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

Date of Decision: 03.12.2019

\+ W.P.(C) 1884/2019 & CM Appl. No. 8818/2019 (for stay)

UNION OF INDIA AND ORS. ..... Petitioners

Through : Mr. Arun Bhardwaj, CGSC for UOI with Mr.Abhinav Kaushik, Advocate.

versus

MADAN LAL ..... Respondent

Through : Mr. Sachin Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **03.12.2019**

J U D G M E N T

G.S. SISTANI, J. (ORAL)

The present petition is directed against order dated 06.03.2018 passed by the Central Administrative Tribunal ('Tribunal') in OA No. 2788/2016. Two issues arise for our consideration. Firstly, whether the respondent is entitled to interest on the amount of commutation of pension ; and secondly, whether he is entitled to interest on the amount of leave encashment.

2. Some necessary facts which are required to be noticed for disposal of the writ petition are that the petitioner superannuated from Central Excise Commissionerate (Jaipur), Alwar Office on 29.09.2010 and was served with a Memorandum of Charge on 30.09.2010. A Departmental Inquiry under Rule 14 of CCS (CCA) Rules 1965 was

initiated against him ; as a consequence whereof the retiral benefits of the respondent were withheld by the department/petitioners.

3. Aggrieved by the issuance of Memo of Charge dated 30.09.2010, the respondent approached the Tribunal in the year 2011 and filed an OA No. 23/2011. The OA was allowed on 08.11.2011 and the Memo of Charge was quashed and set-aside.

4. Aggrieved by order dated 08.11.2011 passed by the Tribunal, the petitioners approached this Court by filing W.P.(C) No. 3944/2012, which was dismissed by order dated 01.10.2013. Admittedly, on 28.07.2014, the retiral benefits were released in favour of the respondent being the amount of leave encashment, commutation of pension and gratuity etc.

5. In the year 2014-15 the respondent made a representation seeking interest @ 18% per annum on his retiral benefits from the date of his retirement i.e. 29/30.09.2010 till the date of actual payment i.e. 28.07.2014. Having received no reply, the respondent filed another O.A. being O.A. No. 307/2015, which was disposed of at the admission stage itself, directing the petitioners to dispose of the representation by a reasoned and speaking order. As a consequence, the respondent received an amount of Rs.2,22,629/- as interest on delayed payment of gratuity.

6. Another representation was made by the respondent seeking interest on delayed payment of leave encashment and commutation of pension. On 10.02.2016, the department rejected the respondent’s representation claiming interest on delayed payment of leave encashment and commutation of pension.

7. Rejection of this representation led to respondent filing OA No. 2788/2016, seeking interest on delayed payment of his retiral dues i.e. leave encashment and commutation of pension from the date of retirement till the date of actual payment. The department filed its counter-affidavit wherein it was submitted that, since the CCS (Pension) Rules, 1972, do not envisage payment of interest on delayed payment of commutation of pension and leave encashment, therefore the full pension i.e. Rs.15,795/- for the period 01.10.2010 to 31.07.2014 was released to the respondent but no interest on the value of commutation of pension was granted.

8. In O.A. No. 2788/2016, the Tribunal has issued the following direction in order dated 06.03.2018 :

> *"12. In view of the foregoing, I allow the O.A. and direct the respondents to pay interest at GPF rate, for delayed release of commutation of pension and leave encashment, to the applicant from the date of his superannuation i.e. w.e.f. 30.09.2010 till the date of actual payment i.e. 28.07.2014. This exercise should be completed within a period of three months from the date of receipt of a certified copy of this order. No costs."*

which direction is under challenge before us.

9. Mr. Bhardwaj, learned counsel appearing for the petitioners, submits that no interest could have been granted for delayed release of commutation of pension.

10. Reliance is placed on proviso (b) to Rule 13 (1) of CCS (Commutation of Pension) Rules, 1981.

> *"**13. Application for commutation of pension***
>
> *(1) An applicant, who is in receipt of any pension referred to in Rule 12 and desires to commute a [percentage] of that pension any time after the date following the date of his retirement from service but before the expiry of one year from the date of retirement, shall—*
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> *(a) apply to the Head of Office in Form 1 after the date of his retirement;*
>
> *(b) ensure that the application in Form 1, duly completed, is delivered to the Head of Office as early as possible but not later than one year of the date of his retirement :*
>
> *Provided that in the case of an applicant—*
>
> *(a) referred to in Clause (iii) of Rule 12, where order retiring him from Government service had been issued from a retrospective date, the period of one year referred to in this sub-rule shall reckon from the date of issue of the retirement orders;*
>
> *(b) referred to in Clause (v) of Rule 12, the period of one year referred to in the sub-rule shall reckon from the date of the issue of the orders consequent on the finalization of the departmental or judicial proceedings.*

11. Relying on Proviso (b) to Rule 13 (1) of CCS (Commutation of Pension) Rules 1981, counsel submits that the pension could only be commuted on the finalization of departmental or judicial proceedings. He submits that in this case, judicial proceedings attained finality in

the year 2014 and soon thereafter the commuted amount of pension was released. Even otherwise, Mr. Bhardwaj contends, that there is no financial loss to the respondent as he was receiving full provisional pension till the year 2014 and thereafter his request for commutation was allowed after the judicial proceedings got over.

12. Mr. Chauhan, learned counsel for the respondent, on the other hand relies upon Rule 9 of CCS (Pension) Rules, 1972, under Chapter II, of the President's right to withhold or withdraw pension in full. He submits that proceedings sought to be relied upon by the petitioners would not cover the case of the respondent as under Rule 9 of CCS (Pension) Rules, 1972, it is only criminal proceedings and not civil proceedings, which would allow the petitioners to keep the respondent's request for release of commuted pension in abeyance.

13. We find however that the contention of learned counsel for the respondent is clearly misplaced for the reason that Rule 9 Sub-Rule (6)(b)(ii) specifically includes civil proceedings as well.

14. Reliance is placed by Mr. Chauhan on a decision dated 12.01.2016 rendered by this court in ***UOI & Ors. vs. Suraj Bhan*** in W.P.(C) No. 3776/2015. He submits that in that case the Division Bench has upheld the order of the Tribunal where interest was granted on the delay in release of commuted pension.

15. Learned counsel for the petitioners however distinguishes this judgment, pointing-out firstly, that the relevant rule i.e. Proviso (b) of Rule 13 of CCS (Commutation and Pension) Rules, 1981 was not brought to the notice of the Division Bench in that case ; and secondly, he submits that the issue which has been raised by him in this case was

not raised in the said matter viz. that during the check period between the year 2011 and 2014 ; the respondent had received full pension and thus there is no financial loss incurred by him. Counsel points-out that while during the pendency of proceedings the respondent received his full pension i.e. 100% pension, upon commutation, the respondent was to receive only 40% of his pension.

16. Upon perusal of the order in Suraj Bhan (supra), we find force in the submission of Mr. Bhardwaj that the provision of Rule 13 was not brought to the notice of the Division Bench in that case. Insofar as the second ground raised by Mr. Bhardwaj, on the amount of interest awarded on the leave encashment is concerned, the Tribunal has considered this aspect and correctly relied upon the judgment in the case of ***S.K. Dua vs. State of Haryana & Anr.*** reported as 2008 (3) SCC 44 which reads as under :

> *"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well-founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules if these are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not*

in the nature of bounty, is in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondent."

17. Accordingly, we are of the view that while the respondent is not entitled to interest on the amount of commuted pension, as far as the direction of the Tribunal for payment of interest on the amount of leave encashment is concerned, we find no infirmity in the same.

18. In view of above discussion, the writ petition is allowed in part. The order of the Tribunal be complied with, as far as payment of interest on leave encashment to the respondent is concerned, within a period of eight weeks from today.

19. The writ petition and the application are disposed of in the above terms.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 03, 2019
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