

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

LIBRARY

OA/350/936/2016

Date of Order: 22-7-19.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Syamal Joardar, JE E/M MES 246946,
Son of late K.G.Joardar
residing at 75/3 Nagbagan Raod
P.O. Syamnagar, Dist; 24 Parganas (N),
Pin- 743127.

.....Applicant

Vrs.

- 1) The Union of India, Service through the Secretary, Ministry of Defence, South Block, New Delhi-110001.
- 2) The Director General (Pers)/MES Engineer-in-Chief's Branch, Integrated HQ of MoD (Army), Kashmir House, Rajaji Marg, DHQ Post, New Delhi-110011.
- 3) The Chief Engineer, Head Quarter Eastern Command, Fort William, Kolkata-700021.
- 4) The ALAO Eastern Command, G/O Chief Engineer Eastern Command, Fort William, Kolkata-700021.
- 5) The Controller of Defence Accounts (Eastern Command), Kolkata, 13 Camac Street, Kolkata-700017.
- 6) The Garrison Engineer (Air Force) Barrackpore, PO: Barrackpore, Dist: 24 Parganas (North), Kolkata-700120.
- 7) Commander Works Engineer, (Air Force), Kalaikunda, PO. Kalaikunda Air Field, Dist West Medinipur.

.....Respondents

For the Applicant(s): Ms. S.Mukhopadhyay, Counsel

For the Respondent(s): Mr. B.P.Manna, Counsel

ORDER

Bidisha Banerjee, Member (J):

The application has been filed seeking the following reliefs:

"a. An order directing the respondents to issue Balance leave certificate of the applicant without any delay.

b. An order directing the respondents to pay the balance leave salary to the applicant along with accrued interest at the rate of 10% per annum.

c. An order directing to the respondents to pay the cost of this proceedings.

d. Pass such other and/or further order....."

2. At hearing, it transpired that the Leave Encashment of the applicant has already been released after some delay. Ld. Counsel for the applicant would confine her prayer only to seek interest on delayed payment of Leave Encashment. In support, she would cite the following decisions:

(1) S.K.Dua Vs. State of Haryana & Anr., rendered by the Hon'ble Apex Court in Appeal (Civil) No. 184 of 2008 on 09.01.2008 where the Hon'ble Apex Court has held as under:

It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. xxxxxx xxx. It also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

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12. To us, the plea of the learned counsel for the appellant that the High Court ought to have entered into the merits of the matter which is based on documentary evidence is well-taken. In our considered view, the writ petition ought to have been admitted by issuing Rule nisi and ought to have been decided on merits. The High Court, however, dismissed the petition by a cryptic order which reads thus:

The petitioner seeks only payment of interest on the delayed payment of retiral benefits. We, however, relegate the petitioner to avail of his remedies before the Civil Court, if so advised. Dismissed with the above observations.

13. The order passed by the High Court, therefore, must be quashed and set aside".

While the order passed by the Hon'ble High Court was quashed and set aside, the matter was remitted back to the Hon'ble High Court to consider the matter on merits keeping in mind the following:

"14. ~~xxx xxx xxx~~.....the appellant is a senior citizen and the ~~prayer relates to interest on retiral dues paid to him after four years.~~ Keeping in view the totality of facts and circumstances, we request the High Court to give priority to the case and decide it finally as expeditiously as possible, preferably before June 30, 2008".

(2) In Govt. of NCT of Delhi and Ors. Vs. Bhagwat Swaroop, W.P.(C) No. 9326/2015, where 12% interest for delayed payment of leave encashment was allowed by the Hon'ble High Court of Delhi vide its order dated 29.09.2015, the reason being as under:

9. At the outset, before delving into the merits of the submissions made by the learned counsel, the relevant statutory provision requires to be noticed which reads as under:

Rule 39 (2) (a) of CCS (Leave) Rules, 1972 provides as under:

"(2) (a) Where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to

grant leave shall, suo moto, issue an order granting cash equivalent of leave salary for both earned leave and half pay leave, if any, at the credit of the Government servant on the date of his retirement subject to a maximum of 300 days;"

10. After perusing the aforesaid provision, it clearly shows that it casts a duty upon the authority competent to take steps of his own to ensure that cash equivalent to leave salary for both earned leave and half pay leave, if any, to the credit of the Government servant to the maximum of 300 days is disbursed immediately after his retirement. Thus, the contention of the petitioner that the respondent was himself responsible for the delay does not hold good as the competent authority shall suo moto issue an order granting cash equivalent of leave salary.

11. This court in the case of *Government of NCT of Delhi v. S.K. Srivastava WP(C) No. 1186/2012* which was decided on 29.02.2012, had decided that interest would be payable on delayed payment of the leave encashment amount where the delay is on account of no fault on the part of the employee.

In this case it was observed as under:

"4. The learned counsel for the petitioner states that all other dues had been paid to the respondent along with interest at the GPF rate, but since there was no provision in the leave rules for grant of interest, that is why the present petition has been filed. We do not agree with the submission made by the learned counsel for the petitioner that because there are no rules providing for grant of interest, the respondent would not be entitled to the same. There is also no bar to the grant of interest whenever the leave encashment amount is delayed for no fault on the part of the employee. The government has retained the money from the year 2000 till 2011, which, in any event, was due to the respondent in the year 2000 itself, particularly in view of the fact that even the conditions specified in Rule 39(3) had not been complied with. Consequently, grant of interest on the said amount at the GPF rate by the Tribunal cannot be faulted. In any event, we may also point out that between 2000 and 2011, because of inflation, the real value of the amount that was due to the respondent had substantially eroded, the payment of interest at the GPF rate would only be a kind of balm applied to the injury suffered by the respondent. It may, in fact, actually turn out that the petitioner would not be paying anything more in real terms than what it was liable to pay in the year 2000."

12. The Hon'ble Supreme Court in the case of *Vijay L. Mehrotra v. State of U.P. & Ors. (2001) 9 SCC 687*, had granted interest on, inter alia, the delayed payment of the

leave encashment amount at the rate of 18% per annum. The relevant part of the judgement is as under :

"3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement."

13. In the instant case, there is no reason or justification for not making the payment for months together. In our opinion, there are no laches or negligence on the part of the respondent. Since in the aforementioned case, the Supreme Court had directed that interest be paid at as high a rate as 18% per annum on both gratuity as well as the leave encashment amount, we see no reason to interfere with the directions of the Tribunal granting interest at the rate of 12% per annum for the delayed payment of leave encashment.

14. In view of above, we find no infirmity in the Order dated 27.08.2014 passed by the Tribunal. The petitioners, in our view, have not made out a case for judicial review. Resultantly, the writ petition is without any merit and the same is dismissed."

3. Per contra, Ld. Counsel for the Respondents vehemently opposed the contention that the applicant deserved interest on delayed payment of leave encashment and submitted that the delay could not be attributed or ascribed to the inaction of the Respondents. The applicant had wrongly availed LTC for the block from 1978-81, which being detected at his retirement, an amount of Rs. 11,490/- was directed to be recovered vide notice dated 13.01.2016 due to which there has been some delay in releasing the Leave Encashment. They contended that the delay being not attributable to the Respondents, the ratio of the decisions cited by the applicant would not apply to the present fact and situation.

4. We considered the matter on the basis of the facts stated and decisions cited in support. We find that, in fact, the delay was attributable to the applicant, who took quite some time to refund the payable amount. However, since it had to be recovered from him whereafter Leave Encashment was released, the

Respondent ought not to be saddled with penal interest on delayed payment of Leave Encashment. Accordingly, the O.A. stands dismissed. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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