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

\+ W.P.(C) 2927/2016

MADAN LAL ..... Petitioner

Through: Mr.S.P.Sethi, Adv.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr. J.K.Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **04.04.2016**

CM No.12251/2016(exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

WP(C) No.2927/2016 & CM No.12250/2016(delay)

1. We have heard counsel for the petitioner. We are not inclined to interfere with the impugned orders dated 26.11.2014 passed in OA No.4342/2013 and 28.01.2016 passed in RA No.18/2015.

2. The petitioner had earlier filed OA No.4180/2011 which was disposed of recording the following findings:

> *"8. As is noted above, the applicant was paid the revised settlement dues vide letters dated 18.01.2011 and 07.04.2011. It is not in dispute that the terminal benefits due to the applicant as Ex-Chief Inspector of Ticket were settled in due course. The applicant has claimed interest on the arrears of revised terminal dues settled on his notional promotion after his retirement. Interest is not a*

penalty or punishment, but it is the normal gain on capital. It accure on capital when the same is due and matured, but the person entitled to it is deprived of the same. Normally interest flow in terms of statute or contract or as damages and compensation. In the present case, the applicant became entitled to arrears of revised terminal benefits only after being included in the panel for promotion to the post of ACM i.e. after 26.08.2010. With inclusion of his name in the said panel, the competent authority passed an order dated 15.12.2010 for notional fixation of pay of applicant in Group-B and consequently revised terminal benefits. Since the applicant had retired from service on 31.01.2005, the consumption of some time by respondents in settling arrear of pay and terminal benefits of applicant cannot be treated as culpable. Prior to inclusion of the name of applicant in the panel of promotion for the post of ACM sometimes after 26.08.2010 no amount of arrear of revised terminal benefits had fallen due to the applicant, thus there is no substance in his claim for interest on the said amount from 31.01.2005. As far as delay in promotion of applicant is concerned, the issue was there before this Tribunal in OA-3137/2003 and Hon'ble High Court of Delhi in WP(C) No.8432/2008. In the said O.A, this Tribunal directed only for notional promotion of the applicant to the post of ACM i.e. without any arrear of pay. When the arrear of revised terminal benefit was directed to be paid, no direction was given for payment of any interest thereon. In WP(C)-8432/2008 the Hon'ble High Court of Delhi upheld the order passed by this Tribunal. There is no statutory rule, regulation or instruction providing for payment of interest or arrear of terminal benefits revised on promotion after the date of retirement.

9. As far as the judicial pronouncements relied upon by the applicant are concerned, in the case of ***Vijay L.***

> ***Mehrotra (supra)**, the terminal benefits due to the applicant on his retirement were paid belatedly, thus interest was directed to be paid to him. Similarly, in the case of **Gyan Prakash Sharma** (supra), who retired in the year 1989, his retiral benefits were paid in 1998 and 1999, thus this Tribunal granted him interest on the arrear of selection grade and terminal benefits. In **Electronics Corporation of India Ltd. (supra)**, the Hon'ble Supreme Court declined to entertain the request for interest on the amount of arrear of pay, but directed payment of 12% interest only in case of non-payment of such amount within the specified period. In **Prem Kumar Aggarwal (supra)** the applicant was exonerated from the disciplinary action, thus for the period of delay caused in payment of terminal benefits on account of disciplinary proceedings he was paid interest. "*

3. The petitioner thereafter filed OA No.4342/2013 praying for identical relief which had been prayed for in OA No.4180/2011. In our opinion, the Tribunal has rightly held and recorded that the OA No.4342/2013 would be barred and hit by principle of *res judicata* in view of decision on merits dated 16.8.2012 in OA No.4180/2011. The petitioner cannot be allowed to re-agitate and question the same issue and cause, time and again.

4. Learned counsel for the petitioner however relies upon order dated 15.7.2013 which was passed in MA No.1790/2013 moved in OA No.4180/2011. The said order reads as under:-

> *"<u>MA 1790/13 IN OA 4180/2011</u>*
>
> *This MA has been filed by the applicant seeking liberty to file fresh OA against the orders passed by the competent authority on his representation. Now, the competent authority has decided his representation*

stating that there is a provision of payment of interest on death-cum-retirement gratuity, if delayed for over three months. However, according to applicant, the gratuity has been paid more than six years after h is retirement and therefore he is entitled for the interest on death-cum-retirement gratuity.

In this view of the matter, the MA is allowed with liberty to the applicant to file fresh OA for further redressal his grievance"

5. The aforesaid order permits the petitioner to file a fresh OA to redress his grievance in respect of enhanced amount of gratuity. Noticing the said facet, the Tribunal in the impugned order under challenge dated 26.11.2014 has recorded that the petitioner can raise his grievance by filing an OA in respect of the limited liberty granted to him in MA No.1790/2013 in OA No.4180/2011.

6. Learned counsel for the petitioner submits that he had earlier filed OA No.3173/2003 which was decided on 11.8.2008. The petitioner had in the meantime retired from service on 31.01.2005. Thereafter, the respondents had challenged the decision dated 11.8.2008 in WP(C) No.8432/2008 before the High Court but the writ petition was dismissed. This aspect has duly noted and recorded in paras 8 and 9 in order dated 16.8.2012 passed in OA No.4180/2011. After noticing the decision in OA No.3173/2003 and WP(C) No.8432/2008 that the order dated 16.8.2008 in OA No.4180/2011 was passed. This order dated 16.8.2008 has attained finality as it was not challenged and questioned. Validity of order dated 16.8.2012 cannot be examined and decided in this writ petition.

7. The petitioner therefore cannot succeed in the present writ petition. We would again clarify that the petitioner is entitled to take advantage and benefit of order dated 15.7.2011 passed in MA No.1790/2013 in OA No.4180/2011, limited to and confined to his claim for interest on the gratuity amount. To this extent, we do not express any opinion in favour or against the petitioner. He may, if so advised, file an OA.

8. With the aforesaid observations, the writ petition is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

APRIL 04, 2016/ak