

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2904/2013

Order Reserved on: 13.10.2015
Order pronounced on 16.10.2015

Hon'ble Shri V. Ajay Kumar, Member (J)

Dr. Ahirwal (Retd.) Addl. DHA (TB), MCD

Aged 63 years

S/o Late Sh. M.Ahirwal

R/o 407, 2nd Floor

Dr. Mukherjee Nagar

Delhi – 110 009.

... Applicant

(By Advocate: Shri K. Venkatraman)

Versus

North Delhi Municipal Corporation

Through its Commissioner

Dr. S.P.Mukherjee Civil Centre

J.L.Nehru Marg

New Delhi – 110 002.

... Respondent

(By Advocate: Shri R. N. Singh)

ORDER

By V. Ajay Kumar, Member (J):

The present OA is filed seeking the following relief(s):

"A) To issue appropriate directions to the respondent declaring the applicant as entitled to the interest at least @8% per annum on the arrears of delayed promotion i.e. arrears of difference of leave encashment, commutation

difference, Pension arrears and promotion arrears on the principal amount as detailed in para 4-24 of O.A. and consequently direct the respondent to pay the interest @8% on the basis of the calculation made by the applicant as detailed in the chart annexed as Annexure A-1.

B) Pass such other or further order(s) that this Hon'ble Court deems fit and proper in the facts and circumstances of the instant case and in the interest of justice and equity".

2. The applicant earlier filed T.A. No. 992/2009, which was disposed of vide order dated 11.11.2009 of this Tribunal and the operative portion of the same reads as under:

"In the light of the above discussion, the orders of the disciplinary authority as well as the appellate authority cannot be sustained and are accordingly quashed and set aside. The Applicant would be eligible for payment of whatever amount was withheld as a result of the penalty with a simple interest of eight per cent per annum. The aforesaid order should be complied with within eight weeks of the receipt of a certified copy of this order. No costs".

3. The said order has been upheld by the Honble High Court. When the respondents failed to comply with the orders passed in the T.A. No.992/2009, the applicant preferred a Contempt Petition No.338/2010 which was closed vide order dated 05.07.2010 by recording as follows:

"Mr. Upadhyay, counsel defending the respondents, admits that there has been some delay in finalizing the matter. He, however, states that the matter is under process and the desired relief shall be given to the applicant within one month.

Statement of the counsel defending the respondents stands recorded and in view thereof, present contempt petition is closed. If the desired relief is not given to the applicant within one month, he may revive this contempt petition".

4. Thereafter, the applicant preferred MA 2307/2010 for seeking revival of the CP No. 338/2010 on the plea that the respondents have not complied with the orders of this Tribunal, and this Tribunal vide order dated 28.10.2010 disposed of the said MA by observing as follows:

"In our opinion this is sufficient compliance of the directions of this Tribunal, non-compliance of which has been alleged in the Contempt Petition, which is sought to be revived by the MA before us. In view of the order passed by the Commissioner of the Municipal Corporation of Delhi, there appears to be no need to revive the Contempt Petition. We, however, direct that the payment due to the Applicant in the TA number 992/2009 should be positively made over by 30.11.2010. The MA is disposed of."

5. Earlier, this Tribunal, after hearing both sides, dismissed this OA on 01.08.2014, by observing that the relief which has already been granted to the applicant in T.A.No.992/2009 cannot be re-granted in this OA. However, in WP(C) No.6117/2014, filed by the applicant, the Hon'ble High Court of Delhi by its Order dated 15.09.2014 by observing that this Tribunal has not gone into the petitioner's grievance of the non payment of the interest on the delayed benefits, set aside the said Order dated 01.08.2014 and remanded the OA for fresh consideration on merits.

6. Shri K. Venkatraman, the learned counsel for the applicant submits that the amount of Rs.12,52,559/- (after deduction of Income Tax of Rs.3,50,000/-) paid to the applicant on 26.12.2012 is the actual

amount withheld by the respondents and that they have not paid any interest for the delayed period.

7. The respondents vide their counter though admitted the said fact but denied the liability to pay any interest by stating that there was no wilful or deliberate delay in payment of arrears to the applicant and the delay, if any, has been due to bonafide administrative reasons and beyond control of the respondents. The respondents further submit that there is no rule under which the applicant is entitled for payment of interest. Accordingly, they denied the liability of payment of any interest on the aforesaid amount which was originally withheld but paid as indicated above.

8. A Constitution Bench of the Hon'ble Apex Court in **D.S.Nakara v. Union of India** (1983) 1 SCC 305 held as under:-

"29. Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible, purpose thus underlying pension scheme or a statute introducing the pension scheme must

inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them inane (see American Jurisprudence 2d. 881).

31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to ten months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.”

9. In **State of Kerala and Others v. M. Padmanabhan Nair,**
(1985) 1 SCC 429, their Lordships observed that

“1. Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

.....

5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the LP.C, but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public.”

10. The Hon'ble Supreme Court, in **Gorakpur University v. Dr. Shitla Prasad Nagendra**, 2001 SCC (L&S) 1032, held as under:

"5..... Pension and Gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest."

11. In **S.K.Dua v. State of Haryana**, (2008) 3 SCC 44, the Hon'ble Supreme Court held as under:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. 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."

12. Admittedly, the respondents were liable to pay the amounts which were withheld along with 8% simple interest, as per the aforesaid orders of this Tribunal. Even otherwise also, as per the aforesaid settled position of law, they are liable to pay the interest. Hence, the contention of the respondents that there is no rule under which the applicant is entitled for payment of interest and that the delay was only because of the administrative reasons, cannot be accepted.

13. In the circumstances, the OA is allowed and the respondents are directed to pay simple interest at the rate of 8% per annum on the amount belatedly paid by them to the applicant for the delayed period, keeping in view the Annexure A1 statement of calculation of interest filed by the applicant. This exercise shall be completed within a period of four weeks from the date of receipt of a certified copy of this order.

14. There shall be no order as to costs.

(V. Ajay Kumar)
Member (J)

/nsnrvak/