

\$~03.

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

+ W.P.(C) 4676/2015

% *Judgment dated 15th July, 2015*

UNION OF INDIA & ORS. Petitioners

Through : Ms.Arti Bansal, Adv.

versus

V.P LAVANIA Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL. 8473/2015.

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 4676/2015

3. Present petition has been filed by the petitioners under Article 226 of the Constitution of India seeking a direction to quash the order dated 19.9.2014 passed by Central Administrative Tribunal, Principal Bench, (hereinafter referred to as “the Tribunal”) in O.A.No.4264/2012, whereby the petitioners herein were directed to pay interest on all the retirement benefits, except gratuity, to the respondent herein for the delayed period i.e. from the date of retirement till the date of actual payment at GPF rates, within ninety days.
4. The necessary facts, to be noticed for disposal of the present writ petition, are that the respondent was working as an Income Tax Officer. He retired

from the service on 31.8.2008 on attaining the age of superannuation. However, retirement benefits were not released in favour of the respondent such as pension, gratuity, commutation of pension, etc. on account of pendency of three criminal cases, besides other cases, wherein charges were also framed against the respondent.

5. Aggrieved by the action of the petitioners, the respondent approached the Tribunal by filing O.A.NO.4264/2012 seeking a direction to the petitioners to release all his retirement benefits such as pension, gratuity, commutation or pension with 18% interest from the date of his retirement i.e. 31.8.2008.
6. While passing the order dated 19.9.2014 in O.A.NO.4264/2012 learned Tribunal observed that during the pendency of the Original Application, the petitioners herein had paid all the retirement benefits to the respondent on all dates. Paragraph 2 of the order dated 19.9.2014 has tabulated the details as under:

Sl. No.	Nature of Payment	Amount	Due date	Date of Payment	Period of delay
1	Gratuity	Rs.349000/- Rs.167160/-	01.09.08	13.03.2013	54 months
2	Commutation	Rs.366345/- Rs.2253568/-	01.09.08	13.03.2013	54 months
3.	Leave Encashment	Rs.297770/- Rs.15660/-	01.09.08	12.02.2009 11.03.2013	5 months 54 months
4.	Pay arrears	Rs.53729/-	01.09.08	12.10.2009	
5.	Provisional Pension Sept. 08 to June 09 1.09.08 to	Rs.53052/-			

	Feb.2013				
--	----------	--	--	--	--

7. Accordingly, the respondent only restricted his prayer in O.A.NO.4264/2012 with regard to his claim of interest on delayed payments.
8. According to the respondent he was entitled to all his retirement benefits as on the date of his retirement i.e. 31.8.2008 and on account of delay in receiving the payments he has claimed interest. The petitioners herein (respondent before the Tribunal) had taken a stand that since three criminal cases were pending against the respondent, besides other cases, wherein charges were also framed, vigilance clearance was not granted.
9. Learned counsel for the petitioners submits before this Court that delay was not intentional. Counsel further submits that retiral benefits were not released only on account of the pendency of criminal cases against the respondent, the retirement benefits of the respondent were paid belatedly and, thus, the petitioner cannot be made liable to pay interest.
10. We have heard learned counsel for the parties and also perused the order dated 19.9.2014 passed by the learned Tribunal. It may be noticed that while passing the impugned order the Tribunal has taken note of the fact that criminal cases were pending against the respondent as on 31.8.2008 i.e. his date of retirement. Those very cases are stated to have been pending even now (i.e. 19.9.2014) except that the High Court at Allahabad has stayed the proceedings in the criminal cases on 29.5.2009. We are in agreement with the reasoning of the Tribunal that criminal cases were pending against the respondent on the date of his retirement and they are pending even now when his retirement benefits were released.
11. Simply to say that no vigilance clearance was granted, would not satisfy a person, who has retired and is awaiting his retirement benefits. This

reasoning also does not appeal to us as the same Vigilance Committee could have granted the clearance either in the year 2008 or after criminal cases were stayed by the Allahabad High Court in the year 2009 but the Vigilance Committee has sought to grant clearance only in the year 2013, for which no explanation is forthcoming with regard to change of circumstances, which prompted the Vigilance Committee to grant the clearance subsequently.

12. The Tribunal while passing the impugned order 19.9.2014 has taken into account Rule 9 of the CCS (Pension) Rules 1972, which deals with the right of the President to withhold or withdraw pension. The Tribunal has also taken into note Rule 68 of the CCS (Pension) Rules 1972, which provides as under:

“68. Interest on delayed payment of gratuity

(1) If the payment of gratuity has been authorized later than the date when its payment becomes due, and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the Government servant to comply with the procedure laid down by the Government for processing his pension papers.”

13. In the case of *S.K. Dua v. State of Haryana*, reported at (2008) 3 SCC 44, the Apex Court has held that a person would be entitled to interest on delayed payment even in case when no detailed Rules or Administrative instructions or guidelines are available and such a person would be protected under Part III of the Constitution, relying on Articles 14, 19 and

21 of the Constitution. Relevant paragraph of the judgment reads as under:

“4. 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 they 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.”

14. Having carefully examined the order passed by the Tribunal we find no illegality in the said order, which would require any interference under Articles 226 and 227 of the Constitution of India. Resultantly, there is no merit in the present writ petition and the same is accordingly dismissed.

CM APPL. 8472/2015 (STAY)

15. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 15, 2015

msr