**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.12211 of 2017

Date of Decision: 04.09.2018

T.R.Hitaishi ..... Petitioner

Versus

Chandigarh Administration and Ors.

..... Respondents

**CORAM: HONBLE MR. JUSTICE SURYA KANT
HONBLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. Baljinder Singh, Advocate for the Petitioner.

Mr. Sanjeev Ghai, Advocate for Respondent Nos.1 to 4.

SUDIP AHLUWALIA, J.

This Writ Petition is directed against the impugned Order dated 23rd of February, 2017 passed by the Ld. Central Administrative Tribunal, Chandigarh-Respondent No.5 dismissing the O.A. No.060/00184/2016 filed by the Petitioner.

2. The Petitioner had approached the Ld. Tribunal claiming interest at the rate of 18% per annum on account of delay of his retiral benefits, which were allegedly released in his favour by the Respondents/his employers representing the Chandigarh Administration, long after he had retired on 31.7.2011 as a Hindi Teacher, on having attained the age of Superannuation. According to him, he was given Leave Encashment benefit for a period of 127 days alongwith his other retiral benefits, whereas his actual entitlement was for a period of 229 days' Encashment. Consequently, the admissible payment for the balance 102 days remained withheld without any reason. The Petitioner later on moved an Application under the RTI Act on

23.5.2014, but the information was not provided to him, on account of which he was constrained to approach the Appellate Authority under the R.T.I. Act. Thereafter on receiving the information, he lodged his protest with the Respondents claiming the benefit of remaining 102 days of Leave Encashment, which was subsequently allowed a few months later by the Respondents by way of releasing a sum of Rs.1,26,028/-, but without any interest.

3. His O.A. claiming disbursement of such interest due towards him was however, rejected by the Ld. Tribunal with the following observations -

> *"Admittedly, the applicant retired on 31.07.2011 when he was granted benefit of 127 days of leave encashment. Thereafter, for the first time, he lodged protest after receiving information under RTI Act on 30.09.2014 i.e. after almost 3 years from the date of retirement. The same was considered and after correcting their record as submitted by the respondents in their written statement, they made payment of remaining 102 days of leave encashment in May 2014. Thus, it can be seen that applicant was not paid amount of leave encashment of 229 days at the time of retirement. Even he kept mum and for the first time he made a request in May 2014, which respondents accepted and made payment on 30.9.2014 i.e. four months after correcting the record. Therefore, there cannot be said to be any delay on the part of the respondents since they had to release full amount of leave encashment at the time of applicant's retirement and though it can be said that there is delay in releasing the same but delay is on the part of the applicant for not verifying his service book at the time of retirement. Therefore, I see no reason to award any interest. The O.A. is rejected."*

4. Having gone through the case record and heard Ld. Counsel for both the sides, we do not find ourselves in agreement with the observations of the Ld. Tribunal. It goes without saying that the liability to maintain the service records of an employee is that of the Employer's Establishment, more so

when it happens to be a Governmental Authority. Needless to add, no rules cast any obligation upon an employee to verify that correct entries regarding his service career are made in his Service Book, which process is to be presumed as having been properly and diligently performed by the Establishment Personnel themselves. It is too much to expect of a retiring employee to minutely verify the entries maintained in his Service Book over a life time when admittedly such Book remained in custody of the Establishment itself, and not that of the employee concerned.

5. In the present case also, the Petitioner apparently did not initially have any reason to suspect that any part of his admissible retiral dues was withheld by some act of omission on the part of the concerned personnel in his Official Establishment, who were assigned with the job of maintaining his Service Book. But the omission in fact did actually happen in the case whether by pure oversight, or by design. The Petitioner was therefore, well within his right to first verify about the Leave Encashment due towards him, for which he at a later stage did actually seek the details under the R.T.I. Act, but the relevant information itself was provided to him only after considerable delay. Admittedly, the balance amount for his unpaid part of the Leave Encashment dues was paid to him after correction in his service record three to four months after he lodged his Protest. In the given circumstances, he does appear to be entitled to compensation by way of reasonable interest on the delay suffered by him due to omission on the part of his Establishment, which is otherwise not attributable to him, particularly considering that he was a retired senior citizen by the time when the payment of admissible dues was made to him more than three years after his retirement.

6. We therefore, hold that the Petitioner indeed is entitled to compensation by way of reasonable interest on account of aforesaid delayed payment. His claim at the rate of 18% per annum however, in the facts and circumstances of the case would appear to be exorbitant. We are of the opinion that the ends of justice would be subserved if the Respondents-Authorities are directed to pay simple interest at the rate of 8% per annum to the Petitioner on the amount of Rs.1,26,028/-, which was paid to him after a long delay. For this purpose, the interest shall be calculated from a date three months after the date of Petitioner's retirement from service, till the date of actual payment of the balance Leave Encashment. The Respondents-Authorities are directed to pay the same to him within a period of three months from the date of communication of this order, failing which the Petitioner shall be at liberty to approach the Court again for appropriate action as thought fit and proper in the given circumstances.

(SURYA KANT)
JUDGE

(SUDIP AHLUWALIA)
JUDGE

September 04, 2018
AS

1. **Whether speaking/reasoned ?** **Yes/No**
2. **Whether reportable ?** **Yes/No**