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

+ W.P.(C) 7976/2016

% *Judgment dated 9th September, 2016*

T.M. SAMPATH Petitioner

Through : Petitioner in person.

versus

UNION OF INDIA & ANR Respondents

Through : Ms.Shiva Lakshmi, CGSC, Mr.Ruchir
Ranjan Rai, and Ms.Shreya Sinha,
Advs. for respondent no.1.
Mr.R.V. Sinha and Mr.A.S. Singh,
Advs. for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 31.8.2016 passed by Central Administrative Tribunal (in short '*the Tribunal*') by which OA No.3892/2015 filed by the petitioner was partly allowed by the Tribunal.
2. The brief facts of the case are that the petitioner was initially appointed as a Stenographer, Grade II, in the respondent organization/NWDA in the year 1984. Thereafter the petitioner was promoted to the post of Stenographer, Grade I, in the year 1990; to the post of Private Secretary in the year 1992; and to the post of Administrative Officer in the year 2001. The petitioner retired from service on 31.7.2015 and has been living in Bangalore since 10.12.2015. Since the respondents failed to release the amount of gratuity to the petitioner after his retirement, the

petitioner approached the Tribunal by filing OA No.3892/2015 for release of his gratuity amount and other retiral benefits. Since the petitioner has shifted to Bangalore after his retirement and on account of financial hardships being faced by him, he filed PT No.9/2016 before the Tribunal seeking transfer of the said OA to the Central Administrative Tribunal at Bangalore, however, the said transfer petition was dismissed vide order dated 18.2.2016. The petitioner challenged the order dated 18.2.2016 by filing W.P.(C) 3198/2016. In the meanwhile, OA No.3892/2015 was partly allowed by the Tribunal vide impugned order dated 31.8.2016.

3. The petitioner, who appears in person, submits that the impugned order passed by the tribunal, by allowing the OA partly, is arbitrary as the Tribunal has failed to notice the law laid down by the Supreme Court of India in the case of *State of Jharkhand & Others v. Jitender Kumar Srivastava & Others*, reported at (2013) 12 SCC 210, and also in the case of *Rakesh Kumar Jain & Anr. V. State of U.P. & Anr.*, reported at (2007) 2 SCC 461. The petitioner further submits that the Tribunal has allowed the respondent to withhold the amount of Rs.83,686/- from the amount of gratuity of the petitioner, which is contrary to the law laid down by the Apex Court in the case of *State of Jharkhand & Others*. It is further submitted that the Tribunal has ignored the decision rendered by the Apex Court in the case of *Rakesh Kumar Jain & Anr.* (supra) and erroneously awarded a lower rate of interest for deliberately delaying the payment of gratuity at the rate of General Provident Fund to the petitioner. It is also contended that the respondents have withheld the gratuity amount of Rs.10.00 lakhs of the petitioner without any basis and, thus, the petitioner is entitled to the same with 18% interest. Petitioner further submits that the Tribunal has

failed to consider the order dated 20.7.2016 passed by the High Court of Delhi in W.P.(C)No.9278/2015, titled as *Union of India & Anr. v. T.M. Sampath*, whereby this Court had directed the petitioners therein (respondents herein) not to recovery any further amount from the petitioner herein, and, thus, the Tribunal has wrongly withheld Rs.83,686/-, which is an outstanding amount of gratuity of the petitioner, could be released only after a decision is rendered in W.P.(C) 9278/2015. Petitioner contends that the respondents have already recovered Rs.90,000/- from the petitioner in W.P.(C) 9278/2015.

4. Ms.Shiva Lakshmi, Advocate, enters appearance on behalf of respondent no.1 and Mr.R.V. Sinha, Advocate, enters appearance on behalf of respondent no.2, on an advance copy, and they have opposed the present writ petition.
5. We have heard the petitioner, who appears in person, and the counsel for the respondents. We have also examined the impugned order dated 31.8.2016 passed by the Tribunal.
6. It may be noticed that the grievances of the petitioner before the Tribunal were three-fold. The first grievance of the petitioner was with regard to release of payment due for leave encashment. The second grievance of the petitioner is that although the amount of gratuity is correct i.e. Rs.83,686/-, but the same is not being released to him. The third grievance of the petitioner is that the Tribunal has granted interest at the rate of General Provident Fund i.e. 8.5 % whereas he should be paid interest at the bank rate.
7. The Tribunal has dealt with the first grievance of the petitioner in paras 4 to 6 of the impugned judgment, which read as under:

“4. As far as encashment of E.L. is concerned, the respondents

in their reply filed on 04.11.2015 have stated that the applicant has been paid Rs.4,07,697/- for encashment of 180 days of E.L. and 80 days of HPL. They have also paid Rs.11,485/- towards leave encashment due to increase in DA rates from 113% to 119%. According to them, after payment of the aforesaid amount, nothing remains to be paid to the applicant for leave encashment.

5. *On 09.08.2016, I directed the applicant to file an additional affidavit indicating clearly as to what remains to be paid to him insofar as his retiral benefits were concerned. In compliance thereof, the applicant has filed his additional affidavit on 11.08.2016 in which he has not mentioned that any amount remains outstanding under the leave encashment head. During the course of arguments, the applicant stated that he wanted to withdraw his prayer regarding leave encashment with liberty to file afresh O.A. for the same. This prayer was seriously opposed by the learned counsel for the respondents, who argued that pleadings on this issue have already been exchanged and there was no reason why the applicant be given liberty to file fresh OA on the subject. I am inclined to agree with the respondents in this regard. The applicant cannot be allowed to waste precious judicial time by filing OAs repeatedly on the same issue.*
6. *The respondents have categorically stated in their reply that nothing remains outstanding as far as encashment of leave was concerned. There is no rebuttal of this averment by the applicant in his affidavit filed on 11.08.2016. I am, therefore, of the view that the respondents' contention in this regard be accepted. I, accordingly, hold that as far as encashment of E.L. is concerned, the entire admissible amount has already been paid to the applicant."*
8. At this stage, we have asked the petitioner as to whether he has given any break-up with regard to the amount with respect to his leave encashment either before the Tribunal or before the Court. The answer is in the negative.

9. We may also notice that the Tribunal has observed that the petitioner was categorically asked to file an additional affidavit with regard to his retiral benefits but he has not mentioned any amount outstanding under the leave encashment heading. We may also notice that according to the respondent, the petitioner has been paid Rs.4,07,697/- for encashment of 180 days of Earned Leave and 80 days of Half Pay Leave. The respondents have also paid Rs.11,485/- to the petitioner towards Leave Encashment due to increase in Dearness Allowance rates from 113% to 119% and, thus, according to the respondents, no further amount is due and payable to the petitioner.
10. In view of the fact that the petitioner has failed to point out the amount due, we are unable to find any fault in the impugned order passed by the Tribunal with regard to the first grievance of the petitioner i.e. release of payment due for leave encashment.
11. As far as the second grievance of the petitioner that Rs.83,686/- towards gratuity is not being released to him is concerned, Mr.Sinha, counsel for respondent no.2, submits that Rs.83,686/- has been retained by the respondents on account of the fact that the said amount cannot be released to the petitioner as part of his period of leave has been declared as *dies non*, which is the subject matter before this Court in W.P.(C) 9278/2015. Counsel further submits that in W.P.(C) 9278/2015 the Court has noticed that Rs.91,461/- has been recovered from the respondent (petitioner herein) and the further amount shall not be recovered.
12. Having regard to the submissions made with regard to the second grievance, liberty is granted to the petitioner to seek modification of the interim order passed in W.P.(C) 9278/2015, if he so desires.
13. As far as the third grievance of the petitioner is concerned the Tribunal

has granted interest at the rate of General Provident Fund i.e. 8.5% instead of bank rate, we find no grounds to modify the same in these proceedings.

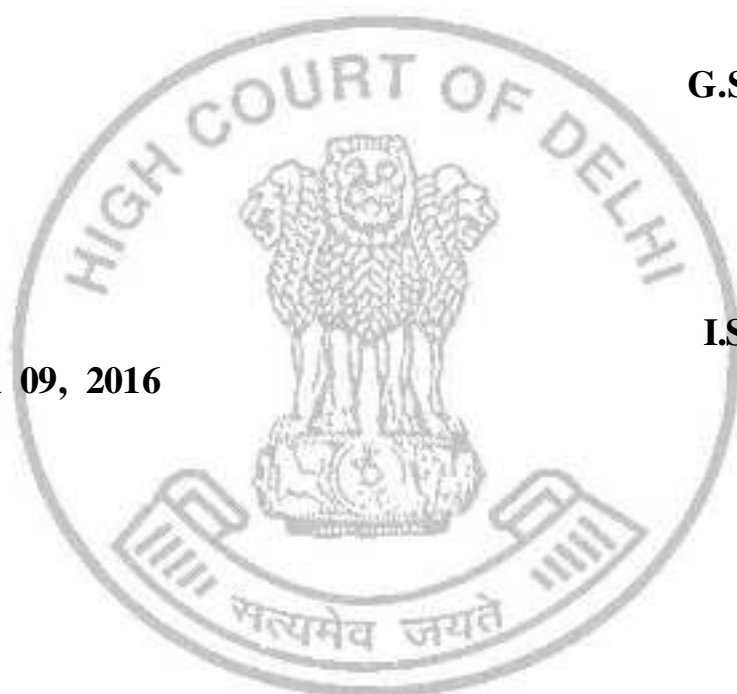
14. Accordingly, the present writ petition stands dismissed in view of above.

CM APPL. 33089/2016 (STAY)

15. Application stands dismissed in view of the order passed above.

SEPTEMBER 09, 2016

msr



G.S.SISTANI, J

I.S. MEHTA, J