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

+ **W.P.(C) 9767/2015**

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Date of Judgment : 07.12.2015

RAM KISHAN

..... Petitioner

Through : Mr. Sachin Chauhan, Advocate.

versus

UNION OF INDIA & ORS

..... Respondent

Through : Ms. Anjana Gosain and Mr. Vishu
Agarwal, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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07.12.2015

1. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal dated 11.08.2015 wherein although the OA stands allowed but the prayer made by the petitioner seeking interest on the retiral benefits has been declined.
2. Counsel submits that although a specific prayer had been made before the Tribunal for grant of interest which finds mentioned in Para 8 (iii) of the OA. This prayer stands declined without assigning any reason.
3. Issue notice to show cause as to why the petition be not admitted.
4. Mrs. Anjana Gosain, learned counsel for the respondent accepts notice.
5. Since the issue involved is rather narrow, we deem it appropriate with the consent of the parties to set down the petition for hearing and disposal.
6. The petitioner superannuated on 31.07.2009 from the post of Lab.

Technician. He claims that he had an unblemished record with the Department of CGHS. A week prior to his retirement on 25.09.2007, a departmental enquiry was initiated against him. Article of charge was served upon the petitioner with Imputation of misconduct. List of documents and list of witnesses were provided to him. The petitioner filed his reply on 07.10.2007. Till his retirement, no report was submitted by the Enquiry Officer. The Enquiry Officer submitted his report on 26.11.2009. Reliance is placed on the observation of the Enquiry Officer which read as under :

“These provision of the rules are not met and hence it is not possible to hold a complete and perfect enquiry. I therefore return the case to disciplinary authority with the observations as made above”

7. The report of the Enquiry Officer was forwarded to the Disciplinary Authority. The Disciplinary Authority issued a disagreement note on 11.10.2012. The petitioner thereafter approached the Central Administrative Tribunal seeking to challenge the disagreement note and also sought release of his retiral benefits with interest. The tribunal allowed the OA filed by the petitioner. The operative part of the order reads as under :

“10. Accordingly, the departmental proceedings initiated against the applicant , vide charge memo dated 25.09.2007 (Annexure A/2), and all other actions taken by the respondent-departmental authorities against the applicant pursuant thereto, including the purported disagreement note dated 11.10.2012 (Annexure A/4), are quashed. The respondents are directed to release all the retirement benefits to the applicant, after adjustment of Government dues, if any, within a period of three

months from the date of receipt of copy of this order. On the facts and in the circumstances of the case, we are not inclined to grant any interest on the retirement dues to be paid to the applicant in terms of this order within the period stipulated as above.

11. In the result, the OA is allowed to the extent indicated above. No order as to costs.”

8. Counsel for the petitioner submits that the petitioner cannot be deprived of his retiral benefits which were due to him since the year 2009. Reliance is placed on a decision rendered by Supreme Court in the case of ***S. K. Dua Vs. State of Haryana and Anr. : AIR 2008 SC 1077.***
9. Learned counsel for the respondent submits that a complete reading of the order of the Tribunal would show that the Tribunal having regard to the facts of this case declined the payment of interest in case of the retiral benefits are paid within three months.
10. Counsel for the petitioner submits that the statutory dues have not been released till date.
11. Having regard to the submissions made and taking into consideration the fact that the order passed by the Tribunal dated 11.08.2015 has attained finality and the same has not been assailed by the respondents, the petitioner cannot be made to suffer on account of the delay in release of his pensionary dues. Since the petitioner is not at fault, he would be entitled to interest. We may note that despite the order dated 11.08.2015 passed by the Central Administrative Tribunal, the retiral dues of the petitioner have not been released till date. The petitioner cannot be deprived of his retiral benefits which

were to be released to him in the year 2009 or at least after the passing of the order by the Tribunal in August, 2015.

12. In the case of ***S. K. Dua Vs. State of Haryana and Anr. : AIR 2008 SC 1077***, it has been held as under :

“.....The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But 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.”

13. In the case of ***V. K. Sareen Vs. Union of India & Ors. : 187 (2012) Delhi Law Times 483***, a Division Bench of this court while relying on various judgments granted 10% interest while holding that the petitioner was not responsible for the delay.
14. The Apex Court in the case of ***D. D. Tewari Vs. Uttar Haryana Bijli***

Vitran Nigam Ltd. & Ors. : 2014 (9) SCALE 78, in para 4 held that :

“4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra. We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.”

15. In view of the law laid down by the Apex Court, the writ petition is allowed and the respondents are directed to pay interest @ 9 % to the petitioner on his retiral benefits.
16. The writ petition stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 07, 2015

SC