IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5200 OF 2018

Shri. S.K. Verma ...Petitioner
Versus
The Union of India and anr. ...Respondents

Mr. V.A. Nagrani for the Petitioner.
Ms Mohinee Chougule i/b Mr. Suresh Kumar for Respondent Nos.1 and 2/UOI.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.

DATE : 11.07.2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 29.8.2016 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 263 of 2012 only to the extent it denies to the petitioner interest at the rate of 18% per annum on the amount of Rs.13,01,609/-, which the CAT, has ordered the respondents to release to the petitioner.

4] Mr. Nagrani, learned counsel for the petitioner, submits that the CAT has quite correctly held that the recovery of amount of Rs.13,01,609/- from the petitioner, in addition to imposition of punishment of stoppage of 3 increments with future effect, amounted to double jeopardy. Mr. Nagrani submits that from this it is quite clear that the respondents, without authority of law, had recovered or withheld the said amount from the petitioner, which, has now been directed to be released to the petitioner. Mr.Nagrani submits that such amount was withheld from the year 2007 when it was due and therefore, the CAT, ought to have awarded the petitioner interest at the rate of 18% per annum on the said amount. Inasmuch as the CAT has failed to do so, there is clear failure to exercise jurisdiction which warrants interference.

5] Ms Mohinee Chougule, learned counsel for the respondents, submits that there are findings recorded by the disciplinary authorities that the petitioner, on account of proved misconduct, caused a loss of over Rs.12.80 lakhs to the respondent. She submits that irrespective of the penalty imposed upon the petitioner, the respondents are in fact entitled to recover this loss from the petitioner. Since, the finding as regards negligence on the part of the petitioner and consequent loss of above Rs.12.80 lakhs to the respondents has attained the finality, there is no question of the petitioner insisting upon payment of any interest on such amount. Ms Mohinee Chougule points out that this is not a case of double jeopardy, but rather, this is a case of unjust enrichment, which the petitioner seeks. She submits that extraordinary and equitable jurisdiction under Article 226/227 of the Constitution of India may not be exercised in favour of such petitioner. On this ground, Ms Mohinee Chougule submits that this petition may be dismissed.

6] The rival contentions now fall for our determination.

7] The reasoning relevant to the issue raised in the present petition and on the basis of which, the petitioner has been granted most of the substantive reliefs is contained in paragraphs 44 to 46. This is followed by the actual relief granted to the petitioner, which is specified in paragraph 47 of the impugned judgment and order. The said paragraphs read as under:

"44. We do not find any merit in the submission of the learned counsel for the respondents. We have already held that the Railway Pension Rules could not be invoked in the facts and circumstances of the case. Although negligence was proved against the applicant in the enquiry but no punishment of recovery of the said amount of Rs.12.80 lakhs was imposed by the Disciplinary Authority and the Disciplinary action was concluded by imposing the punishment of stoppage of three increments with future effect. The action of the authorities to recovery of 24,71,597/- which definitely included Rs.12.80 lakhs is impermissible and such action amounts to double jeopardy. We have also held that once taking final decision of imposition of major penalty of stoppage of increment with future effect other than minor penalty of recovery, the action taken by the respondents to withhold an amount of Rs.13,01,609/- or recovering any amount from pensionary benefits arising out of the selfsame cause of action is wholly unwarranted under the settled position of law.

45. Accordingly, the impugned orders dated 09.03.2012, 28.06.2010, 08.07.2010, 23.11.2012 are set aside and quashed.

46. On setting aside the order dated 23.11.2012 passed by the authorities toward recovery of Rs.11,87,748/-, we could have directed the authorities to initiate disciplinary proceeding against the applicant to prove his negligence for loss of the amount over and above Rs.12,80 lakhs. But in view of the fact that the applicant superannuated from service on 31.07.2010 and no action was taken during the period from 1996 to 2010, we do not find that it will be proper to initiate the disciplinary proceeding against the applicant now for any misconduct which according to the respondents was allegedly committed by the applicant in the year 1995-97.

47. Accordingly, the respondents are directed
(a) to release the withheld amount of Rs.13,01,609/- within four weeks from the date of receipt of a copy of the order (b) not to recover any amount from the

> *pensionary benefits of the applicant (c) to pay all the admissible amount of retirement benefits if not already paid to the applicant within four weeks from the date of receipt of a copy of the order.*".

8] From the aforesaid, it is clear that the only reason which persuaded the CAT from ordering the release of the amount of Rs.13,01,609/- is that the petitioner, on account of his negligence and consequent loss of over Rs.12.80 lakhs to the respondents had already been punished with stoppage of three increments. The CAT, felt that withholding of the amount of recovery of amount might have amounted to double jeopardy. Since, this reasoning based upon "*double jeopardy*" is not in challenge before us, we refrain from making any observations in that regard.

9] In paragraph 46, the CAT, has itself stated that it could have directed the authorities to initiate disciplinary proceedings against the petitioner in the matter of negligence resulting in loss of above Rs.12.80 lakhs to the Government. However, the CAT, refrained from issuing such a direction, mainly because the petitioner had already retired on attaining the age of superannuation.

10] From the aforesaid, it is quite clear that there is some material on record to indicate that the Government, on account of negligence of the petitioner, did incur losses in an amount in excess of Rs.12.80 lakhs. The recovery of such amount has been set aside by the CAT, not because such finding was found to be vitiated, but because, the CAT felt that the order of such recovery, in addition to suffering penalty of stoppage of three increments, might amount to double jeopardy. While we make no observations about the view taken, we find that the insistence on the part of the petitioner that he be paid interest at the rate of 18% per annum on the amount so withheld or so recovered, is certainly, not an insistence which can be upheld either in law or in equity. In fact, such an insistence does sound in the arena of unjust enrichment. Such a claim therefore, cannot be enforced by the petitioner by invoking equitable jurisdiction under Articles 226 and 227 of the Constitution of India.

11] The CAT has, therefore, committed no error in not awarding the petitioner any interest on the amount which it has directed the respondents to refund / release to the petitioner. This petition is, therefore dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.) **(ACTING CHIEF JUSTICE)**