

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/01050/2016

Date of Order : 12-11-2018

Date of Order : 28-11-2018

Between :

Kaattula Vasantha Rao S/o Sri Venkanna,
Aged 66 years, Occ : Retired Sr Accounts Officer (TRA),
R/o H.No.18-1048, Ashoknagar,
Miryalaguda, Nalgonda District, Pin-508207,
Telangana State.

....Applicant

AND

1. Union of India, rep by its Secretary,
Ministry of Information & Technology,
Department of Telecommunications,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi – 110 001.
2. The Chief General Manager Telecom,
Bharat Sanchar Nigam Limited,
A.P. Telecom Circle, Hyderabad-500 001.
3. The General Manager (Finance),
O/o the Chief General Manager Telecom,
(CGMT), Bharat Sanchar Nigam Limited,
A.P. Telecom Circle, Hyderabad-500 001.
4. The General Manager Telecom,
Telecom District, Khammam,
Khammam District – 507 001.

...Respondents

Counsel for the Applicant: Mr. G. Jayaprakash Babu

Counsel for the Respondents : Mrs.K.Rajitha, Sr.CGSC

Mrs.A.P.Lakshmi, SC for BSNL

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 :

(i) to declare the action of the respondents in not paying interest on the delayed payment of 10% Earned Leave Encashment from 31.07.2010 is illegal, arbitrary, discriminatory, non application of mind and in violation of Article 14 and 16 of the Constitution of India;

(ii) consequently direct the respondents to pay the interest on the delayed payment of 10% Earned Leave Encashment from 31.07.2010 to till the date of payment along with costs ; and

(iii) pass such other and further order or orders as this Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that, the applicant joined in service in December, 1970 as Postal Assistant and later the services were transferred to the respondent department in the year 1992 as Junior Accounts Officer (JAO), Telecom. Thereafter, he was promoted to Accounts Officer and Senior Accounts Officer and retired from service on 31.07.2010, having rendered about 40 years of service. The applicant while working as Account Officers (Planning) in the office of the Telecom District Manager, Nalgonda was issued charge memo on the ground that he conspired with Sri K. Sampath Kumar, the then TDM, BSNL, Nalgonda District, Sri C. Sambasiva Rao and others. The respondents have initiated the disciplinary proceedings against the applicant, the CBI has also registered a case under section 120-B, 420, 468 and 471 of IPC and under section 13(2) read with 13 (1)(d) of

Prevention of Corruption Act, 1988 and filed a Charge Sheet on 27.12.2005.

The departmental inquiry was conducted against the applicant and an enquiry report was submitted by the inquiry officer vide proceedings dated 27.07.2010 holding that the charges against applicant is not proved and the disciplinary proceedings were closed in terms of the inquiry report.

3. The Respondents has issued the sanctioned letter dated 30.08.2016 for an amount of Rs.52,653/- towards the withheld amount of 10% of Earned Leave encashment, but failed to grant interest on the delayed payment. The Respondents have paid the Earned Leave encashment to (i) Sri B. Gangadhar Rao, DE O/o the GM, TD, Nalgonda and (ii) Sri C. Sambasiva, SDE, O/o GMT, Vijayawada immediately after their retirement who are arrayed as accused No.2 and 3 in the Crime registered by the CBI along with applicant herein, who is accused NO.6 in the alleged offence. The present original application is filed aggrieved by the action of the respondents not paying interest on the delayed payment of 10% Earned Leave Encashment from 31.07.2010 to till the date of payment is illegal, arbitrary, discriminatory, non application of mind and violative of Article 14 and 16 of the Constitution of India.

4. The applicant has further made a representation on 23.08.2013 basing on a judgment of the Hon'ble Apex Court in CA No.6770/2013, dated 14.08.2013, requesting the authorities to release the withheld leave encashment amount with interest. Thereafter the applicant reiterating the same has further submitted representations on 25.11.2010, 23.08.2013,

23.09.2013, 06.02.2015, 20.06.2015 and 18.12.2015.

5. The applicant made an application under RTI Act on 18.08.2016 requesting the next course of action on the judgment of the CBI Court, in reply to the same, the respondents issued a letter dated 01.09.2016, enclosing a letter dated 04.08.2016 addressed by the CBI : ACB : Hyderabad, that the CBI has decided not to prefer any appeal against the Judgment of the CBI Court dated 12.05.2016. The applicant is entitled for interest from the date of his retirement ie 31.07.2010 to till the date of payment. The delay in payment of the Earned Leave encashment and withholding the same for the said period is highly illegal, arbitrary, unjust, discriminatory and in violation of Article 14, 16 and 300-A as enshrined in the Constitution of India. Hence this application.

6. Respondents have filed reply statement stating that the action has been taken as per Rule 39(3) of CCS Leave Rules, 1972 and 10% of leave encashment amount of Rs.52,653/- is withheld. Comparison with other SSAs is not tenable in this issue since the Disciplinary Authorities in IOs are varied. As such an amount of Rs.52,653/- was only withheld which is almost 50% to the amount against which the applicant stated in his representation dated 29.07.2010 that "each officer/official will have to contribute/borne Rs.1,04 lakh only". The withheld amount was also released on receipt of the final orders in the case.

7. That the Inquiry Officer has submitted his report dated 27.07.2010

before the date of retirement of the applicant ie 31.07.2010 in which it is noticed that the charges levelled were not proved and at the same time the final proceedings in this case are awaited from Disciplinary Authority. Until and otherwise final proceedings in this case are received from Disciplinary Authority, it cannot be treated as that the case is closed basing on the Inquiry Officer report only. 10% of EL encashment could not be released for want of final proceedings in the case based on instructions of the competent authority.

8. That the judgment copy of the Hon'ble Supreme Court along with representation of the applicant was forwarded to the office of the CGMT, BSNL, Hyderabad vide GMTD, Khammam letter dated 03-09-2013 for further disposal. However, the withheld 10% amount of EL encashment was released based on the final orders passed in the disciplinary case wherein the charges framed against the applicant are not proved. The applicant had retired on 31.07.2010 while the disciplinary proceedings and CBI case are pending. The CBI case CC No.4/2006 was disposed in May, 2016 and the final orders in the disciplinary proceedings were passed in August, 2016. The Respondents further submit that there is no provision for payment of interest on EL encashment. In view of these submissions, the Respondents pray for dismissal of the OA.

9. We have heard Mr. G. Jayaprakash Babu, learned counsel for the applicant, Mrs. K. Rajitha, learned Sr Central Govt., Standing Counsel and Mrs. A. P. Lakshmi for Respondents.

10. The report in the Departmental Proceedings in respect of the applicant was submitted on 27.07.2010. The applicant retired on 31.07.2010. The final proceedings in that connection was received from the Disciplinary Authority. The representation of the applicant was forwarded to the office of the CGMT, BSNL, Hyderabad on 03.09.2013 for disposal. The applicant claims that he is entitled for interest on the 10% of the withheld amount of the EL encashment with effect from 31.07.2010 but no rule has been quoted by the applicant at the time of the arguments to the satisfaction of the Tribunal to show that the applicant is entitled for withholding of the 10% of the leave encashment. In the absence of any reasonable ground, the applicant is not entitled for any interest but for the fact that there was delay in the matter has to be looked into by the concerned authority and appropriate action against the person or officers due to which laches or negligence or delay has occurred.

11. The Original Application is accordingly dismissed with the above observations. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 28th November, 2018.

vi

