

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.6563/2007**

% **Date of Decision: 07.10.2009**

UNION OF INDIA Petitioner

Through: Mr. D.S. Mahendru, Advocate.

Versus

SH. R.K. GUPTA Respondent

Through: Mr. G.S. Lobana, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

ANIL KUMAR, J.

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1. The petitioner, Union of India, has challenged the order dated 26.04.2007 passed by the Central Administrative Tribunal, Principal Bench in O.A. No. 1268/2006 titled as Sh. R.K. Gupta (Retd.) Vs. Union of India awarding interest at the rate of 8% per annum on arrears of retiral/pensionary benefits for the period when the respondent was under suspension.

2. The respondent was a Postal Assistant with Delhi Postal Circle and he was suspended while in service on account of a criminal case pending against him.

3. On his retirement on 01.03.1996 he was paid only provisional pension on 24.11.1998 and other retiral benefits like leave encashment, gratuity etc. were withheld. Aggrieved by non-payment of leave encashment and gratuity and other benefits along with interest at the rate of 12 per cent per annum, the respondent filed O.A. No. 1832/98. The petition of the respondent was allowed on 06.04.1999 with the following directions:

“4. In so far as the claim of interest is concerned, representation dated 10.7.1998 (Annexure A-VI) indicates that pension was revised in terms of Government of India order dated 27.10.1997, and pay was also revised pursuant to the Government orders on the recommendations of the 5th Pay Commission which were also issued around that time. Some time would naturally have been required for the authorities charged with preparing the bills and releasing the aforesaid amounts to applicant, and having regard to the same, it would be reasonable to direct respondents to pay applicant interest @ 12% p.a. on the sums release on 1.1.1998 till the date of actual payment. This should be calculated and paid to applicant within three months from the date of receipt of a copy of this order.”

4. After the petition for release of gratuity and leave encashment was allowed, the same were paid on 08.06.1999. Thereafter arrears of pay and allowances were paid on 08.07.1999 with 12 per cent interest.

5. Later on the respondent was acquitted in the criminal case which was pending against him, on 29.11.2003. However, the period from 26.07.1985 to 04.05.1988 during which he was under suspension was not treated as a period spent on duty and an order dated 28.05.2005 was passed declining to the petitioner emoluments during the said period of suspension.

6. The respondent, therefore, filed yet another O.A. No. 1706/2004 challenging the order dated 28.05.2004 whereby his suspension period was not treated as period spent on duty. The petition was allowed by order dated 11.02.2005 and the order dated 28.05.2005 was set aside and the respondent was directed to treat the respondent on duty from 26.07.1985 to 04.05.1988 and he was also awarded all consequential benefits including retiral benefits for the said period.

7. According to the respondent despite order dated 11th February, 2005 all the amounts due to him were not paid. Therefore an M.A. 2027/05 was filed by the petitioner seeking implementation of order dated 11th February, 2005. In the said miscellaneous application, the respondent categorically claimed interest on his retiral benefits under sub-rule (1) and (2) of Rule 68 of CCS (Pension) Rules, 1972 for the said period when he was under suspension.

8. After hearing the contentions of the parties, the plea of the respondent to grant interest was declined by the tribunal by order dated 27.02.2006 in M.A. No. 2027/05. While declining the prayer of the respondent for interest, the tribunal had held as under:

“At this stage, the Tribunal will not go behind the order of this Tribunal dated 11.2.2005 and will not entertain any claim of the applicant which ought to have been pleaded in the original OA and which has not been granted by the Tribunal. According to the applicant, the consequential benefits which are payable in accordance with the order will also include the amount of interest payable. We are afraid the executing court cannot modify the order of this Tribunal and extend the benefit which was not specifically granted while disposing of the OA. The order of the Tribunal is very clear. There was no direction that interest would also be payable on the amount due in the order of the Tribunal.

The dictionary meaning of the word ‘consequential’ are ‘following’ as an effect ‘immediate’ or ‘eventual’ or as a ‘logical inference’. The payment of interest on pay and allowances is not a necessary effect and eventual to the main order of payment of pay and allowances for suspension period. Interest, as such, is not a consequential benefit which flows from the main direction.”

9. The respondent, thereafter, filed yet another O.A. being O.A. No. 1268/06 claiming interest on his retiral benefits which were awarded by order dated 11th February, 2005 in O.A 1706 OF 2004.

10. By the impugned order the tribunal has allowed the relief of interest to the respondent, rejecting the plea of the petitioner that the relief claimed by the respondent is barred by the principle of constructive *res judicata*. The petitioner had categorically contended that since the relief of interest was available to the respondent in O.A. No. 1706/04 and should have been claimed by him, therefore, the similar plea could not be taken by the respondent by filing another petition. The petitioner had also relied on ***Forward Construction Co. and Others Vs. Prabhat Mandal (Regd) Andheri and Others***, (1986) 1 SCC 100 in support of his contention that the relief of the respondent would be barred under the principle of constructive *res judicata* and the plea would also be barred as it was categorically denied by the tribunal in M.A. No. 2027/05 by order dated 27.02.2006.

11. We have heard the Learned counsel for the parties and have also perused the petition, counter affidavit and the documents filed by the parties. This cannot be disputed that while challenging the order dated 28th May, 2004 whereby the emoluments for the period of suspension were denied to the respondent, the respondent was entitled to claim interest on the said emoluments. It appears that the respondent did not claim the interest specifically on the emoluments for the period he was under suspension. The tribunal, therefore, though directed to pay consequential benefits for the period 26th July, 1985 to 5th May, 1988 but did not award interests on the consequential benefits for the said

period. In the application filed by the respondent later on, as the amounts due to the respondent were not paid, also claiming interest on the amounts, it was held that the Tribunal while executing the order cannot grant interest.

12. The respondent did not challenge the order dated 27th February, 2006 declining interest on the amounts which had become due pursuant to order dated 11th February, 2005 nor sought review of order dated 11th February, 2005 whereby the petitioners were directed to treat the suspension period as the period on duty for all purposes and awarding all consequential benefits including retiral benefits but not interest as it was not claimed by the respondent.

13. The tribunal has not considered the plea of the petitioner that the claim of the respondent for interest is barred by the principle of constructive *res judicata*. No reason has been given as to why the claim of interest by the respondent in the Original Application in question is not barred by constructive *res judicata*. What is held by the tribunal is that after hearing arguments of both sides, the tribunal agrees with the arguments placed by the Counsel for the respondent and the Tribunal has relied on W.P. Bhatia Vs Union of India, WP(C) 4931 OF 2002. In the case relied on by the tribunal for awarding interests, the plea of claim being barred by constructive *res judicata* was not even involved. It is merely an example of an instance where the claim of interest had

been allowed by the Court. The Tribunal has not considered as to why the ratio of *Forward Construction Co. & ors* (supra), relied on by the petitioner, will not be applicable or relevant.

14. After hearing the learned counsel for the parties we are unable to agree with the decision of the Tribunal. As aforesaid, the Tribunal has not even discussed as to why the principle of constructive *res judicata* shall not be applicable in the present facts and circumstances, when the respondent was entitled to claim interest in the earlier petition filed by the petitioner and where it was not sought specifically. A relief which was available and which could be sought by the respondent and which had not been sought by him, could not be claimed by the respondent by filing another petition later on. Even assuming that the respondent was justified in claiming interest as claimed by him, in the face of the order dated 27.02.2006 passed in M.A. 2027/2005, which was allowed to attain finality, the respondent could not have maintained yet another O.A. to again claim the same relief.

15. The Supreme Court in ***Forward Construction Co.*** (supra) had held that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both

in respect of the matters of claim or defense. Consequently, the adjudication by the Tribunal in O.A. 1706 of 2004 and M.A. 2027/2005 shall also be conclusive about the claim of interest by the respondent and it could not have been claimed afresh by the respondent by filing another petition being O.A no.1268 of 2007, which was allowed by order dated 26th April, 2007, which is impugned by the petitioner.

16. The plea of the learned counsel for the respondent that since the respondent is entitled for interest under Rule 68 of CCS (Pension) Rules 1972, therefore, the interest ought to have been awarded and it will not be barred under the principle of constructive *res judicata* or that the principle of constructive *res judicata* shall not be applicable to such a case is not acceptable and is rejected. The other plea of the learned counsel for the respondent that since the respondent was under suspension for a fairly long period and therefore he should have been awarded interest, also cannot be accepted in the present facts and circumstances. No exceptions can be carved out to principle of constructive *res judicata* on the grounds as has been alleged by the respondent.

17. Consequently, the writ petition is allowed and the impugned order dated 26.04.2007 passed in O.A. No. 1268/2006 titled Shri R.K. Gupta (Retd.) Vs. Union of India and Others awarding interest at the rate of 8 per cent on the retiral/pensionary benefits to the respondent is set

aside. The respondent shall not be entitled for any other interest at the rate of 8 per cent or at any other rates in the facts and circumstances. However, in the facts and circumstances the parties are left to bear their costs.

ANIL KUMAR, J.

VIPIN SANGHI, J.

OCTOBER 07, 2009
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