that the husband of the applicant expired while in service as Commissioner of Income Tax having rendered 27 years of service. The applicant was sanctioned family pension vide PPO dated 01.05.1999 which should have been revised as per the recommendations of the 5th & 6th Central Pay Commission w.e.f. 01.01.1996 and 01.01.2006 in the Senior Administrative Grade (SAG) drawn by the deceased husband of the applicant at the time of his death.

4. The applicant notably filed several representations seeking the reliefs of pension with interest thereon. As a consequence of which the family pension was fixed as per the recommendations of the 5th & 6th Central Pay Commission and paid to the applicant along with the arrears on 31.08.2008. However, no interest was paid for which the applicant approached this Tribunal vide OA No.3833/2011 which was disposed of vide order dated 27.09.2012 with the following directions:-

“12. For parity of reasons, I direct in this case as well to the respondent no.2 to pay interest on the delayed payment of family pension arrears from the date they become due until the date of actual payment at the corresponding rates of interest applicable to GPF deposits for these years on annual compounding basis. This shall be complied with by the respondent no.2 within a period of three months from the date of receipt of a certified copy of this order, failing which the amount of interest becoming so due will fetch further interest at the rates referred to above.

13. The Application is allowed in above terms. No order as to costs.”

5. The applicant submits that the interest on Rs.4,70,372/- was paid on 19.02.2013 in respect of the amount due from 01.01.1996 to 31.08.2008. The applicant filed CP No.98/2013 for non-compliance of the Tribunal's order dated 27.09.2012 passed in OA No.3833/2011, which was considered and disposed of by the Tribunal vide order dated 07.10.2013, which reads as under:-

“2. According to the learned counsel for the petitioner, the petitioner was due for pensionary benefits from 1.1.1996 but the respondents have paid the same only

on 31.8.2008. Therefore, she seeks interest on the delayed payment.

3. The learned counsel for the respondents has submitted that for the aforesaid period the interest has been paid at the rate applicable to GPF deposits.

4. In view of the above position, nothing survives for consideration in the present Contempt Petition and the same is accordingly closed. Notices issued to the respondents are discharged.

5. If the petitioner is still having any grievance with the aforesaid order, the petitioner shall take appropriate action in the appropriate proceedings in accordance with law, if so advised."

6. The applicant now claims interest on the amount from 01.09.2008 till the date of actual payment i.e. 19.02.2013 and also prays for interest on this interest amount. The principle ground adopted by the applicant is that she stood deprived of payment of Rs.4,70,372/- to which she was legitimately entitled to and has right to be compensated by the respondents for use of money from 01.09.2008 till the date of actual payment on 19.02.2013. She has principally relied upon two decisions of the Hon'ble Supreme Court i.e. *Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy* (supra) and *Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I* [2006 (2) SCC 508].

7. The respondents have filed their counter affidavit rebutting the averments of the applicant save those which lie in the factual matrix. The basic ground adopted by the respondents is that they have complied with the orders of

the Tribunal dated 27.09.2012 in letter and spirit and have made the payment of arrears along with interest at compound rates. The matter was also raised in CP No.98/2013 decided by this Tribunal vide order dated 07.10.2013 wherein the Tribunal held that the respondents fully complied with its orders and discharged them from all liabilities. Therefore, nothing is payable from the side of the respondents to the applicant by way of interest.

8. We have carefully gone through the pleadings of the rival parties as also the documents adduced and decisions cited on either side. We have also patiently heard the oral arguments advanced by the learned counsel for both the parties. The only issue to our mind, which needs to be adjudicated in the instant OA, is whether the interest on interest is payable till the date of actual payment i.e. 19.02.2013. In this regard, we are compelled to ask the basic question as to why the interest is paid. The answer is simple that it is paid to compensate for the forgone dues of money. When interest is paid in simple terms, the principal amount remains the same and interest is calculated on the principal amount every year. However, when the interest is paid on compound rates, the interest is added every year to the principal amount which becomes the principal for the next year and so on and so forth.

Thus, the interest automatically accruing over the interest accumulated till so far. We find in the instant case that the payments of dues on account of fixation of family pension as per the recommendations of the 5th and 6th Central Pay Commission from 01.01.1996 have been paid at the compound rates till 31.08.2008. Therefore, not only arrears have been paid but interest on interest has also been paid on accrual basis every year. Hence, the question of payment of interest on interest on this count does not arise as the payment has already been made to the applicant. With regard to the cases cited, it is well established by the pronouncements of the Hon'ble Supreme Court that every order of the High Court or the Supreme Court does not constitute binding legal precedent and thereby does not attract the doctrine of *stare decisis*. However, in order to act as a valid legal precedent, the case to which parallel is sought to be withdrawn must fulfil a certain conditions. These conditions have been prescribed in *Divisional Controller KSRTC vs. Mahadev Shetty*, (2003)7 SCC 197, *Bank of India & Anr. Vs. K. Mohandas & Ors.* (2009)5 SCC 313, *Bharat Petroleum Corporation & Anr. Vs. N.R. Vermani & Anr.*, (2004)8 SCC 579, *Sri Jagannath Temple Managing Committee Vs. Siddha Math & Ors.* MANU/SC/1470/2015 and *Vishal N. Kalsaria Vs. Bank of India & Ors.* MANU/SC/001/2016. These judgments, in sum and

substance, provide that no obiter dicta or any superior court howsoever exalted the authors of the judgments might have been, would not act as *stare decisis* unless two happen to be matching point to point and there is identity in *ratio decidendi*.

9. Applying this yardstick, we find that in the instant case, none of the decisions relied upon by the applicant i.e. **Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy** (supra) and **Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I** (supra) is applicable to the facts of the present case. The basic requirement can be summed up that the facts of the case to be cited as binding legal precedent must match with the case in hand on point to point basis.

10. The decision cited by the applicant i.e. **Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy** (supra) pertains to arbitration proceedings and the same is, therefore, not applicable to the facts of the present case. Likewise, the decision in **Sandvik Asia Ltd. Vs. Commissioner of Income Tax-I** (supra) relates to tax refund. We see both the above cases under Arbitration Act and Income Tax Act relate to commercial transactions which cannot be used as a precedent in the case of payment of government dues to its employees. But, one

could rely upon the decision of the Hon'ble Supreme Court rendered in **Chandi Prasad Uniyal & Others versus State of Utrakhand & Others** [2012 (8) SCC 417] affirming the ratio that the amount in the exchequer is the public money, which belongs neither to the officers who have effected over-payment nor that of the recipients. The relevant portion of the judgment is extracted hereunder:-

“14. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

11. We are of the view that the interest is awarded not only to compensate the claimant for the forgone dues of money but also to remind the government officials that they have not discharged their duties on time. If the Government is being vested by a penalty, the government servant is expected to be moderate in his claims and not behave like a

Shylock which we find the applicant doing in the instant case.

12. In view of our above discussion, we find the instant OA bereft of any merits and the same is accordingly dismissed. There shall be no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(Justice M.S. Sullar)
Member (J)

/Ahuja/