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

+ **W.P.(C) 8415/2016**

N.N. SHARMA

..... Petitioner

Through: **Mr. Mahesh Srivastav, Advocate.**

versus

UNION OF INDIA & ANR

..... Respondents

Through: **Mr. Dev Prakash Bhardwaj, CGSC**
with **Mr. Debajyoti Behuria,**
Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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04.12.2018

W.P.(C) 8415/2016 with CM APPL. 34787/2016

The petitioner has preferred the present writ petition to assail the order dated 27.05.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter 'Tribunal') in RA No.86/2013 passed in OA No.1112/2011. The Tribunal had allowed the Original Application vide order dated 02.05.2012 and directed that the petitioner would be paid interest on delayed payment of leave encashment @ 6% p.a. from the expiry of three months after the date of retirement till actual payment. However, the orders were reviewed by the Tribunal by the impugned order and the operative part of the order reads as follows:-

"In the circumstances, review application is disposed of with direction to the review applicants to verify whether any industrial employee, other than, the applicants retired prior

to 7.11.2006, i.e. during the period when the applicants retired has been given the benefit of enhanced leave encashment for 300 days. If the outcome of such verification is positive, the applicants would not be entitled to interest, as directed in the OA, otherwise, the order pass in OA would stand.”

Along with the writ petition, the petitioner has preferred CM APPL. 34787/2016 seeking condonation of 860 days' delay in filing the writ petition. The reason given for filing the writ petition belatedly is that the petitioner had undergone knee replacement surgery and therefore could not pursue his claim before this Court. The said plea is supported by medical record placed on record. Since no time limit is prescribed for preferring a writ petition and the principle of delay and laches applies, considering that the writ petition was preferred in the year 2016 in respect of the review order which is impugned, which was passed on 27.05.2014, we condone the delay in filing the writ petition. We are driven to condone the delay also for the reason that there is no undue advantage that the petitioner has derived or could have derived by delaying the filing of the writ petition and the respondents have also not suffered any loss on account of the said delay. In fact, the delay has only hurt the petitioner.

The submission of learned counsel for the petitioner is that the direction issued by the Tribunal while passing the impugned order in the Review Application does not stand to reason. The petitioner is entitled to interest on delayed payment of leave encashment since the petitioner has been found to be entitled to leave encashment for 300 days and the same was not paid within three months of retirement. The interest is awarded by the Courts and Tribunals with a view to mitigate the loss that the recipient

would suffer on account of depreciation in value of money due to inflation.

Learned counsel for the respondent has tendered in Court the order dated 16.09.2014 stated to have been passed in compliance of the direction issued by the Tribunal in the review order. The said order dated 16.09.2014 reads as follows:-

“No.A-11751/5/2011-Legal
Government of India
Delhi Milk Scheme
West Patel Nagar
New Delhi – 08

Dated 16th September, 2014

ORDER

WHEREAS Sh.Nooruddin Ashraf & Ors., Dairy Supervisor (retired) filed OA No.1112/2011 (titled Nooruddin Ashraf & Ors. Vs. UOI & Ors.) before the Hon’ble Central Administrative Tribunal, New Delhi seeking interest @ 18 p.a. on the amount accrued on account of delayed payment of leave encashment for 300 accumulated leave.

WHEREAS the Hon’ble Tribunal vide its order dated 02.05.2012 stated that “although the plea of constructive res judicata raised by respondents also look quite attractive but a perusal of order of Hon’ble High Court reveal that their lordships did not decide the issue but left it open to the applicants to take the same before the respondents who finally viewed that applicants were entitled to leave encashment for 300 days. Thus, constructive res judicata would not apply against applicants. In the peculiar facts of the case, interest of justice would be served, if applicants are granted interest on amount leave encashment for 180 days paid belated @ 6% from expiry of three months after their retirement till the date actual payment of the same.” Ordered accordingly. Original application stands disposed of.

WHEREAS the said order dated 2.5.2014 of Hon’ble CAT has been challenged by the Respondents with due

approval of the Ministry of Law & Justice in Delhi High Court by filing a Writ Petition No.1618/2013 and the said WP(C) has been disposed by the Hon'ble High Court of Delhi vide their order dated 12.03.2013 stating that" While dismissing the writ petition as not pressed, we would simply observe that if the Writ Petitioners were to seek a review of the impugned decision passed by the Tribunal the same shall be decided by the Tribunal keeping in view its review jurisdiction".

WHEREAS as per the above order of Hon'ble High Court of Delhi, a Review Application No.86/2013 has been filed by the Respondents in the Central Administrative Tribunal, New Delhi seeking to review the order dated 2.5.2012 of the Hon'ble Tribunal.

WHEREAS the Hon'ble CAT vide its order dated 27.05.2014, disposed of the R.A. No.86/2013 filed against the order dated 2.5.12 passed in OA No.1112/2011 (Nooruddin Ashraf & Ors. Vs UOI & Ors) with the following observations:-

"..... In the circumstances, review application is disposed of with direction to the review applicants to verify whether any industrial employee, other than, the applicants retired prior to 7.11.06, i.e. during the period when applicants retired has been given the benefit of enhanced leave encashment for 300 days. If the outcome of such verification is positive, the applicants would not be entitled to interest, as directed in the OA, otherwise, the order passed in OA would stand."

WHEREAS in pursuance of the directions of Hon'ble CAT, DMS has scrutinized the old records and found that in a similarly situated case, Shri Kanwal Singh, Ex.Store Keeper, who comes under the definition of technical/industrial staff, was granted encashment for 300 days Earned Leave after his retirement on 31.05.2006.

AND WHEREAS the result of the verification as directed by the Hon'ble Tribunal is positive, the applicants viz. S/Shri Nooruddin Ashraf, Vijay Kumar, Smt.Mridu Jain,

A.M.Chand, N.N.Sharma and A.K.Puri are not entitled for interest.

Accordingly, the directions of the Hon'ble Tribunal passed in RA No.86 of 2013 in OA No.1112/2011 is hereby communicated to the individual and the directions of Hon'ble Court stands fully complied with.

Sd/-

(Manabendu Sen)

Dy.General Manager (Admn.)”

A perusal of the aforesaid order and the impugned order shows that it does not stand to reason as to why the petitioner should be deprived of interest on belated payment of leave encashment amount which has been found admissible to the petitioner. In our view, that was no justification to review the order passed in the Original Application and to deny interest to the petitioner on any ground whatsoever. We, therefore, set aside the impugned order dated 27.05.2014 passed in RA No.86/2013 and restore the order passed in the Original Application No.1112/2001.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 04, 2018

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