

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.60/1381/2017

Date of decision: 15.01.2019

(Reserved on: 07.01.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

Manjit Kaur, aged 74 years, Superintendent Gr-II, (Retired) Chandigarh Administration Secretariat, Chandigarh, R/o H. No.1900, Sector-59 (Phase V), S.A.S. Nagar, Mohali. Group C.

**... APPLICANT
VERSUS**

1. Union of India through the Secretary to Government of India, Ministry of Home Affairs, (U.T. Division) North Block, New Delhi.
2. Home Secretary, Chandigarh Administration, Chandigarh, Sector-9, Chandigarh.
3. Accountant General (A&E), Union Territory, Chandigarh, Sector-17, Chandigarh.

... RESPONDENTS

PRESENT: Ms. Rumpa Ghorai Saha, counsel for the applicant.
Sh. Arvind Moudgil, counsel for respondents no.1 and 2.
None for respondent No.3.

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER (A):-

1. Applicant is a person who took voluntary retirement from post of Superintendent Grade-II w.e.f. 04.01.1999. Applicant was released a sum of Rs.77,647/- as DCRG, and a sum of Rs.1,54,096/- was withheld from total DCRG amount of Rs.2,31,743/- due to her. This was on account of a dispute between Chandigarh Administration and Ministry of Home Affairs, which was resolved on 24/25.6.2004, wherein it was ordered that all the Assistants, who have already retired

and their final pension had been fixed, the same will be treated as regularized and final. In respect of Assistants who are still in service, their pay was fixed w.e.f. 1.1.1998 in the scale to which they were entitled. Excess payment made due to grant of grant of senior scale to which they were not entitled was not to be recovered. On the basis of this order of the Ministry of Home Affairs, applicant was released, withheld amount of gratuity and no interest was paid.

2. Applicant filed O.A. No.376/PB/2005 before this Bench claiming interest on the withheld amount of gratuity which was released six years after her retirement. The O.A. was dismissed on 19.12.2005, with the following order:-

“7. Considering the explanation given by the respondents for withholding part of DCRG, we find that fixation of pay of the applicants and other similarly situated Assistants was in dispute and lengthy correspondence had been going on between Chandigarh Administration and the Ministry of Home Affairs. It appears that the controversy was settled by the Ministry of Home Affairs by letter dated 25/25.6.2004 (Annexure R-2 13). A reading of this letter also makes it clear that some of the Assistants had drawn the senior scale in excess of their entitlement. For those who are still in service, the excess payment made to them was ordered not to be recovered. However, in case of the Assistants who had retired and whose final pension had been fixed, the same has been treated as regularized. The case of the applicants falls in this category. Under these circumstances, we do not find that the applicants can claim that their portion of DCRG had wrongly been withheld and, therefore, they cannot be entitled to any interest on delayed payment.”

3. It was verbally argued by learned counsel for the applicant that CWP also filed on the same matter by the applicant was dismissed. The applicant has cited judgment dated 02.6.2006 in O.A. No.850/CH/2004 titled **Bhagat Ram & Ors. Vs. UOI & Ors.**, wherein action of the respondents in withdrawing pay scale given to the applicants after so many years was held as arbitrary and illegal and respondents were directed to allow the applicants, who were in service to continue to

draw the pay scale. In the said O.A., circumstances were different as applicants therein were serving employees from whom recovery was ordered. However, in the case of applicant DCRG was withheld to accommodate the excess payment, and excess payment made was allowed on compassionate ground. The excess payment was released when a decision was taken by respondent not to recover the excess payment. Hence the said benefit as given in the above O.A. cited has already been extended to the applicant by Ministry of Home Affairs vide order dated 24/25.6.2004, wherein it was decided that such Assistants as the applicant, who have already retired and their pension had been fixed, the same will be treated as regularized and final.

4. As regards the payment of interest prayed for, the relief sought is hit by res-judicata as the matter has already been adjudicated by the competent Court in O.A. No.376/PB/2005, wherein the Tribunal had held that the applicants cannot claim that the DCRG withheld was wrong and hence they are not entitled to any interest on the delayed payment. Since a specific order has been passed in the case of the applicant with regard to interest, therefore, applicant cannot re-agitate the matter by filing another petition on the same cause of action.
5. Also, the gratuity was released to the applicant way back in 2004 and order in O.A. No.376/PB/2005 denying interest was passed on 19.12.2005 hence prayer of the applicant is also hit by delay for which, no plausible explanation or justification has been made out.
6. The applicant has cited Apex Court judgment in the case of **S.K. Dua vs. State of Haryana & Anr.** reported as 2008 AIR (SC) 1077. We find that this was a matter regarding payment of interest on delayed

payment where vigilance inquiry was pending, which is not applicable or comparable to applicant's case in this O.A. We also note that the respondents had taken a decision to not recover the excess payment made to the applicant and other similarly placed persons due to grant of senior scale, to which they were not entitled. This decision may be prompted on account of the fact that the applicant was a retiree. The relief has already given to the applicant by the respondent which was also noted by the Tribunal in earlier similar O.A. (cited above) filed by the applicant, while denying the same claim, sought as relief again in this O.A. The applicant has also cited some Apex Court judgment supporting her claim with regard to payment of interest on delayed payment of gratuity. However, these were arguments which applicant should have made in the earlier O.A. filed before the Tribunal. The applicant's relief sought, has already been settled in earlier O.A. No.376/PB/2005 and cannot be re-adjudicated.

7. Accordingly, the O.A. is dismissed being devoid of merits.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Date:

Place: Chandigarh.

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