

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No.290/00161/2017

Reserved on : 06.09.2018
Pronounced on : 12.09.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Harish Chandra Singh s/o Late Sh. Mani Ram Singh, aged about 65 years, r/o House No. S15/15 Ghausabad, Varanasi Pin 221002, Retired from the post of Senior Mining Geologist, Indian Bureau of Mines (IBM) 142 C, Hiran Magri, Sector 11, Udaipur. (Rajasthan).

...Applicant

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through the Secretary, Ministry of Mines, Shastri Bhawan, New Delhi.
2. The Controller General, Indian Bureau of Mines (IBM), Indira Bhawan, Civil Lines, Nagpur- 440001.
3. Pay and Accounts Officer, Indian Bureau of Mines, (IBM), Indira Bhawan, Civil Lines, Nagpur 440001.

...Respondents

(By Advocate: Shri B.L.Bishnoi)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) By an appropriate writ order or direction respondents may be directed to revise the basic pension of the applicant from Rs. 18670/- to Rs. 19780/- w.e.f. 01.07.12 and make payment of arrears of difference of revised pension along with interest @ 18% per annum.
- (ii) By an order or direction respondents may be directed to make payment of interest of leave encashment as calculated vide Annx.A/6 from 01.07.12 to 31.10.15 amounting to Rs. 4048 along with interest @ 9% per annum. Also make payment of commutation of pension after revision of pension.
- (iii) By an order or direction respondents may be directed to revise pension as per 7th pay commission and make payment of arrears along with 18% interest per annum.
- (iv) Exemplar cost be imposed on respondents for causing undue harassment to the applicant.
- (v) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. Brief fact of the case, as stated by the applicant, are under:-

While working on the post of Senior Mining Geologist the applicant was denied the benefit of second Modified Assured Carrier Progression (MACP) scheme. Aggrieved by the action of the respondents, the applicant filed OA No.546/2011 before this Tribunal, which was allowed vide order dated 31.10.2012 wherein the impugned orders were quashed and set aside and the respondents were directed

to consider the case of the applicant for second MACP w.e.f. 1.9.2008 by convening a review DPC and grant all consequential benefits including arrears of pay and allowances with 9% interest.

The applicant retired on superannuation on 30.6.2012. At the time of retirement his pay was Rs. 37340/- and accordingly, his pension was fixed at Rs. 18670/- w.e.f. 1.7.2012 vide PPO dated 7.9.2012. The respondents challenged the order of this Tribunal before the Hon'ble High Court in DBCWP No.10556/2013 and the Hon'ble High Court dismissed the Writ Petition vide order dated 9.12.2013.

Thereafter the respondents vide order dated 11.2.2014 granted second MACP w.e.f. 1.9.2008 and vide office order dated 15.1.2015 the respondents made fixation of pay of the applicant and as on 1.7.2011 the pay of the applicant was fixed at Rs. 39560/- in the pay scale of Rs. 15600-39100 + GP Rs. 7600, but neither refixation of pension was made nor arrears of pay and allowances were given. The applicant filed Contempt Petition and thereafter vide order dated 20.1.2015, the respondents sanctioned arrears of Earned Leave with interest and vide order dated

2.12.2015 paid arrears of leave encashment, but did not make payment of interest amounting to Rs. 4048/- as per direction of the Tribunal.

The applicant vide representation dated 11.12.2015 stated that the interest on leave encashment is contrary to the order passed by the Tribunal as retiral benefits comes under the consequential benefits. Thereafter vide order dated 11.7.2016 this Tribunal disposed of the Contempt Petition stating that there is a substantial compliance of the order dated 31.10.2012 and non consideration of the amount of 2nd MACP for fixation of pension is a new cause of action and the applicant is at liberty to file fresh OA.

The applicant thereafter submitted representation dated 19.8.2016 for revision of pension to Rs. 19780/- instead of Rs. 18670/- and to further revise his pension as per 7th Pay Commission and make payment of benefits derived therein along with interest. He has also made representation vide his letter dated 15.1.2017 (Ann.A/13). But nothing has been done, therefore, he has approached the Tribunal claiming for the reliefs mentioned above.

3. The respondents have filed reply dated 9.8.2018. The respondents have stated that after passing of the order

dated 31.10.2012, the respondent department have issued PPO and made all admissible payments to the applicant. Inspite of this, Contempt Petition was filed by the applicant which was decided vide order dated 11th July, 2016 and though payments as admissible were made, the applicant has preferred the present OA. The respondents have further submitted that the application of the applicant dated 11.12.2015 addressed to DDO, IBM, Udaipur was forwarded to PAO, IBM, Nagpur vide letter dated 28.12.2015.

According to the respondents the interest on retirement benefit was disallowed by the PAO, IBM, Nagpur stating that the Hon'ble Court has ordered interest @ 9% per annum from 1.7.2012 to 31.10.2015 payable on pay and allowances only and not on retiral benefits. As the leave encashment does not come under the retirement benefits, the bill may be resubmitted after deducting the interest component.

4. Heard Shri S.K.Malik, counsel for the applicant and Shri B.L.Bishnoi, counsel for the respondents and perused the material available on record.

5. The learned counsel for the applicant stated that the order of this Tribunal dated 31.10.2012 has attained its

finality since the same has been affirmed by the Hon'ble Rajasthan High Court vide order dated 9.12.2013. Accordingly, he was entitled for his revised pay as on 1.7.2011 and for revised pension w.e.f. 1.7.2012. Action of the respondents for not fixing pension and granting him further benefits like revision of commutation of pension, grant of interest on difference of Earned Leave payment as well further revision of pension under 7th CPC and its arrears is clearly arbitrary, illegal and violative of provisions of law. He contended that he has not been given any revised PPO as he is entitled for enhanced pension from Rs. 18670/- to Rs. 19780/-. Also with regard to leave encashment, he was entitled for the same from 1.7.2012 to 31.10.2015 along with interest of Rs. 4084/-, which has not been paid with regard to his claim for leave encashment.

6. The learned counsel for the respondents contended that prior to filing of the OA, claim of the applicant has already been granted. So far as first relief regarding revision of pension from Rs. 18760/- to Rs. 19780/- is concerned, the same has already been granted, as is evident from letter dated 21/25.4.2015 (Ann.R/2). Pertaining to the payment of unutilized Earned Leave, the same has already been granted, which is evident from order

dated 20th October, 2015 (Ann.A/6). Pertaining to second relief regarding payment of interest on leave encashment, it is clear that the applicant is not entitled for the same as this Tribunal vide order dated 31.10.2012 ordered for interest @ 9% per annum from 1.7.2012 to 31.10.2015 only on pay and allowances. The learned counsel for the respondents contended that as the leave encashment does not come under the retirement benefits, the question of payment of interest does not arise and the same is also settled before this Tribunal in its order dated 11.7.2016 in CP No.88/2013 in the earlier OA. Therefore, the applicant is not entitled to any interest. Pertaining to the revised pension as per 7th CPC, the respondents have stated that as and when the applicant is due, he will be given the same as the same is consequential.

7. After perusal of the pleadings, it is clear that the applicant is already getting his revised pension from Rs. 18670/- to 19780/- as per 6th CPC, therefore, the question of payment of any arrears of difference of revised pension with interest does not arise (Ann. R/2 dated 21/25.4.2017). With regard to the question of grant of interest on leave encashment, this Tribunal had already passed the orders pertaining to grant of consequential benefits, wherein it is

clearly mentioned that only arrears of pay and allowances to be granted with 9% interest per annum and since the leave encashment does not come under consequential benefits, therefore, there is no justification for payment of interest of Rs. 4084/- as prayed by the applicant. So far the relief pertaining to the grant of revised pension as per 7th CPC is concerned, the respondents ought to have undertaken this exercise. It is not clear from the reply of the respondents whether the respondents have initiated any action for revision of pension after filing of this OA. In these circumstances, the respondents are directed to expedite the matter of revision of pension as per 7th CPC and communicate the decision to the applicant, if any taken or to be taken on revision of his pension, within a period of three months from the date of receipt of a copy of this order.

8. With the above directions, the OA stands disposed of. No order as to costs.

(HINA P.SHAH
MEMBER (J)

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