$~R-17.

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

\+ **W.P. (C) 4297/2002**

% ***Judgment dated: 10th January, 2017***

UOI & Ors. ..... Petitioners

Through: Mr.Bhagvan Swarup Shukla, CGSC for the petitioner/UOI

versus

P.R. Toora ..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

<u>G.S.SISTANI</u>, J. (*ORAL*)

1. Rule DB in this matter was issued on 07.02.2003.
2. Despite this matter being shown in the regular list since 15.11.2016, none has appeared on behalf of the respondent.
3. Challenge in this writ petition is to the order dated 15.03.2002 passed by the Central Administrative Tribunal (hereinafter the '*Tribunal*') whereby the application, being OA 1286/2001, filed by the respondent herein has been allowed. The Tribunal had granted interest of 12% on the commuted value of pension as well as revised pension to the respondent herein along with costs of Rs. 3,000/-.
4. The only issue which arises for our consideration is whether the Tribunal could have granted interest to the respondent upon the delayed payment of pension?

5. The necessary facts to be noticed for the disposal of the present writ petition are that the respondent/ applicant, at the relevant time, was working as Assistant Commissioner of Income Tax and in 1989, a disciplinary proceeding was initiated against the respondent on the charge that the respondent had failed to maintain absolute integrity and devotion to duty as having unduly favoured the assessee while completing assessments between October 1984 to July 1986 of four newly floated investment companies.

6. During the pendency of the disciplinary proceedings, the respondent/applicant retired on 31.07.1991 and has been drawing provisional pension at the old full rates without reducing the commutation value.

7. In the disciplinary proceedings, the inquiry officer in his report dated 13.03.1992 held that the charges are not proved; which was disagreed to by the CVC, which led to the petitioners taking the matter up with the UPSC, which concurred with the findings of the inquiry officer that the proceedings should be dropped. Thereafter, the Department of Personnel and Training (DoPT) was consulted, which again advised that the proceedings should be dropped.

8. The respondent had also approached the Tribunal previously in OA 1390/1991, which had been disposed of on 03.08.1995 as the same was premature and permitting the petitioners herein to deal with the proceedings in accordance with law. While the said OA was pending, the petitioners herein had approached the Supreme Court against an interim order passed by the Tribunal; wherein the Supreme Court, by its order dated 03.04.1997, had directed the petitioners to conclude the

disciplinary proceedings within 6 months from the date of the order. Since the proceedings did not conclude within the time-frame, the respondent had filed contempt petitions in 1999. Before the Supreme Court, the petitioners herein had tendered an unconditional apology and issued an order dated 21.10.1999 dropping the proceedings and exonerating the respondent.

9. After the disciplinary proceedings were dropped, the commuted value of pension of Rs. 83,095/- was released to the respondent on 19.11.1999. Further the amounts of Rs. 42,914/- towards revised monthly pension between 01.11.1999 and 20.04.2001 and Rs. 50,125/- being arrears of revised pension from 01.01.1996 to 31.10.1999 were released by the Bank on 01.05.2000. Since the petitioners had not granted any interest on the delayed payments, the respondent made representations dated 29.10.1999 and 22.11.1999, which were rejected by an order dated 22.11.1999.

10. Aggrieved by the order dated 22.11.1999, the respondent herein had approached the Tribunal by filing of OA 1286/2001 which was allowed and the Tribunal directed the petitioners to grant 12% interest on the commutation value of pension from the date it became due, i.e. 31.07.1991, to the date of its actual release. It further directed the same rate of interest on the arrears of provisional pension for the period 01.01.1996 to 30.04.2000 as well as on the monthly revised pension for the period November 1999 till March 2000. At the same time, the Tribunal had allowed the petitioners to adjust the amount of Rs. 20,735/- which had been paid in excess to the respondent herein.

11. Aggrieved by the order passed by the Tribunal, by which interest was granted, the petitioners have filed the present writ petition. While issuing Rule in the matter, the operation of the impugned order dated 15.03.2002 was stayed till the disposal of the writ petition.

12. Mr. Shukla, learned standing counsel for the petitioners, submits that the order of the Tribunal is bad in law and liable to be set-aside. He submits that the Tribunal could not have granted any interest upon the commuted value of pension as the same was withheld owing to the pendency of the disciplinary proceedings against the respondent herein.

13. Learned standing counsel submits that the Tribunal has misled itself in coming to the finding that the disciplinary proceedings were *ab initio* void or false or that the same were initiated in order to harass the respondent herein. Mr. Shukla contends that the proceedings were perfectly valid and had already been tested in a previous round of litigation which went upto the Supreme Court. He also submits that the respondent was never subjected to harassment by the department as the proceedings were in accordance with law and due procedure was followed; moreover, the respondent was already drawing provisional pension.

14. It is next urged by the learned counsel for the petitioner that there was no delay in payment of commuted pension to the respondent as it was paid immediately after the culmination of the disciplinary proceedings. This is in accordance with Rules 4 and 5 of the Central Civil Services (Commutation of Pension) Rules, 1981, which read as under:

> "***4. Restriction on commutation of pension*** - *No Government servant against whom departmental or judicial*

<u>proceedings, as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a percentage of his provisional pension</u> authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.

5. Limit on commutation of pension -
(1) A Government servant shall be entitled to commute for a lump sum payment of an amount not exceeding forty percent of his pension.
(2) In an application for commutation in Form 1 or Form 1-A or Form 2, as the case may be, an applicant shall indicate the fraction of pension which he desires to commute and may either indicate the maximum limit of forty percent of pension or such lower limit as he may desire to commute.
(3) If percentage of pension to be commuted results in fraction of a rupee, such fraction of a rupee shall be ignored for the purpose of commutation."

(<u>Emphasis Supplied</u>)

15. Relying upon the aforegoing rules, Mr. Shukla submits that the commuted pension cannot be paid when disciplinary proceedings are pending against the retiring officer. The retiring officer will be entitled to the commuted pension only after the disciplinary proceedings have been concluded. Similarly, in the present case, the disciplinary proceedings were dropped on 21.10.1999 and the commuted pension was paid immediately thereafter on 19.11.1999. In view of the same, learned counsel submits that there cannot be said to be any delay whatsoever on the part of the petitioners warranting grant of interest.

16. We have heard the learned counsel for the petitioner and perused the impugned order as well as the writ petition.

17. The law with regard to grant of interest on delayed payment of retiral benefits is no longer *res integra*. It is well settled that the retiring officer is entitled to interest on delayed payment of retiral benefits provided the delay was not occasioned on his part.

18. In ***S.K. Dua* v. *State of Haryana & Anr.*, (2008) 3 SCC 44**, the Supreme Court was confronted with a similar situation. The appellant therein had been deprived of partial retiral benefits owing to pendency of disciplinary proceedings which had been initiated at the fag end of his career. It was alleged that the disciplinary proceedings were initiated as a vendetta by one Mr. Quraishi, who had been previously removed from his post based upon a complaint of the appellant. The High Court of Punjab and Haryana dismissed the writ petition *in limine* relegating the appellant therein to approach a civil court. The Supreme Court set-aside the order of the High Court and remanded the matter back with the following observations on interest:

> "*14. 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. <u>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 of 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.</u> 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."

(Emphasis Supplied)

19. A coordinate bench of this Court, in which one of us (G.S. Sistani, J.) were a member, in ***Union of India & Ors.*** **v.** ***Daya Ram*****, MANU/DE/2732/2015** has held that in case of delayed payment of retiral benefits, the retiree is entitled to interest in accordance with the rate as applicable to General Provident Fund in that particular year from the date he was due for grant of payment of retrial benefits. This Court after considering the judgments in ***S.K. Dua*** **(Supra)**; ***Vijay L. Mehrotra*** **v.** ***State of U.P.*****, (2001) 9 SCC 687**; and ***Gorakhpur University*** **v.** ***Shitla Prasad Nagendra (Dr)***, **(2001) 6 SCC 591** held as under:

"*12. On perusal of facts and submissions of both the counsel for the parties, we are in consonance with the view of the Learned Tribunal that the Respondent was entitled to receive his payment of pension w.e.f. 15.09.2006, at the same rate as applicable on General Provident Fund in that particular year from the date he was due for grant of payment of retiral benefits in respect of his premature retirement. However, the Petitioners took contradictory and dylatric stands regarding pension to be paid to the Respondent. Therefore it is conclusively found that there was more than reasonable delay in the payment of pension to the Respondent and the Respondent is not responsible for the delay.*"

(Emphasis Supplied)

20. Even otherwise, interest is not a penalty or punishment, but a normal accretion on capital amount which is paid after a delay. We may note the following observations of the Supreme Court in ***Alok Shanker Pandey*** **v.** ***Union of India*****, (2007) 3 SCC 545**:

> "*9. It may be mentioned that there is misconception about interest. <u>Interest is not a penalty or punishment at all, but it is the normal accretion on capital.</u> For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. <u>Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B.</u>*"
>
> (<u>Emphasis Supplied</u>)

21. From the aforegoing, it is clear that the retiring officer is entitled to interest upon delayed payment of retiral benefits. Retiral benefits are not a 'bounty', but a right of the retiring officer who has rendered years of service for the Government. Such retiral benefits are generally due upon the superannuation of an officer, but may be withheld owing to administrative lapses, pendency of departmental proceedings or criminal proceedings, etc. When the same are released and the delay is not attributed to the retiring officer, he is entitled interest which may have accrued upon the amount due to him at the time of superannuation.

22. In the present case, the respondent has retired on 31.07.1991, but owing to the pendency of disciplinary proceedings against him, partial retiral

benefits were not released. The stand of the respondent before the Tribunal was that the disciplinary proceedings were *mala fidely* initiated in order to harass him. This stand stood vindicated by the report of the inquiry officer dated 13.02.1992, advice of the UPSC in 1996, the advice of the DoPT dated 18.10.1996 and the disciplinary proceedings ultimately being dropped on 21.10.1999. We may also note that the proceedings were only dropped after notice was issued by the Supreme Court in the contempt proceedings. From the aforegoing factual matrix, it cannot be said that there was any fault on the part of the respondent which would have warranted withholding of pensionary benefits.

23. Further the reliance of the learned counsel for the petitioners on Rule 4 and 5 of the CCS (Commutation of Pension) Rules, 1981 is misplaced. The same merely allows the department to withhold commuted pension in case of pendency of disciplinary proceedings; they cannot be read as any bar upon interest upon subsequent release of such benefits. The other contention relating to the nature of the disciplinary proceedings is inconsequential. Since the respondent was deprived of his retiral benefits owing to a pendency of disciplinary proceedings, in which he was later exonerated, the same cannot deprive him of the commuted pension along with interest which would have accrued thereon.

24. In view of the aforegoing, we are of the view that the present writ petition is completely covered by the judgment of the Supreme Court in ***S.K. Dua*** **(Supra)** and therefore, is liable to be dismissed.

25. Accordingly, the writ petition is dismissed. The interest, as directed by the Tribunal, shall be released within 6 weeks from the receipt of the present order.

G. S. SISTANI, J.

VINOD GOEL, J.

JANUARY 10, 2017

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