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

+ **W.P.(C) 7131/2015**

% ***Judgment dated 29th July, 2015***

UNION OF INDIA & ANR Petitioners

Through : Mr.Sarfaraz Khan, Adv.

versus

U. RAI ARYA

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPL.NOS. 13091/2015 & 13092/2015

1. Exemption allowed subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 7131/2015 & CM APPL. 13090/2015 (STAY)

3. Present petition has been filed by the petitioners under Article 226 of the Constitution of India seeking a direction to set aside/quash the Order dated 18.2.2015 passed by Central Administrative Tribunal, Principal Bench, (hereinafter referred to as "*the Tribunal*"), in OA No.908/2014, by which the respondent herein has been granted simple interest at the rate of 9% on all dues payable to the respondent on the date of his superannuation on 30.6.1994.
4. The brief facts of the case, as noticed by the learned Tribunal, are that the respondent herein was initially appointed as an Engineering Supervisor, Telephones in Delhi Telephones, Delhi, in May, 1967. Thereafter, he was promoted as SDO (E) in the year 1980. While, he was working in the said

capacity, a criminal case was registered against him and he was placed under suspension. The Special Judge, CBI, Jaipur, vide Order dated 24.6.1993 convicted him, consequent to which he was imposed with a penalty of removal from service on 23.6.1994. The date of superannuation of the respondent was 30.6.1994. The respondent, was, thus, denied retirement benefits. The respondent thereafter filed an appeal before the Rajasthan High Court, which was allowed vide Order dated 7.12.2006, the Order of conviction and sentence were set aside, and the respondent was acquitted. Pursuant to the said judgment, the petitioners herein deemed the respondent as retired from service w.e.f. 30.6.1994 and he was paid his leave encashment, gratuity and pension vide letter dated 1.2.2008. However, since the petitioners herein refused to grant interest on delayed payments, the respondent approached the Tribunal by filing O.A. 4088/2010, which was disposed of by the Tribunal with the direction to the petitioners herein to consider his representation and take an appropriate decision in accordance with Rules. The petitioners vide its letter dated 20.9.2011 granted interest only on delayed payment of gratuity but did not pass any order with regard to interest on other dues. The respondent thereafter again approached the Tribunal by filing a Miscellaneous Application wherein a direction was passed to the petitioners to consider the request of the petitioner and pass appropriate orders. Since the petitioners herein failed to comply with the directions of the Tribunal, the respondent filed a contempt petition, during the course of which the petitioners herein passed the order dated 7.11.2012 denying him payment on interest on the delayed payment of commuted value of pension and leave encashment on the ground that it is not permissible under Rules.

5. Petitioners thereafter filed O.A. 908/2014, which was allowed by an

Order dated 18.02.2015 wherein it was held that the respondent (petitioner before the CAT) would be entitled to interest @ 9% on all dues payable on the date of his superannuation on 30.6.1994, is assailed on the ground that there was no delay caused at the instance of the petitioners for release of the retirement benefits, however, delay if any caused, was on account of the fact that a CBI case was pending against the respondent and in fact the Special Judge, CBI, Jaipur, convicted the respondent herein on 24.6.1993, consequent to which a penalty of removal from service was imposed upon the respondent on 23.6.1994. It is also submitted that in the normal course the respondent would have superannuated on 30.6.1994. It is contended that on an appeal filed before the Rajasthan High Court at Jaipur, the respondent was acquitted by a judgment dated 7.12.2006 and thereafter on a representation made by the respondent all retiral benefits were released in the year 2007. It is, thus, contended that the respondent could at best demand interest from the year 2007 i.e. after his acquittal and no interest would be payable for a period prior thereto as the petitioners were well within its right to withhold the retirement benefits on account of his conviction by the Special Judge, CBI.

6. We have heard learned counsel for the petitioners and also carefully examined the impugned order dated 18.2.2015 passed by the Tribunal. Before the Tribunal the respondents (petitioners herein) had raised a defence that no interest would be payable in the absence of any Rules.
7. The learned Tribunal while placing reliance on *S.K. Dua v. State of Haryana*, reported at 2008 3 SCC 44, held that even in the absence of specific Rule or order for providing interest, relief can be claimed on the basis of Articles 14, 19 and 21 of the Constitution of India, as retirement benefits are not a bounty.
8. What has prevailed upon the Tribunal to grant interest to the respondent,

as noticed from the impugned Order passed by the Tribunal, is primarily the observation made by the Rajasthan High Court in the judgment dated 7.12.2006, passed in the Appeal filed by the respondent herein, with regard to respondent being falsely implicated in this case.

9. The short question which gains importance in this case is as to whether the retirement dues of the respondent were withheld on account of any fault of the respondent. In the case of **Y.K. Singla Vs. Punjab National Bank** reported at (2013) 3 SCC 472, it has been held that in case criminal proceedings concludes in the conviction of an employee, it can be deemed as delay caused on account of the fault of the employee, but in case the proceeding concludes in acquitted, employee cannot be faulted. In the case of **Y.K. Singla (Supra)**, the appellant, a bank employee was accused of having entered into a conspiracy with another bank employee superior to him so as to extend unauthorized benefits to a member of the Indian Administrative Services. On the basis of allegations the appellant along with two accused persons were charged under Section 120-B IPC and Sections 5(2) read with Section 13(2)(d) of the Prevention of Corruption Act. The trial was conducted by the Special Judge, CBI. During the subsistence of the criminal proceedings the appellant retired from the service of the bank on his having attained the age of superannuation. On his retirement on account of pendency of the criminal proceedings, gratuity, leave encashment and commutation of permissible portion of pension were withheld. The employee was informed that his retirement benefits including gratuity were being withheld because of pendency of criminal proceedings against him. The appellant was acquitted in the year 2009; upon being acquitted he sought release of gratuity, encashment of privilege leave, balance and commutation of permissible portion of pension. Additionally, he claimed interest from the date of aforesaid

retiral benefit became due to him till the actual payments. The stand of the bank was that retiral benefits were paid to him as soon as he was acquitted by the Special Court, but no interest was paid. A writ petition was allowed by the Single Judge and the bank was directed to pay interest @8% from the date of retiral benefits had become due till the actual date of payment. In an appeal filed by the bank before the Division Bench it was held that the appellant was not entitled to any interest on delayed payment of gratuity, however, the award of interest to the appellant for withholding the other retiral benefits was not interfered with. In this backdrop, it was held:

“20. Our determination of the first ingredient is, as follows. We are of the considered view, that consequent upon the acquittal of the appellant by the Special Judge, CBI Court, Chandigarh, it would be erroneous to conclude, that the gratuity payable to the appellant on attaining the age of superannuation i.e., on 31.10.1996, was withheld on account of some fault of the appellant himself. We may hasten to add, if the appellant had been convicted by the Special Judge, CBI Court, Chandigarh, then the first ingredient would also be deemed to have been satisfied. Conversely, because the appellant has been acquitted, he cannot be held to be at fault. Accordingly it emerges, that the “fault” ingredient of the employee himself, for denial of gratuity when it became due, remains unsubstantiated. Since one of the two salient ingredients of the proviso under sub-Section (3A) of Section 7 of the Gratuity Act is clearly not satisfied in the present case, we are of the view, that the appellant cannot be denied interest under the proviso to section 7(3A) of the Gratuity Act. Accordingly, the appellant has to be awarded interest under section 7(3A) of the Gratuity Act. Therefore, if the provisions of the Gratuity Act are applicable to the appellant, he would most definitely be entitled to interest under sub-Section (3A) of Section 7 of the Gratuity Act, on account of delayed payment of gratuity.”

10. The Rajasthan High Court, while passing the judgment dated 7.12.2006,

has noticed that one, Sh.T.C. Deothia, had got a trap arranged to give vent to his annoyance and prevent the appellant (respondent herein) in pronouncing the order, which had finally been prepared by him, by which two grade increments of the decoy, T.C. Deothia, were stopped. Having noticed the financial loss, harassment and mental agony meted out to the respondent herein the Tribunal had granted interest to the respondent. The Tribunal has also noticed that what amount the respondent would have received immediately on his retirement in the year 1994, he actually received it in the year 2008.

11. Since the retiral benefits could not be released in favour of the respondent herein on account of pendency of criminal case against him, in our view the case of the respondent herein would be covered by the decision in the case of Y.K. Singla(Supra), wherein it has been held that in case criminal case is pending and the person is acquitted, he cannot be held responsible for the delay in release of the retiral benefits. The respondent herein was not only acquitted, but it shows that he was falsely implicated in the matter. Relevant portion of the judgment dated 7.12.2006 reads as under:

“20. In view of what has been discussed above, it can be safely stated that the accused has been successful to satisfactorily rebut the presumption arising against him under Section 4(1) of the Act. It appears that PW1 T.C. Deothia got the trap arranged to give a vent to his annoyance and prevent the appellant in pronouncing the order which had finally been prepared by the appellant by which two grade increments of the decoy T.C. Deothia were stopped. Also viewed in this perspective the defence version appears to be plausible, reasonable and logical that the accused accepted the money under the impression that PW1 T.C. Deothia was returning the money which was earlier advanced to him.

21. For the reasons discussed above, the conviction of the accused is bad and cannot be maintained.

22. In the result, the appeal of the appellant Ulfat Rai Arya is allowed. His conviction and sentence under Section 161 IPC and Section 5(1)(d) read with Section 5(2) of the Act are set aside and he is acquitted. He is already on bail and need not surrender. His bail bonds shall stand cancelled.”

12. In view of the peculiar facts of this case and 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. It is made clear that this order is being passed in the peculiar facts of this case, which have been stated hereinabove.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 29, 2015

msr