CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

Pronounced on: 29.11.2017
Reserved on : 20.11.2017

OA. No. 060/00249/2017

Kishan Chand, aged about 75 years, S/o Sh. Mast Ram, R/o H. No. 5063/2, Category III, Modern Housing Complex, Manimajra, Chandigarh.

…….Applicant

BY ADVOCATE**: Sh. Arvinder Singh**

Versus

1. The Union of India, through Vice-Chairman, Kendriya Vidyalaya Sangathan and Additional Secretary, Department of Education, Ministry of Human Resource Development, Shastri Bhawan, New Delhi – 110 001.

2. The Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi – 110 016 through Senior Administrative Officer (Establishment).

3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, S.C.O. No. 72-73, Sector 31-A, Chandigarh – 160 031.

……..Respondents

BY ADVOCATE**: Sh. R.K. Sharma**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicant has filed this OA seeking interest @ 18% towards arrears of pension and gratuity being paid after an inordinate delay of 12 years after his retirement.

2. The brief facts as enumerated in the OA are that the applicant served in Navodaya Vidyalaya Samiti (NVS) as PGT (Physics) from 31.12.1990 to 02.09.1993, when he resigned to join Kendriya Vidyalaya

Sangathan (KVS) on 03.09.1993. He retired from KVS service on attaining superannuation on 31.10.2000. While in KVS, he applied to count his past service rendered in Navodaya Vidyalaya from 31.12.1990 to 02.09.1993. The respondents rejected his claim on the ground that the pension scheme was not in force at the time the applicant had served in the NVS school. Further, the applicant had resigned on 02.09.1993 whereas DCRJ had been made applicable to the employees of the NVS from 13.07.1997 i.e. four years thereafter. The applicant filed OA No. 82/CH/2005 seeking a direction to count his past service rendered by him in NVS for payment of pensionary benefits alongwith interest. The Tribunal disposed of the OA with the following order:-

"12. In as far as CPF is concerned, it is seen from the record that the NVS authorities by its letter dated 2.5.2003 (Annexure A-10) had sent the final dues amounting to Rs. 11,871/- of the applicant with regard to own subscription of the applicant as well as of the Management share including interest. The instructions dated 19.2.2003 (Annexure A-17) which were made effective from 1.1.1986 provide that in the cases of mobility of personnel from autonomous bodies where CPF Scheme is in operation to other similar autonomous bodies, besides transferring CPF to new autonomous body, previous autonomous body will be required to discharge pro-rata DCRG liability to new body.

13. However, it is not provided in these instructions as to from where grant of pro-rata D.C.R.G. liability is to be provided, but if an employee is getting the benefit of C.P.F. Scheme, how his earlier period of working in autonomous body is to be calculated for the purpose of pensionary benefit to be granted to him on his transfer to autonomous body.

14. As we have seen that N.V.S. was not covered under any Scheme when the applicant was working in N.V.S. but admittedly he has got the benefit under C.P.F. Scheme. The instructions are silent as to how pro-rata liability benefit is to be met. In our considered opinion, this anomalous position needs clarification and examination by the concerned Ministry.

15. Therefore, in view of our observation as above, we find it appropriate to give directions to Respondents No. 1 & 2 to send the matter to the concerned nodal Ministry i.e. D.O.P. & P.W. who have issued instructions dated 19.2.2003, to get this anomlay clarified and on receipt of clarification, applicant be informed accordingly. Needful be done within a period of three months from the date of receipt/production of copy of this order.

16. In terms of these observations and directions as above, this O.A. stands disposed of. No costs."

3. The applicant filed a second OA No. 351/CH/2008 again requesting for counting his past service for the purpose of pensionary benefits. The Tribunal disposed of the OA with the following order:-

"……It is not denied that the applicant had applied through proper channel and tendered his technical resignation before joining his new assignment in the KVS. It is also not denied that his CPF contribution was transferred to the KVS. Since the pension scheme was not applicable to NVS on the date, the applicant left the said organization, he is not entitled to gratuity or pro-rata pensionary benefits for the period he served therein.

The next question is as to whether the applicant is entitled to count the period of service he rendered in NVS for purpose of pension in the new department. The foresaid Memo provides that "In the case of mobility of personnel from Autonomous Bodies where CPF Scheme is in operation to Government Departments or Autonomous Bodies where pension scheme is in operation, the previous body will be required to transfer employer's share of CPF contribution plus pro rata DCRG liability to new Department or body". It is not denied by the respondents that the previous department had transferred applicant's CPF to the new department. It is also admitted fact that when the applicant retired from KVS, it was a pensionable establishment. Therefore, by virtue of the OM dated 19.2.2003 (Annexure A-11) the applicant is entitled to have his previous service (from 31.12.1990 to 2.9.93) counted in the new department for purpose of payment of pension. To that extent, the OA is allowed and the order dated 15/18.2.2008 (Annexure A-1) is quashed and set aside. The respondents are directed to consider/examine applicant's entitlement to pension within a period of three months from the date of receipt of a copy of this order and issue PPO/make payment as per Rules, if any, within further one month thereafter.

OA is disposed of in the above terms. No costs."

4. The respondents filed CWP No. 21736-CAT-2010 which was disposed of by the High Court with the following order:-

"However, in respect of gratuity, we find that the decision of the Government of India dated 31.12.2007 that the applicant will not be entitled to gratuity for the reason that he took deemed retirement on 02.09.1993, whereas death-cum-retirement gratuity scheme has been made applicable to the employees of NVS from 13.07.1997 is not tenable in law. The normal date of superannuation in the case of applicant was 31.10.2000 i.e. the age of superannuation in KVS as well. The death-cum-retirement gratuity scheme was extended to the employees of NVS on 13.07.1997. In other words, had the applicant continued to work for NVS, he would have been entitled to gratuity on the date of his superannuation. Mere fact that he is deemed to have resigned on 02.09.1993 will not lead to denial of death-cum-retirement gratuity for the period he served for NVS. In fact, the Circular dated 19.02.2003 contemplates that pro-rata death-cum-retirement gratuity liability will be transferred to the new Department. Meaning thereby, that for the period, the applicant has worked with NVS, the pro-rata death-cum-retirement gratuity will be transferred to KVS, so that the said benefit is also payable to the applicant.

In view of the above, while dismissing the writ petition, we hold that the applicant is entitled to death-cum-retirement gratuity from 31.12.1990 till 31.10.2000. However, the NVS shall transfer pro-rata liability of death-cum-retirement gratuity to the KVS. The needful be done within three months from the date of receipt of the order."

5. The SLP filed by the respondents before the Supreme Court against CWP No. 21736-CAT-2010 was also subsequently dismissed. Subsequent to the above order, the benefits were paid to the applicant. The applicant argues that he had made prayer for award of the interest before the Tribunal. The OA was disposed of with direction to the respondents to seek a clarification from the nodal Ministry and in the second OA filed by applicant, the Tribunal held that he was not entitled to gratuity or pro-rata pension for the period he has served therein and hence question of payment of interest does not arise. The High Court, while considering the matter, counted the service of the applicant for the purpose of gratuity and pension. However, it is argued that though a prayer had been made for interest, no interest was allowed in the High Court order of 21.07.2014. The applicant himself admits that he had made a prayer for award of interest.

6. Applicant argues that he is entitled to claim interest on the payment of pension and gratuity since the same was delayed by the respondents.

7. The respondent in the written submissions argues that the applicant had been in service of KVS for a period of seven years, one month and 29 days and had been paid a sum of Rs. 57,370 as DCRG and Rs. 81,375 as service gratuity in January, 2001, i.e. within three months of his retirement. Therefore, the admissible retirement dues were paid to the applicant without any delay. The Punjab and Haryana High Court in CWP No. 21736-CAT-2010 decided on 21.07.2014, held that the applicant was entitled to death cum retirement gratuity for the period 31.12.1990 to 31.10.2000 i.e. inclusive of NVS service. However, the court had directed

the NVS to transfer the pro-rata liability of death cum retirement gratuity to KVS. The court had also ordered that pending the outcome of the OA, the DCRG be paid to the petition and an amount of Rs. 24204 as DCREG was paid to the petitioner. Hence, the High Court had acknowledged that it was NVS and not KVS when the authority who had to make provision for DCRG and ordered NVS to transfer the amount to KVS. The order for payment of DCRG was therefore ordered by the High Court. The respondent KVS was neither the authority to sanction or pay DCRG. As regards NVS, they were guided by the rules in force, at the time of applicant leaving their service, which did not have a provision for payment of DCRG. Hence, both KVS and NVS cannot be held responsible for non-payment as they were not authorized as per prevalent rules to allow such a payment.

8. The argument of respondent KVS is that till NVS decided to resolve the issue of non-applicability of the pension scheme at the time the applicant was in service with them, the applicant was treated as per rules as of NVS according to which pension scheme was not applicable to NVS. They argue that they could not make the applicant admissible for a scheme which was not otherwise admissible to any of its employees. The applicant was paid the amounts towards gratuity and pro-rata pension for NVS service when so ordered by the court. The respondents also argue that though the applicant had prayed for payment of interest, the same was not ordered so by the High Court. The respondents paid pro-rata amount for NVS service on the basis of interim order dated 30.03.2011 of High Court in Writ Petition No. 21736-CAT-2010 vide Annexure R-10 dated 02.05.2012.

9. From the above arguments, it is drawn out that the applicant's case was one not covered under the statutory rules and required three rounds of litigation to finally succeed in the counting of NVS service with KVS service for payment of retirement benefits. The applicant was not covered under the Rules of the respondent organization for the relief he was seeking and hence could not be given the relief. It could be for the above reasons, and that since the litigation had to take a decision on the policy matter of admissibility of payment of benefits as prayed and that as the rules operating at that point of time did not permit such a payment, no relief was given on the matter of payment of interest by the High Court, despite the fact that the applicant had prayed for it as he himself admits in the OA. This is a case covered by res judicata as the applicant had sought the relief in his matter before the High Court. The Apex Court in the case of Jaswant Singh & Anr. vs The Custodian Of Evacuee (1985) 3 SCC 648 decided on 7 May, 1985 had answered the question whether a subsequent proceeding is barred by res judicata as under:-

> "It is well settled that in order to decide the question whether a subsequent proceeding is barred by res judicata it is necessary to examine the question with reference to the (i) forum or the competence of the Court, (ii) parties and their representatives, (iii) matters in issue, (iv) matters which ought to have been made ground for defence or attack in the former suit and (v) the final decision."

In Commissioner of Income Tax, Bombay Vs. T.P. Kumaran, 1997(1) SLR 114, it was held as under:-

"1. Leave granted.

2. We have heard arned counsel for the parties.

3. This appeal by special leave arises against an order of the Central Administrative Tribunal, Ernakulam made on 16-8-1994 in OA No. 2026 of 1993. The admitted position is that while the respondent was working as Income Tax Officer, he was dismissed from service. He laid a suit against the order of dismissal. The suit came to be decreed and he

was consequently reinstated. Since the arrears were not paid, he filed a writ petition in the High Court. The High Court by order dated 16-8-1982 directed the appellant to pay all the arrears. That order became final. Consequently, arrears came to be paid. Then the respondent filed an OA claiming interest at 18% per annum. The Administrative Tribunal in the impugned order directed the payment of interest. Thus, this appeal by special leave.2

4. The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive res judicata under Section 11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not seek so and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2 Rule 2 CPC prohibits the petitioner to seek the remedy separately. In either event, the OA is not sustainable.

5. The appeal is accordingly allowed. No costs."

10. We find that all the above grounds have been covered in the decision of the High Court. The applicant appears to be before us to seek a review of the High Court order which did not provide the relief of interest, a plea which is not to be allowed. The applicant has gone through three rounds of litigation to make himself eligible for a relief which was not covered by the rules of service in the earlier respondent department. As the litigation involved a decision on a policy matter, the relief, if any, would be available from the date the court had ordered the payment of relief, which respondent has already made. Hence, the relief of interest sought herein is not admissible on this ground also. OA is dismissed accordingly. No costs.

(P. GOPINATH)
MEMBER(A)

Dated:
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Central Administrative Tribunal
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