

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.1908 of 2018

This the 13th day of August 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Ashwani Kumar Sharma
Aged about 65 years,
Retired Under Secretary, R&A.W.
House No.-217, Sector-30,
Faridabad, Haryana.

....Applicant

(By Advocate : Ms. Richa Ojha)

VERSUS

Secretary (R)
Cabinet Secretary
10th Floor, 1001, CGO Complex,
Paryavaran Bhawan Bldg.,
New Delhi-110003.

.....Respondents

(By Advocate : Shri Hanu Bhaskar)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following reliefs:-

- “8.1 To direct the Respondent No.1 to make payment of interest on arrears of Foreign Allowance local servant allowance component to the applicant for the period from 24.03.2006 to 12.04.2017 at the rates applicable to General Provident Fund.
- 8.2 To award the cost of the case.
- 8.3 To grant any other relief as may be deemed fit in facts and circumstances of the case.”

2. Brief relevant facts of the case are that the applicant at the relevant time was posted on special assignment as

Attache w.e.f. 9.4.2002 to 24.3.2006 and his actual stay abroad was from 1.7.2002 to 23.3.2006. The applicant had earlier filed OA 14/2014 before this Tribunal praying for grant of arrears of Foreign Allowance (Local Servant Allowance Component) for the period from 29.6.2002 to 23.3.2006, which, according to him, comes to Rs.4,85,773/- and also interest Rs.3,25,183/- on the said amount of arrears. The said OA was filed by the applicant along with delay of condonation application seeking condonation of about 7 years and 9 months and the applicant stood retired as on 31.1.2013. This Tribunal vide Order dated 16.1.2014 dismissed the said OA of the applicant by holding the same barred by limitation. Thereafter applicant preferred Writ Petition (Civil) No.3486/16 against the aforesaid Order of this Tribunal before the Hon'ble Delhi High Court and the High Court dismissed the said Writ Petition by upholding the view taken by this Tribunal vide Order dated 27.4.2016. Thereafter applicant has also filed Review Petition No.301/2016 before the Hon'ble Delhi High Court which was also dismissed by the High Court vide Order dated 15.7.2016.

2.1 The Department had moved a proposal before the M/o Finance somewhere in December 2012 to seek the approval to make the payment of Local Servant Allowance Component to all the 126 similarly placed officers so that the said officers are not discriminated against each other in the payment of

the said allowance. The approval of the M/o Finance was received in May 2016. The Department though was aware that the case of the applicant stood dismissed in January 2016 and confirmed in April/July 2016 when his Writ Petition as well as Review Petition stood dismissed, still so as not to discriminate him on the said ground issued him an amount of Rs.5,36,748/- by cheque dated 12.4.2017, as the said payment was made to all similarly placed 126 persons.

2.2 Now by filing this OA, the applicant is seeking a direction to the Respondent No.1 to make payment of interest on arrears of Foreign Allowance local servant allowance component to the applicant for the period from 24.03.2006 to 12.04.2017 at the rates applicable to General Provident Fund.

3. During the course of hearing, learned counsel for the applicant submitted that the arrears of local servant allowance was withheld by the respondent no.1 without any valid ground or rule, hence, the respondent is liable to pay interest to the applicant. In support of his contention, learned counsel for the applicant placed reliance on the decision of the Apex Court in the cases of **S.R. Bhanarale vs. UOI and others**, 1996 SCALE (5)693, **S.K. Dua Vs. State of Haryana and another**, (2008) 3 SCC 44 and also of the Hon'ble Bombay High Court in the case of **Yuvraj Nathuji Rodye v/s The Chairman, Maharashtra State Electricity**

Board & Others in Writ Petition No.3492 of 1994 decided on 18.9.2008 and of Hon'ble High Court of Madras, Madurai Bench in **B. Thirumoothy vs. The Secretary to Govt., Highways Deptt.** in WP (MD) No.20062/2013 decided on 22.3.2017.

3.1 Counsel also placed reliance on the decision of this Tribunal in OA No.4335/2013 (**J.P. Jyoti vs. UOI and others**) and OA No.4365/2013 (**Sharad Sharma vs. UOI and others**) in which similar cases were considered by this Tribunal and vide common Order dated 11.2.2015 allowed the said OAs and directed the respondents to pay arrears of Foreign Allowance for the different periods of the applicants therein at the highest rate and both the applicants were also declared to be entitled for interest on delayed payment at the rate applicable to the GPF deposits. The said decision of this Tribunal dated 11.2.2015 was challenged by the respondents before the Hon'ble Delhi High Court by filing Writ Petition (Civil) Nos.10190/2015 and 10260/2015 and the High Court vide Order dated 22.2.2016 in the said cases modified the said Order of this Tribunal with the following observations:-

“The only issue raised in the present writ petition relates to the period for which interest should be paid. We notice that the Tribunal in the impugned order has directed payment of interest from the date when the payment became due, till the date of payment at the rate applicable to General Provident Fund (GPF) deposits.

Learned counsel for the respondents submits that he has no objection, in case the interest is restricted to period one year prior to the date of representations, which in the case of Joginder Pal Singh is dated 02.11.2012 and in the case of Sharad Sharma is dated 03.11.2012. In other words, interest would be payable w.e.f. 03.11.2011 in the case of Joginder Pal Singh and w.e.f. 04.11.2011 in the case of Sharad Sharma.

We accept the statement made by learned counsel for the respondent and accordingly modify the impugned order to this extent.

Learned counsel for petitioner accepts that payment of principal amount is not challenged by them.

The statement made on behalf of the respondents, in these circumstances, we believe should be accepted.

Learned counsel for the respondent submits that there is some dispute with regard to the conversion rate applicable. This is a separate matter and not a issue/question raised in this writ petition.

Writ petitions accordingly stand disposed of.”

Thereafter the respondent preferred SLPs against the aforesaid Order of the Hon’ble High Court by filing SLP (Civil) No.12797/2016 and SLP (Civil) No.12818/2016 and the Apex Court vide similar orders dated 1.8.2016 and 18.7.2016 respectively dismissed the said SLPs with the following observations:-

“Delay condoned.

We are not inclined to interfere with the order impugned herein. The Special Leave Petition is dismissed.

However, we modify the rate of interest awarded by the High Court to 6 per cent per annum and at that rate payment should be made within three months from today.”

3.2 Lastly counsel contended that although the respondent has released the arrears of Foreign Allowance (Local Servant Allowance Component) to the applicant for the aforesaid period but they have not paid any interest amount on account of delayed payment of the same which was due to him on 24.3.2006, i.e., from 24.03.2006 to 12.04.2017 at the rate of GPF and, therefore, the respondents be directed to pay interest to the applicant also.

4. On the other hand, counsel for the respondent contended that applicant's case is not similar with the other persons/employees, as the applicant is not entitled to any interest because such claim filed by the applicant earlier stood adjudicated and was rejected right upto the Hon'ble High Court and the same has attained finality as the applicant has not chosen to challenge the said decision of this Tribunal as well as of the Hon'ble Delhi High Court (supra) before the Hon'ble Supreme Court. Counsel further submitted that stand of the respondent whereby it did not discriminate the case of the applicant, after dismissal with similarly situated persons, does not give rise to a fresh cause of action for the applicant to claim interest.

5. After having heard learned counsel for the parties and having carefully perused the pleadings on record, it is observed that it is an admitted position that the applicant has

earlier filed aforesaid OA claiming the amount of arrears of Foreign Allowance (Local Servant Allowance Component) for the period from 29.6.2002 to 23.3.2006 as also interest thereon. However, this Tribunal dismissed the said OA being barred by limitation and appeal preferred by the applicant before the Hon'ble Delhi High Court was also dismissed as the High Court by upholding the said decision of the Tribunal. The applicant has chosen not to challenge the said decision before the Apex Court, which lead to attainment of finality of the issue raised by the applicant.

6. Although it is true that subsequently, the similar issue had also been raised before this Tribunal by similarly placed persons and this Tribunal allowed the same and on challenge, the same was modified to certain extent as quoted in preceding paragraph by the Hon'ble Delhi High Court. Further the said decision of the Hon'ble Delhi High Court was again modified by the Apex Court with the observations as quoted in preceding paragraph. It is to be noted that the matter regarding payment of higher foreign allowances inclusive of the local servant wages, i.e., Discretionary Foreign allowance to 126 such officers including the applicant was reviewed in the light of Hon'ble CAT's order dated 5.3.2009, which was upheld by the Hon'ble Delhi High Court in the case of V.K. Jan, AFLE/US(Retd.), allowing higher foreign allowance inclusive of local servant wages and a proposal was

moved in December 2012 to seek the Ministry of Finance approval. At the time of submission of representations and filing case/OA in the Court by the officers falling in this category, the Department was not equipped to pay the arrears of higher foreign allowance, viz., Discretionary Foreign Allowance for want of requisite authorization. The approval of MOF was received in May 2016. Be that as it may, the OA No.140/14 as filed by the applicant before this Tribunal was dismissed as well as Writ Petition as well as Review Petition were also dismissed by the Hon'ble Delhi High Court and the said decision had attained finality and thus this Tribunal is also of the view that the applicant in the present facts and circumstances of this case is not entitled to claim interest on the payment of arrears of Foreign Allowance. Reason is obvious that if the applicant is allowed interest on the delayed payment of arrears in the present factual situation, it would lead to a situation of opening an issue which has attained finality qua a particular individual. If the contention of the applicant is also accepted in the present factual situation, that would also lead to unsettling of settled matters. It is better to give quietus to the issue. The applicant has already engaged himself in two rounds of litigations in this regard. If the applicant was aggrieved, it was open to him to challenge the said decision before the higher forum. Further unsettling

a position settled by the decision of the Court cannot be legally permitted.

7. In the result, and for the foregoing reasons, this Tribunal does not find any merit in the claim of the applicant and hence, the same is accordingly dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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