

\$~14

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

+ W.P.(C) 1261/2018 & CM No.5271/2018

VIJAY PAL SINGH

..... Petitioner

Through: Mr.Om Prakash, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mrs.Bharathi Raju, CGSC for R-1 to
R-3

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

12.02.2018

%

1. The petitioner is aggrieved by the order dated 19.08.2017, passed by the Tribunal in O.A. No.4058/2016, filed by him for issuing directions to the respondents to pay him interest @ 12% per annum on the delayed payment of gratuity released to him.
2. The facts of the case as set out in the O.A. are that the petitioner had joined the respondent/CPWD as a Junior Engineer on 01.04.1977 and was promoted to the post of Assistant Engineer on 25.02.2002. On 26.06.2003, an FIR was lodged against the petitioner on the complaint of one Mr.R.D.Gupta. Based on the said FIR, respondent No.2/CPWD had issued a charge sheet dated 26.09.2013 against the petitioner, proposing to impose upon him a major penalty. The said charge sheet was issued to the petitioner four days short of the date of his retirement. The petitioner submitted a reply to the charge sheet on 04.10.2013, stating *inter alia* that the disciplinary

proceedings may be dropped as the FIR lodged against him was false. Despite that, on 11.02.2014, respondent No.2/CPWD appointed an Inquiry Officer to inquire into the charges framed against the petitioner who finally submitted his report on 15.07.2014, stating *inter alia* that the charges levelled against the petitioner could not be proved.

3. Respondent No.2/CPWD forwarded the report of the Inquiry Officer to the petitioner vide order dated 15.10.2015, for making a representation, if any. The learned Additional Sessions Court set aside the criminal case against the petitioner on 01.11.2014. One year thereafter, on 12.11.2015, the departmental proceedings against the petitioner were finally dropped and on 18.03.2016, the respondent No.2/CPWD released the gratuity in favour of the petitioner.

4. On 08.09.2016, the petitioner made a representation to the respondent/CPWD stating *inter alia* that he is entitled to claim interest on the withheld amount of gratuity of ₹10 lacs, from the date of his retirement, till the date of the actual payment i.e. from 30.03.2013 to 18.03.2016. When the respondent No.2/CPWD rejected the petitioner's representation, he approached the Tribunal by filing O.A. No.4058/2016, which has been dismissed by the impugned order dated 19.08.2017.

5. The respondents opposed the prayer made by the petitioner and relied on the provisions of Rule 69 (1) (c) of the CCS (Pension) Rules, 1972, to urge before the Tribunal that till the departmental proceedings were pending against him, the gratuity amount could not be released and immediately after a decision was taken to close the departmental proceedings on 15.10.2015, the gratuity was released to the petitioner on 18.03.2016, which was within a reasonable time and could not attract any interest.

6. On examining the stand taken by the respondents, the Tribunal observed that though it is provided in Rule 69 (1) (c) of the CCS (Pension) Rules, 1972, that gratuity is payable to a Government servant on the conclusion of the departmental proceedings, the said provision would not apply in this case as the departmental proceedings against the petitioner were not initiated under Rule 16 of the CCS/CCA Rules as contemplated in Rule 69 (1) (c), but under Rule 14 of the CCS Rules.

7. Further, the Tribunal pointed out the error on the part of the respondent in mis-quoting Rule 68 (1) (2) of the CCS (Pension) Rules, 1972, in their counter-affidavit and observed that the extracted portion reproduced in para No. 8 of the counter-affidavit is not the said Rule but forms a part of the Government of India's decisions dated 11.07.1979 and 10.01.1983, which states as under:

“2. Where disciplinary or judicial proceedings against a Government servant are pending on the date of his retirement, no gratuity is paid until the conclusion of the proceedings and the issue of the final orders thereon. The gratuity if allowed to be drawn by the Competent Authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue or orders by the Competent Authority.”

8. Referring to the aforesaid decision, the Tribunal observed that the petitioner was not able to point out any specific provision where interest has to be paid on release of delayed gratuity in circumstances where departmental inquiry/judicial proceeding were pending against an employee and gratuity was released after conclusion of the said departmental/criminal proceedings. For this, reliance was also placed on the decision of the Supreme Court in the case of R.Veerbhadrar vs. Govt. of A.P. [(1999) 9

SCC 43]. As a result, the delay in this case was not found to be so inordinate as would entitle the petitioner to interest.

9. The Tribunal concluded that the respondent is empowered to withhold the gratuity in certain circumstances and the fact situation of this case did permit the respondent No.2/CPWD to withhold the gratuity payable to the petitioner. In those circumstances, the employer was not liable to pay any interest to the petitioner on the withheld amount.

10. Having gone through the impugned judgment and the Rule position, particularly, Government of India's decisions dated 11.07.1979 and 10.01.1983, as quoted in para 5 of the impugned judgment, we are of the opinion that there does not appear any illegality or infirmity in the said order.

11. Accordingly, the present petition is dismissed *in limine*, along with the pending application.

HIMA KOHLI, J.

PRATIBHA RANI, J.

FEBRUARY 12, 2018
'hkaur'