

**Central Administrative Tribunal
Principal Bench**

OA No. 3015/2016

Order reserved on: 08.08.2018
Order pronounced on: 24.08.2018

Hon'ble Mr. Pradeep Kumar, Member (A)

Raj Kumar Sehgal,
Aged 69 years,
S/o Late Sh. Dev Raj Sehgal,
R/o 199, 3rd floor,
Gagan Vihar,
Delhi-110051.

... Applicant

(By Advocate: Sh. Thakur Sumit)

Versus

1. Union of India
Through Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.
2. Central Board of Direct Tax,
Through its Chairman,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.
3. Principal Chief Commissioner of Income Tax,
C.R.Building,
I.P.Estate,
New Delhi-110002.

... Respondents

(By Advocate: Sh. Rajnish Prasad)

ORDER

Heard the learned counsel for applicants and the learned counsel for respondents.

2. The applicant had retired on 31.01.2007. He was issued a charge sheet on 25.01.2007 on the following two charges:

“STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI R.K.SEHGAL, INCOME-TAX OFFICER, WARD 12(3), NEW DELHI

Article -I

Shri R.K.Sehgal, while posted as Income-tax Officer, Ward 12 (3), New Delhi, during the period from 06.06.2005 to 31.12.2006, issued notices u/s 148 of the Income-tax Act, 1961, in 31 cases for the A.Y. 2005-06, listed in the Annexure-II, with the intention of completing assessments in these cases under scrutiny in clear violation of the guidelines captioned as 'Procedure for selection of cases for scrutiny for corporate assessees reproduced on pages 24 to 28 of the Action Plan document for 2006-07. He has thus shown lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby he contravened clauses (i), (ii) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

Article-II

Shri R.K.Sehgal, while posted as Income-tax Officer, Ward 12 (3), New Delhi, during the period from 06.06.2005 to 31.12.2006, issued notices u/s 148 of the Income-tax Act, 1961, in 31 cases for the A.Y. 2005-06, listed in the Annexure-II, on flimsy grounds such as 'donations debited to P&L account', 'TDS not deposited in time', 'wrong figures of profit after tax has been taken', 'wrong claim of deduction u/s. 80G has been made' etc. He has thus shown lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby he contravened

clauses (i), (ii) and (iii) of sub-rule (1) of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.”

3. This charge sheet was closed on 24.12.2013 with the following orders:

“AND WHEREAS on denial of the charges by the Charged Officer, an oral enquiry was instituted. The inquiry report was submitted on 13.04.2012. It was considered and examined in detail.

AND WHEREAS after careful examination and analysis of the IO’s report, CO’s comments on the enquiry report and the report of the erstwhile Disciplinary Authority, the Disciplinary Authority had decided to drop the disciplinary proceedings.

NOW, THEREFORE, the President is pleased to drop the disciplinary proceedings initiated vide Memo No. No. CIT-IV/PS(RKS)/2006-07/245 dated 25.01.2007 subject to conveying displeasure of the Government to Shri R.K.Sehgal, ITO (Retd.), the charged officer.”

4. Thereafter, the applicant was paid his retiral dues but since there had been delay in payment of such retiral dues, the applicant had pleaded to the respondents to pay interest for the delay period. The applicant also filed an online grievance for payment of such interest on 14.03.2015. This grievance was disposed off on 19.01.2016 when the payment of interest was not agreed to.

5. The applicant pleaded that in his case even though charge sheet was issued but the charges were dropped subject to issuance of displeasure. The applicant further pleaded that displeasure is not a penalty in terms of the relevant instructions and as such this dropping of charge sheet has to be taken as an honourable

acquittal. Thereafter, issuance of displeasure cannot be given any cognizance and accordingly the applicant is due to be compensated with interest on all the delayed payments made to him after retirement which were otherwise due on the date of retirement itself. In support thereof, the applicant brought out three judgments:

5.1 Hon'ble Supreme Court judgment delivered on 09.01.2008 in **S.K.Dua vs. State of Haryana and another**, AIR 2008 SC 1077.

The relevant portions of the judgment are reproduced below:

“3. The appellant had an unblemished record of service for 37 years. During the course of his duties as Head of the Department, he submitted reports in or about April-May, 1998 to the Government highlighting certain irregularities and mal-practices said to have been committed by Mr. S.Y. Quraishi, the then Secretary, Irrigation & Power and requested the Government to make enquiry through Central Bureau of Investigation (CBI). According to the appellant, in pursuance of the complaint made by him, the Government removed Mr. Quraishi as Secretary, Irrigation allowing him to work only as Secretary, Department of Power.

4. The appellant has alleged that, as a measure of vendetta, Mr. Quraishi organized to send the appellant on deputation on May 15, 1998 to a lower and unimportant specially created post of Engineer-in-Chief, Command Area Development Agency by upgrading it just few weeks before his retirement. In addition to the said action, the appellant was served with three charge-sheets/ show cause notices in June, 1998, few days before his retirement. The appellant, however, retired on June 30, 1998 on reaching the age of superannuation.

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11..... The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. 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. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

5.2 Order of the Principal Bench of this Tribunal delivered on 19.07.2010 passed in OA No.1625/2008. The relevant portions are reproduced below:

"7. On perusal of the record, under Rule 11 of the CCS (CCA) Rules, displeasure is not a designated penalty, which could be imposed upon a government servant in service. Moreover, under the CCS (Pension) Rules, 1972, Rule-9 authorizes on jurisdiction the President on retirement of government servant under Rule 9 (2) to deem the proceedings pending as the proceedings for the purpose of Pension Rules but it is only when the charge in a disciplinary proceeding finds the retiree guilty of grave misconduct or negligence or some pecuniary loss caused to the Government, only then a penalty can be imposed, which is not displeasure but cut in pension or gratuity, that too, with the prior advice of the UPSC. In

the instant case it is no more res integra that the applicant, who had been proceeded against in a disciplinary proceeding on 5 counts of charges, EO has categorically exonerated him from all the charges as having not proved. In such view of the matter, the proceedings when post-retirement are treated as to have continued under the CCS (CCA) Rules, under Rule 15, the DA is with jurisdiction to disagree with the enquiry report and tentatively proposing any penalty. However, in the instant case no disagreement to the chargesheet has been communicated with tentative reasons but what has been proposed in the memorandum dated 17.8.2006 is displeasure, which is not a penalty to be imposed upon applicant. We also do not find any proposal to have pension or gratuity cut proposed to the applicant. As such, the displeasure communicated to the applicant is without any reasons and finding recorded in the order passed by the President. Moreover, when it is not a penalty, it is not open to the respondents to approbate or reprobate simultaneously by releasing all retiral dues of the applicant but withholding his actual benefit of promotion.

8. As the applicant has been, on opening of the sealed cover, deemed to have been fully exonerated for promotion as Office Superintendent, Group 'B' w.e.f. 29.8.1998 has retired later on from this date to the date of retirement what prevented him from shouldering higher responsibility of the post is an illegal act of the respondents whereby a disciplinary proceeding was initiated, which culminated into his exoneration and without any penalty, 'no work no pay' would not apply and respondents' action to deny arrears for this period cannot be countenanced in law. The Apex Court in State of Haryana v. Rameshwar Dass, 2009 (7) SCALE 276 clearly held that promotion when given with respect to the junior all benefits are to be accorded.

9. In the above view of the matter, OA is allowed. Impugned orders are set aside. Respondents are directed to pay to the applicant arrears of difference of pay between the pay now fixed on promotion to the post of Office Superintendent Grade-I, Group 'B' and the pay which he has been drawing w.e.f. 28.9.1998 till 31.7.2002 when he retired on superannuation, within a period of two months from the date of receipt of a copy of this order. Applicant is also entitled to interest on his retiral benefits @ 9% p.a. simple till it is paid and to be

computed from three months from the date of retirement. No costs.”

5.3 Order of the Principal Bench of this Tribunal delivered on 20.09.2011 passed in OA No.1611/2011. The relevant portions are reproduced below:

“12. It is an admitted position that the applicant’s dues relating to pension & gratuity and final settlement of GPF (as per the statement of the applicant referred to hereinbefore), were paid to him on 30.05.2006 and 22.05.2006 respectively. However, as these became due on the date following the date of retirement, i.e., 01.02.2006, he should be paid interest for payment from the date when the dues became due for payment to the date of actual payment.

For Leave Encashment also, as already explained earlier, this is a benefit that is payable on retirement and is due for payment on the date following the date of retirement and, therefore, in the case of leave encashment also the applicant would need to be paid interest for the period of ‘delay’ in actual disbursement.....

In view of the aforementioned facts and circumstances of the case, therefore, we direct as follows:

- i) the applicant should be paid interest on the pension/gratuity amount at the applicable GP Fund rate of interest from 01.05.2006 (i.e. allowing 3 months time for processing after his superannuation on 31.01.2006) till the date of actual payment, i.e., 30.05.2006
- ii) in respect of delayed payment of ‘final GPF payment’ the applicant should be paid interest as prescribed in the GPF Rules till the date of actual payment.
- iii) in respect of the payment of leave encashment/arrears of leave encashment, interest at the GPF rate for the period from the date when the same became due (the date following the date of retirement) to the date of actual payment (minus 3 months time allowed for processing), may be calculated and be paid to the applicant, as in the case of gratuity,.

iv) in respect of payment of arrears of pay and allowances for the period of absence from 12.10.1995 to 18.05.1999, no interest would be payable.

v) as regards other dues, namely, bonus and HPL the matter with full facts may be placed before the Secretary of the Department for taking a decision with regard to the extent of delay attributable to administrative lapses, keeping in view the facts and circumstances of the case and our observations in para 10, and appropriate orders in accordance with rules on the subject may be passed.”

5.4 The judgment of Hon’ble Supreme Court in the case of **S.K.Dua** (supra) laid down the principles and conditions that will govern the payment of interest for such delayed payments.

6. The respondents pleaded that in the instant case, the charge sheet was issued when it came to light that the applicant had issued notices under Section 148 for completing assessment in respect of 31 entities when actually action under Section 148 was not required in the first place. On completion of the DAR enquiry in instant case, the applicant admitted his fault also. The relevant portions of this final report of the enquiry, are reproduced below:

“In all these 31 cases, the time limit for issuing notices u/s 143 (2) was available and, therefore, issuing notices u/s 148 in these cases was not proper. If these cases were not covered under the categories mentioned in Para 2 of the guidelines captioned as ‘Procedure for selection of cases for scrutiny for corporate assessees’ reproduced on pages 24 to 28 of the Action Plan for 2006-07 and Shri R.K.Sehgal still felt that the returns for the A.Y. 2005-06 in these cases needed scrutiny on certain points, the proper course was to move proposals, through the Addl. CIT and the undersigned, to the CCIT, Delhi-IV, New Delhi seeking her approval for selection of these cases for scrutiny as per Para 3 of the said guidelines. However, Shri R.K.Sehgal, instead of

following the procedure laid down in the Action Plan for 2006-07 for selection of cases for scrutiny, adopted a shortcut approach for selecting the returns for the A.Y. 2005-06 in these 31 cases for scrutiny by issuing notices u/s. 148, which is in clear violation of the said guidelines.

2. Apart from violating the guidelines for selection of cases for scrutiny as laid down in Action Plan for 2006-07, as will be seen from the details given above that the notices u/s 148 were issued, in most of these cases, on flimsy grounds such as 'donations debited to P&L account', 'TDS not deposited in time', 'wrong figures of profit after tax has been taken', 'wrong claim of deduction u/s. 80G has been made' etc. Curiously enough, in three cases, the proceedings u/s 147 were dropped and in six cases, the assessments have been completed in a routine manner without making inquiries even on the points which formed the basis for issuing notices u/s 148. The manner in which the proceedings have been dropped in three cases and the assessments have been completed in six cases shows that the notices u/s 148 were not issued to make up any loss of revenue in these cases but with an ulterior motive of calling these assessees to office to extract certain benefits from them.

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3. In his explanation furnished vide his letter dated 29.11.2006, Shri Sehgal has admitted the lapse stating that there was some confusion or lack of understanding on his part in issue of notices u/s. 148 in these cases and sought permission for withdrawal of notices u/s.148 in 22 cases where the assessments in consequence of such notices are still pending. From a perusal of the explanation of Shri R.K.Sehgal , it is clear that he has deliberately selected these 31 cases for scrutiny by issuing notices u/s 148 clearly violating the guidelines laid down for selection of cases of corporate assessees for scrutiny in the Action Plan for 2006-07. By the above said acts, Shri R.K.Sehgal, ITO, has shown lack of integrity, lack of devotion of duty and conduct unbecoming of a Government servant and thereby he contravened clauses (i), (ii) and (iii) of sub-rule (1) of rule 3 of the Central Civil Services (Conduct) Rules, 1964. He is, therefore, liable for disciplinary action under the

Central Civil Services (Classification, Control and Appeal) Rules, 1965.”

6.1 With regard to the interest on delayed payment of gratuity, relevant Govt. instructions under Rule 68 of CCS (Pension) Rules, 1972 are reproduced below:

“Govt. of India’s Decisions (copy enclosed) is as under:

(1) Admissibility of interest on gratuity allowed after conclusion of judicial/departmental proceedings-

1. Under the rules, gratuity becomes due immediately on retirement. In case of a Government servant dying in service, a detailed time-table for finalizing pension and death gratuity has been laid down vide Rule 77 onwards.

2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of orders by the competent authority.

3. In order to mitigate the hardship to the Government servants who, on the conclusion of the proceedings **are fully exonerated**, it has been decided that the interest on delayed payment of retirement gratuity may also be allowed in their cases, in accordance with the aforesaid instructions. In other words, in such cases, the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment on interest on delayed payment of gratuity. The benefit of these instructions will, however, not be available to such of the Government servants who die during the pendency of judicial/disciplinary proceedings against them and against whom proceedings are consequently dropped.

4. These orders (paragraph 3) shall take effect from the 10th January, 1983.

[G.I., Dept. of Per. & A.R., O.M. No. F.7 (1)-P.U./79, dated the 11th July, 1979 and No.1 (4)/Pen. Unit/82, dated the 10th January, 1983.]”

6.2 As such in the present case even though the charges were dropped subject to issuance of displeasure, this cannot be treated to be equivalent to honourable acquittal. Therefore, in accordance with the rules on the subject brought out in para 8 above, payment of interest is not warranted and hence the same has not been paid.

7. The matter has been heard at length.

7.1 It is seen that the circumstances of the three judgments quoted by the applicant are very different than the instant case. As such, the ratio of those three judgments is not directly applicable in the instant case, as summarised in para 7.2 to 7.4 below.

7.2 In OA No.1625/2008 (supra) relied upon by the applicant, it is seen that none of the five charges were proved and hence the promotion was granted to the concerned officer along with payment of retiral dues with interest.

7.3 As regards the judgment of Hon'ble Supreme Court in **S.K.Dua** (supra) it is seen that the applicant in that case was working as Head of the Irrigation Department and he gave a report in April-May, 1998 to the Government, highlighting certain irregularities and mal-practices said to have been committed by his superior officer, the then Secretary, Irrigation Department. As a result

thereof, the Secretary, Irrigation Department was divested of the Irrigation Department's charge. In due course of time, this erstwhile Secretary, Irrigation, came to hold the post of Principal Secretary to the Hon'ble Chief Minister of Haryana and it was at this stage that he caused certain charge sheets to be issued and certain enquiries were initiated against the said Sh. S.K.Dua.

Thus, the very issuance of charge sheet and the holding of enquiry can be taken to be a coloured exercise. Taking this into account, the Hon'ble Supreme Court remitted the matter back to the Hon'ble High Court for decision in respect of retiral dues.

For the delay part, the Hon'ble Supreme Court brought out the circumstances, when the interest shall be payable.

7.4 In respect of OA No.1611/2011 (supra), the Tribunal granted interest for the delayed period.

8. In view of the foregoing, it is the considered view of Tribunal that while the principle to compensate the applicant on account of delays has been established, yet how much delay is to be considered for this purpose, is to be decided in each individual case on merits.

8.1 In the instant case, the charge sheet was issued on 25.01.2007 which had brought out serious irregularities on his part in issuing notices to 31 entities with ulterior motives. In the course of enquiry, applicant admitted that in 22 cases such notices should

be withdrawn. It was only after this that the charges were dropped subject to issuance of displeasure. Hence in the instant case “dropping of charges with displeasure” cannot be equated to “honourable acquittal” despite displeasure not being a notified penalty. Thus, the plea of applicant that since retiral dues were not paid to him on the date of his retirement but were paid subsequently and hence he should be compensated by way of interest for this entire period, is not acceptable.

Thus, it is the view of this Tribunal that as soon as this charge sheet was decided on 24.12.2013 it was necessary that the retiral dues should have been paid at the earliest thereafter, within a time period of three months, say by 24.03.2014, and specially so since these retiral dues pertained to an employee who had already retired on 31.01.2007.

It is seen from the counter of the respondents that these retiral dues were paid in many instalments with long delays even thereafter, as brought out below:

S.No.	Particulars	Amount	Payment Status
1.	Enclashment Earned Leave	Rs.1,88,660/-	Paid
2.	CGEGIS	Rs.26,740/-	Paid
3.	Gratuity	Rs.3,10,289/-	Paid vide cheque 574081 dated 21.04.2014
4.	Withheld amount Gratuity	Rs.1000/-	Paid vide cheque 574080 dated 21.04.2014

5.	Gratuity (addition)	Rs.1,25,268/-	As per letter dt. 20.02.2015 of Sehgal, this amount been received by on 22.01.2015
6.	Encashment Earned Leave (Difference)	Rs.75,920/-	Paid vide cheque 575053 dated 24.10.2015
7.	Arrear of Pension	Rs.1,50,582/-	Paid vide cheque 574873 dated 11.09.2014
8.	Commutation Pension	Rs.3,42,566/-	Paid vide cheque 574783 dated 11.09.2014
9.	Commutation Pension (Different)	Rs.2,04,719/-	As per letter dated 20.02.2015 of Sehgal, this amount been received by on 22.01.2015
10.	Salary arrears 01.01.2006 31.01.2007	Rs.1,23,038/-	Paid vide cheque 255393 dated 13.10.2014

9. In the event, it is decided that the delayed period between 24.03.2014 and till the actual date of payment in each of above payment, will only qualify for compensating the applicant by way of payment of interest.

10. Accordingly, the present OA is partly allowed with direction to the respondents to pay interest at GPF rate, for the time duration lapsed in the case of each of the ten items of retiral payment listed in the table in para 8.1 above, between the date of actual payment and 24.03.2014, when these payments ought to have been made.

These interest payments be worked out and paid within a period of eight weeks. No order as to costs.

(Pradeep Kumar)
Member (A)

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