

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 357/2013
M.A. No. 3511/2012

New Delhi, this the 8th day of November, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)

Gauri Shankar Daksh,
S/o Shri Shiv Prakash,
Retd. Income Tax Officer,
R/o 1067/Gata Ashram Tila,
Mathura. .. Applicant

(By Advocate : Mrs. Meenu Mainee)

Versus

Union of India through:

1. Secretary,
Ministry of Finance,
North Block, New Delhi-1.

2. Chief Commissioner of Income Tax,
Bada Chauraha,
Ayayakar Bhawan, Kanpur.

3. Chief Commissioner of Income Tax,
Agra. .. Respondents

(By Advocate : Shri V.P. Uppal)

ORDER (ORAL)

The applicant had sought voluntary retirement through an application dated 26.02.2009, which means that he would have voluntarily retired on 01.06.2009, given the requirement of three months' notice period.

2. Since he was not granted any pensionary benefits, he approached this Tribunal in O.A. No.773/2010 seeking release of pension and other retirement dues. Vide order dated 09.01.2012, the Tribunal held that he would be treated as voluntarily retired in pursuance of his application for voluntary retirement dated 26.02.2009. The primary reason why the respondents have not released the retirement dues is that there was a charge sheet issued to the applicant vide memo dated 26.05.2010. The Tribunal held that memo dated 26.05.2010 was of no consequence as it was issued after one year of the order of voluntary retirement. The respondents were directed to release the retirement benefits to the applicant expeditiously.

3. Thereafter, the respondents wrote to the applicant on 06.03.2012 for furnishing of pension papers which was supplied by the applicant in two instalments, i.e. on 14.03.2012 and 26.03.2012. The retirement benefits were thereafter released as follows:

26.04.2012	GPF
08.05.2012	Gratuity
02.08.2012	Pension
30.05.2012	CGEGIS
07.09.2012	Leave Encashment
08.05.2012	Commutation of pension

4. The present O.A. has been filed for payment of interest @ 12% p.a. for the delayed payment of retirement benefits, i.e. from 2009 to 2012. The learned counsel for the applicant has cited the following judgments in support of her contention:

(i) Judgment of the Hon'ble High Court of Delhi in **DTC vs. Roshan Lal & Ors.** in LPA No.34/2008 dated 22.01.2008, wherein it has been held that interest is payable on delayed payment of pension. The facts of the case are as follows:

“2. Counsel appearing for the appellant has raised only one issue that the learned Single Judge could not have passed an order for payment of compound interest @ 12% per annum on the delayed payment of pension. We have considered the said submission in the light of the records placed before us. The contention raised is that the respondents have no right to claim interest on the arrears of pension, due to the delay in disbursement, as they had themselves submitted an affidavit stating that they would not claim any interest on the arrears of pension. It is also submitted before us that the aforesaid delay in making the payment was procedural as the question with regard to respondents' entitlement for pension was a matter of inquiry by the appellant.

3. On the face of it, the aforesaid contention cannot be accepted in view of the fact that there was delay in release of arrears of pension to the respondents. The respondents also cannot be blamed for non-inclusion of their names in the list of the employees who opted for DTC Pension Scheme. What was required to be done has been done by them and it was for the appellant to process their case well in time for making payment of pension. The appellant also has a specific rule which provides for payment of interest @ 12% per annum on non-payment or delayed payment of pension. In view of the mandate of the said provision, it was obligatory for the appellant to pay pension well in time. It was also obligatory for the appellant to pay interest at the rate envisaged therein which is 12% compound interest for delayed payment. The contention that the respondents would be dis-entitled to receive any such interest in view of the affidavits submitted by them cannot be relied upon as the same were obtained by the appellant from the respondents on the ground that unless such an affidavit is filed, no pension would be released in their favour. Therefore, having no other alternative, the respondents had executed the aforesaid affidavits. That

however would not in any manner dis-entitle the respondents from getting their statutory dues i.e. payment of the entire arrears due towards pension along with interest.”

(ii) Judgment of the Hon’ble Supreme Court in **Union of India & ors.** vs. **Madan Mohan Prasad** in Civil Appeal No.4832-4833 of 1999 dated 28.02.2002. Here also interest was directed to be paid.

The facts of the case are as follows:

“An application was filed by respondent before the Central Administrative Tribunal, Allahabad Bench (hereinafter referred to as the ‘tribunal’ making several claims but subsequently, he confined his claim only to the relief of payment of death-cum-retirement gratuity (for short the DCRG) and the leave encashment. The tribunal found that the respondent retired from service as head time clerk in the workshop of North East Railway, Gorakhpur on 31.7.1982. Payment of DCRG as well as leave encashment having not been done despite several representations, he filed an application before the tribunal for payment of the same along with the interest. The stand of the appellants before the tribunal has been that the payment of the said amounts had not been arranged on account of the fact that the respondent did not vacate the railway quarter which he continued to occupy even after retirement. It appears that he had filed an application before the authorities concerned for regularisation of the allotment of the house in favour of his son who was living with him before his retirement. The tribunal relying upon a decision of this Court in **R. Kapoor v. Director of Inspection (Printing and Publication) Income Tax & Anr.** (JT 1994 (6) SC 354) took the view that DCRG being akin to pension, the same cannot be held back after retirement just for the recovery of the dues of rent and allowed the claim made by him and also directed the payment of interest at 10 per cent annum. It was also brought to the notice of the tribunal that separate proceedings had been initiated under the Public Premises (Unauthorised Occupants) Act, 1971 not only for recovery of the quarter from respondent but also for recovery of panel damages. The tribunal stated, however, that aspect was left open to be agitated before the appropriate forum.”

(iii) Judgment of the Hon’ble Delhi High Court in **M.S. Kaushik vs. N.D.M.C. & ors.** in W.P.(C) No.3353 of 2007 dated 07.05.2007. This

was a case of voluntary retirement and the Hon'ble High Court directed payment of interest. The facts of the case are as follows:

"The wife of the petitioner, namely, Bimla Kaushik was a Trained Graduate Teacher (Sanskrit) in N.P. Boys Secondary School No.2, Mandir Marg, New Delhi, which is being run by respondent No.1. On July 23, 2002, she had taken voluntary retirement. However, she was not paid her retrial benefits despite her repeated requests, representations and personal visits to the office of respondent No.1. Unfortunately, on March 6, 2003 she died and, thereafter, it fell upon her husband to pursue the case with respondent No.1. He did receive the benefits but belatedly.

2. Learned counsel for the petitioner has placed on record a chart containing the details as to when the retrial benefits under each head were ultimately paid by respondent No.1. These details are available on page No.65 of the paper book. Counsel submits that Bimla Kaushik and, upon her death, her husband had to undergo lot of harassment on account of non-payment of her retrial benefits. They have three daughters who were to be married and the retrial benefits were badly needed to perform their marriages.

3. Learned counsel for the respondent does not dispute that there has been delay in paying the retrial benefits to the petitioner but submits that the delay has occurred because it took time to process the papers pertaining to the benefits claimed by the employee and then by her husband."

5. Learned counsel for the respondents stated that they could not release the retirement benefits as there was a departmental proceeding pending against the applicant. However, after the Tribunal held on 09.01.2012 that the charge sheet dated 26.05.2010 is of no consequence and that retirement benefits should be released treating the applicant to have been retired on 01.06.2009, the relevant papers were sought for from the applicant and after receipt of papers from the applicant on 14.03.2012 and 26.03.2012, all pensionary benefits have been released, within a reasonable time.

6. It is argued that thus the delay has not been deliberate and due to negligence, but because of the specific reason that there was a departmental proceeding pending against the applicant and only after the order of the Tribunal dated 09.01.2012, could they proceed to release the retirement benefits.

7. Heard the learned counsel for both the sides and also perused the judgments cited by the applicant side.

8. It would be seen from the facts of the case quoted above that the facts of the present O.A. and the facts in judgments cited by the applicant are completely different. In the present case, there was a departmental proceeding pending against the applicant. As voluntary retirement application was turned down and the departmental proceeding was pending, the Department was not in a position to release the retirement benefits till the Tribunal vide order dated 09.01.2012 directed the respondents to treat the applicant as having been retired on 01.06.2009 and ignore the charge sheet dated 26.05.2010. There is no mala fide or intentional delay by the respondents.

9. In view of this, the O.A. is dismissed. No order as to costs.

(P.K. Basu)
Member(A)

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