$~Special Bench-2

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

\+ **W.P.(C) 6710/2015**

Date of decision: 27th January, 2017

K.R. SACHDEVA ..... Petitioner

Through Ms. Raman Oberoi, Advocate.

versus

UNION OF INDIA ..... Respondent

Through Mr. Jaswinder Singh, Advocate.

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

SANJIV KHANNA, J. (ORAL)

R.K. Sachdeva, in this writ petition, impugns the order dated 13th March, 2015, whereby MA Nos. 1692 and 1791 of 2014 in OA No.642/2013 praying for grant of interest on arrears with effect from 1st March, 1995 stands disallowed.

2. The contention of the petitioner is that he should have been granted interest with effect from 1st March, 1995 i.e. the date when the petitioner had retired and became eligible for pension.

3. OA No. 642/2013, ***K.R.* Sachdeva v. *Union of India*** filed by the petitioner was partially allowed by the Principal Bench of the Central Administrative Tribunal, vide the order dated 7th January, 2014 in the following terms:-

> "6. In view of this, we feel it necessary to grant some compensation for the delayed payment by way of interest at the same rate on which respondents pay interest on GPF. This shall be payable the date on which the first similarly situated person was given the revised pensionary benefits on notional basis till

the date of payment of the revised pensionary benefits is made to the applicant."

4. The aforesaid OA was filed as a sequel and follow up to an earlier adjudication by the Tribunal vide order dated 22nd April, 2010, whereby OA No.1409/2009, ***P.G. George Vs. Union of India & Anr.*** and other OAs were disposed of directing that the applicants therein would be granted notional promotion from the date their immediate juniors were promoted by virtue of various Select List of the years 2003, 2004, 2005 and 2006. The term 'notional' was clarified to mean that back wages would not be paid, but increments would be taken into account while calculating the post retirement dues. Pertinently, interest was not directed to be paid.

5. Grant of retrospective promotion, that too after an employee is retired, would be unusual, but in the facts of the present case, the Tribunal had issued the said direction. The Union of India had challenged the aforesaid decision of the Tribunal dated 22nd April, 2010 in W.P. (C) No. 4864/2010, ***Union of India & Anr. Vs. P.G. George***, which was dismissed vide order dated 23rd July, 2010.

6. The petitioner had filed the aforesaid OA No.642/2013, as noticed above, claiming similar benefits as granted in the case of ***P.G. George*** (supra). The Tribunal while disposing of the OA vide order dated 7th January, 2014 was conscious of the fact that they were awarding arrears to the petitioner from the date of retirement i.e. 1st March, 1995 and had not restricted it to the last three years from the date of filing of the OA. Pertinently, on the question of payment of interest, they had restricted the said claim to the date on which the first similarly situated person was given the revised pensionary benefits on the notional basis. Reference obviously

was to the similar situated persons, i.e. the applicants in OA No. 1409/2009 - ***P.G. George's*** case (supra) and other connected OAs, which were disposed of on 22nd April, 2010. As noticed, in these cases, no interest was directed to be paid.

7. The order dated 7th January, 2014 disposing of OA No.642/2013 has attained finality. It is not under challenge by the petitioner or the Union of India.

8. The petitioner herein thereafter filed MA Nos. 1692 and 1791 of 2014 alleging non-compliance of the order dated 7th January, 2014 passed in OA No. 642/2013 and for execution of the said order. A compliance report was filed by the respondents highlighting their stand. These MAs were disposed of by the impugned order dated 13th March, 2015 recording that the order dated 7th January, 2014 passed in OA No.642/2013 does not contain any direction to pay interest on arrears payable on account of revision of pensionary benefits with effect from 1st March, 1995. The Tribunal held that the petitioner has not produced any evidence or material to establish his claim for interest with effect from the date the first similarly situated person was granted revised pensionary benefits. The applications were accordingly dismissed.

9. Noticing the aforesaid facts, this Bench had passed a detailed order dated 27th April, 2016, which reads as under:-

> "1. By order dated 17.1.2014, the Tribunal has allowed the OA No.642/2013 filed by the petitioner with a direction that he would be paid enhanced pension from the date of retirement on 1st March, 1995, treating the petitioner as retired on notional basis from the post of Under Secretary

pursuant to the departmental select list published on 31st July, 2003 on the basis of recommendation of the Departmental Promotional Committee. The last paragraph of the said order reads as under:-

> "6. In view of this, we feel it necessary to grant some compensation for the delayed payment by way of interest at the same rate on which respondents pay interest on GPF. This shall be payable the date on which the first similarly situated person was given the revised pensionary benefits on notional basis till the date of payment of the revised pensionary benefits is made to the applicant."

2. In compliance of the said order, the petitioner has been paid arrears of pension from 1st March, 1995 to 31st July, 2014 of Rs.1,68,134/- (see Pages 171 to 176 of the paper book).

3. The said arrears were paid either in the month of June, 2014 or July, 2014 (the date is to be confirmed by the counsel for the respondent).

4. With regard to the starting point for payment of interest, paragraph 6 of the order dated 7th January, 2014 quoted above states, that the interest would commence from the date when a similarly situated person was given the revised pensionary benefits on notional basis. As per the respondent and the impugned order, such benefit was first given to a similarly situated person on 4.8.2010. Accordingly, the said date would become the starting point of payment of interest.

5. Learned counsel for the petitioner submitted that interest should have been paid with effect from 1st of March, 1995. This plea cannot be accepted for the reason that order dated 7th January, 2014 has attained finality and is binding. We also notice that the Tribunal, in the said order, had directed payment of arrears of pension from 1st March, 1995 and had not restricted it to the last three years from the date of filing of the petition before the Tribunal.

6. Learned counsel for the petitioner has submitted that one Mr. B.S.Mathur was paid enhanced pension from an earlier date prior to 4.8.2010. We do not find any document or pleading in support of the said contention. Hence, the said plea is unacceptable.

> 7. In view of the aforesaid discussion, the petitioner would be entitled to interest on enhanced pension or the arrears upto 31st of July, 2010 with effect from 4.8.2010 till the date when the payment of the arrears was made, i.e. June, 2014 or July, 2014 (the date to be ascertained by the respondent). Thereafter, the petitioner would be entitled to interest accruing on the enhanced pension amount payable each month till payment in June, 2014 or July, 2014. Calculation of interest for this period has to be made on the arrears of pension which had accrued each month till payment.
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> 8. The respondent will file a chart of the aforesaid interest amount and if any balance interest remains unpaid, the same will be paid to the petitioner.
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> 9. Learned counsel for the respondent prays for four weeks' time for the said purpose. We grant the said time."

10. Pursuant to the directions given by us, with reference to paragraph 7, the respondents have paid a sum of Rs.39,138/- to the petitioner. Earlier, the respondents had paid Rs.1,68,134/- as additional pensionary benefit for the period 1st March, 1995 to 31st July, 2014.

11. Controversy thereafter arose as the petitioner had alleged that one R.S. Mathur, who was statedly junior to the petitioner, was granted similar benefit from an earlier date. The relevant details of R.S. Mathur were not forthcoming and in these circumstances, we had issued directions to the respondents to file an affidavit indicating the steps taken by them to ascertain whether R.S. Mathur was given similar pensionary benefits and if so, with effect from which date.

12. The respondents have now filed an affidavit stating that the said R.S. Mathur was promoted as Deputy Secretary (*ad-hoc*) on 30th October, 1998. He had subsequently retired on 30th April, 2002.

13. In view of the said factual position and as R.S. Mathur before his

retirement was appointed as Deputy Secretary on 30th October, 1998, albeit on an *ad* hoc basis, his case is distinguishable. In his case, therefore, the notional benefit was given from 1994 and actual benefit was granted from 30th October, 1998, the date of actual appointment to the post of Deputy Secretary (now Under Secretary). This being the position, the petitioner cannot claim equivalence or similar treatment as given to R.S. Mathur. The petitioner must be treated in similar and in identical manner as the other applicants in OA No. 1409/2009 and other cases decided on 22nd April, 2010.

14. In fact, if we accept the case of the petitioner, we would have to grant similar benefits to all other applicants, who were earlier parties to the order dated 22nd April, 2010 in OA No.1409/2009 and other connected matters. If the said applicants have not been given benefit of interest, it will not be fair and just to grant benefit to the petitioner herein, who had approached the Tribunal much later and relied upon their decision.

15. In view of the aforesaid discussion, we do not think that the impugned order requires any interference. The writ petition is accordingly dismissed. No costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

JANUARY 27, 2017
NA/ssn