

REPORTABLE

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

+ **WRIT PETITION (CIVIL) NO. 4941 OF 2002**

% **Reserved on : 11th May, 2011.**
Date of Decision : 1st June, 2011.

DHYAN SINGH Petitioner
Through Dr. J.C. Vashista, Advocate.

VERSUS

GOVT. OF NCT OF DELHI & OTHERS Respondents
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

SANJIV KHANNA, J.:

The petitioner, Dhyan Singh, retired as the Principal of Government Boys Senior Secondary School, Rana Pratap Bagh, Delhi on 28th February, 1999. He filed O.A. No. 2530/2000 on account of non-payment of his pension, gratuity, etc. The aforesaid O.A. along with application for amendment M.A. No. 971/2001 have been disposed of by the impugned order dated 28th September, 2001. In the said order, the Central Administrative Tribunal, Principal Bench, New Delhi (the tribunal, for short) records that payment of provisional pension was directed by the tribunal vide their order dated 19th March, 2001

passed in M.A. No. 592/2001. The impugned order directs that the respondents would pay interest @ 15% per annum on the delayed payment of provisional pension for the period 1st March, 1999 up to the date of actual payment of the arrears of provisional pension. The impugned order further records that the petitioner would be paid interest on the Group Provident Fund as per the applicable rates for the months of June and July, 1999, as interest upto May, 1999 had already been paid. There is no dispute about the aforesaid directions and the respondents have accepted the order of the tribunal. It may be noted here that the petitioner has been paid provisional pension as he is facing prosecution in a criminal case instituted by Parent Teachers Association on the allegation that he had misbehaved with a student, who was paraded naked. It appears that the said prosecution is still pending.

2. The grievance of the petitioner against the impugned order is limited and is restricted to interest on two accounts; (1) the petitioner was paid leave encashment of Rs.92,182/- on 19th June, 2001. The tribunal has awarded interest @ 15% per annum from January, 2000 to 30th May, 2001. The petitioner claims that he should be paid interest from the date of his retirement, i.e., 1st March, 1999 till December, 1999 and (b) the

petitioner was paid Group Insurance of Rs.33,704/- on 19th June, 2000 but the tribunal has refused to grant interest for the period between 1st March, 1999 to 24th May, 2001.

3. The tribunal has denied interest on Group Insurance for the following reasons:-

“10. Payment of insurance money requires submission of pre-receipted bill by the applicant. According to the respondents, the aforesaid bill was submitted by the applicant on 29.3.2001 and the amount involved (Rs.33704) was paid vide cheque dated 24.5.2001. I have no reason to disbelieve the respondents in regard to the date on which the aforesaid pre-receipted bill was submitted by the applicant. There has not been any undue delay thereafter inasmuch as the financial sanction for the payment of insurance money was issued within a month thereafter, i.e., on 28.4.2001. I am, therefore, not inclined to direct payment of interest on this amount.”

4. It is apparent from the above that the tribunal held that the petitioner should have given a pre-receipt bill and as he had delayed submission of the pre-receipt bill, interest should not be awarded. The aforesaid reasoning of the tribunal does not merit acceptance in view of paragraph 11.1 at page 27 of Swamy's 1980 Edition on Compilation of Central Government Group Employees Insurance Scheme, 1980, which reads as under:

“11.1: If an 'employee' retires on attaining the age of superannuation or

otherwise ceases to be in Central Government Service and his service book discloses that he has been in the member of the 'Scheme', the Head of Office shall issue a sanction for the payment of the member's accumulation in the Savings Fund after obtaining a simple application in Form No. 4.

FORM NO. 4 of page 62 & 63 of Swamy's Compilation on Group Insurance Schemes for Central Government Employees and Union Territory Government Employees – Annexure R-2”

5. The aforesaid paragraph clearly states that it is for the Head of the Office to issue sanction for payment of the member's accumulation in the savings fund after obtaining a simple application in form No. 4. Therefore, it was the obligation on the Head of the Office to get the necessary formalities completed. In this connection, we may notice that the petitioner had submitted before the tribunal and has submitted before us that he had submitted pension papers to the respondents on 7th July, 1998. However, these were returned as the respondent maintained that these should be submitted in November-December, 1998 since vigilance clearance was required. These were re-submitted in December, 1998 but were again returned by the respondents that these should be re-submitted in February, 1999. The petitioner had submitted these papers on 26th February, 1999 but no action was taken. In case a pre-

receipt bill was required to be submitted by the petitioner, the respondents should have informed and indicated the same to the petitioner. There was no lapse or fault on the part of the petitioner and the delay in submitting the pre-receipt bill was because the respondents did not ask the petitioner to submit the same. Accordingly, the petitioner is entitled to interest @ 15% per annum on Rs.33,704/- from 1st March, 1999 till the date on which the payment was made, i.e., 24th May, 2001.

6. Interest on leave encashment for the period between 1st March, 1999 till 31st December, 1999 has been rejected by the tribunal for the following reason:

“11. Leave encashment was sanctioned according to the respondents on 24.4.2001. This amount could be paid only after the verification of the service record, in particular, after completion of the service book. For various reasons, service book could be completed only by the end of December, 1999. The applicant is also responsible for the delay thus incurred. The amount of leave encashment, as stated, could be paid only thereafter. The respondents have, however, taken a long enough time for sanctioning leave encashment and making payment thereof. The amount in question has been sanctioned on 24.4.2001 and paid vide cheque dated 30.5.2001. In the circumstances, there is, in my view, sufficient justification for payment of interest on leave encashment amount from January, 2000 to 30.5.2001 @ 15% which I have

already directed to be paid in respect of arrears of provisional pension.”

7. In an earlier portion of the order, the tribunal has referred to the contention of the respondents on the question of service book. The said portion which records the contention of the respondents, reads as under:

“4.....Further, the applicant took his service book personally to G.B.S.S. School, Bawana for its completion along with the office letter dated 24.2.1999. He failed to get the service book completed and, therefore, the respondents had to make special efforts to get back his service back(sic) duly completed. At long last, the applicant's service book was received on 20.12.1999.....”

8. In spite of the aforesaid contention and defence of the respondents, the tribunal has allowed the original application and has directed payment of interest on provisional pension from 1st March, 1999 to the date of actual payment of arrears of provisional pension. Thus, there is a contradiction in the order of the tribunal. Interest had been awarded on belated payment of provisional pension, in spite of the contention of the respondents that the service book was taken by the petitioner for completion and was not returned after it was duly completed. However, while examining the question of payment of interest on

leave encashment, the same ground and reason has been upheld and applied to deny interest. The order of the tribunal awarding interest on belated payment of provisional pension has been accepted by the respondents. We also find that under the relevant rules, leave encashment had to be calculated and paid suo motu by the respondents. The petitioner in this connection has referred to Rule 139 (2)(a) of CCS Leave Rules, 1972, which reads as under:

“139. Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service.-

(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 motu issue an order granting cash equivalent of leave salary for [earned] leave, if any, at the credit of the Government servant on the date of his retirement, subject to a maximum of 300 days.”

9. In terms of the said Rule, the leave encashment should have been paid by the respondents themselves and did not require any effort or steps to be taken by the petitioner. Accordingly, the petitioner will be entitled to interest on the leave encashment amount of Rs. 92,192/- from 1st March, 1999 till 31st December, 1999 @ 15% per annum.

10. In the counter affidavit filed by the respondents it is stated that several amounts are to be recovered from the petitioner on account of licence fee, etc. It is stated that even after adjustment, a balance of Rs.83,243/- was to be recovered from the petitioner. The said counter affidavit was filed on 9th November, 2005. The interest amount now awarded to the petitioner will be set off against the dues, which are payable by the petitioner to the respondents. If any balance amount is still payable to the petitioner, the same will be paid to him within a period of two months from today. The claim and quantum can be contested by the petitioner before the authorities and, if required, in appropriate proceedings. Dispute if raised in writing will be decided by the authorities within four weeks thereafter.

11. With the aforesaid directions, the writ petition stands disposed of. In the facts and circumstances of the case, there will be no order as to costs.

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(SANJIV KHANNA)
JUDGE

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(DIPAK MISRA)
CHIEF JUSTICE

JUNE 1, 2011
VKR