NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 876 of 2020

Judgment reserved on *10.02.2020*

Judgment delivered on *18.02.2020*

1. Bharat Sanchar Nigam Limited A Government of India Enterprises, Through The Chief Managing Director, Bharat Sanchar Nigam Limited, Corporate Office-Personnel (Per-DPC) Section 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-1, Pin- 110001.
2. The Chief General Manager Telecom Bharat Sanchar Limited, Chhattisgarh Circle, Vidhan Sabha Road, Khamhardih, Raipur, Chhattisgarh. Pin 492007.
3. The General Manager Telecom District, Bharat Sanchar Nigam Limited, Bilaspur C.G. 495001
4. The Assistant (Admin/ HR) General Manager O/o General Manager Telecom District, Bharat Sanchar Nigam Limited, Bilaspur, Chhattisgarh. Pin 495001.

----Petitioners/respondents

VERSUS

- Gopal Prasad Jaiswal, S/o Shri Trilochan Prasad Jaiswal, aged about 66 years R/o Ashin Kaliram Kunj, Kalyan Bag, Rajkishor Nagar, Police Station Sarkanda, District Bilaspur C.G. 495001

-------**Respondent/applicant**

For Petitioners : Mr. Sandeep Dubey, Advocate
For Respondent : None.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

CAV Order

Per Parth Prateem Sahu, J.

1. Challenge in this writ petition is to the order dated 18-11-2019 passed by Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur (for short “C.A.T.”) in Original Application (OA) No. 203/00297/2016 whereby the C.A.T. has allowed the OA and awarded interest @ 8% p.a. on delayed payment of the amount of leave encashment.

2. Facts of the case are that respondent/ applicant on attaining the age of superannuation was provisionally retired on 30-11-2012 from the post of Sub Divisional Engineer of the petitioner department. On the date of

superannuation, he was served with a charge-sheet under Rule 36 of BSNL (CDA) Rules, 2006. On the same date, i.e. on 30-11-2012 Annexure A-7 (as reflected in impugned order) was issued granting provisional pension to the respondent/ applicant and withholding of commuted value of pension and the amount of DCRG (Death cum Retirement Gratuity) till conclusion of the disciplinary proceedings. Subsequently, the respondent/ applicant was exonerated from the charges levelled against him *vide* order dated 08-04-2014.

3. The grievance of the respondent/ applicant before the C.A.T. was that there was no office order for withholding the benefit/amount of leave encashment accrued in favour of the respondent/ applicant on account of his superannuation from services. The petitioners/ respondents disbursed the leave encashment in parts, first part to the tune of Rs. 2,93,170/- which was disbursed on 28-09-2013 and the balance amount of Rs. 3,25,000/- was paid *vide* order dated 29-04-2014. Looking to the unreasonable long delay in payment of his leave encashment amount which is part of retiral dues accrued to him on attaining age of superannuation, he moved an application to the authority of department for grant of interest on the delayed payment of the amount of leave encashment which was rejected, which made the respondent/ applicant to file OA before the C.A.T. with the following prayers:

> "8.1 The Hon'ble Tribunal may kindly be pleased to call for the entire records pertaining to this case from possession of the respondents for its kind perusal.
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> 8.2 The Hon'ble Tribunal may kindly be pleased to pass/ issue suitable order and quash/ set-aside the letter dated 16-09-2014 (Annexure A/9) issued by the respondent No. 4 to the extent the claim of the applicant for interest on delayed payment of the amount of leave encashment has been rejected in substance;
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> 8.3 The Hon'ble Tribunal may kindly be pleased to issue direction commanding the respondent authorities to make payment of interest to the petitioner for delayed payment of the amount of

leave encashment.

8.4 Any other relief, which this Hon'ble Tribunal may deem fit and proper, may also be passed in favour of the applicant;

8.5 Cost of this application may kindly be awarded."

4. The OA filed by the respondent/ applicant was resisted by the petitioners mainly on the ground that there is no provision of awarding interest on delayed payment of leave encashment to any employee. As per CCS(Leave) Rules, 1972, the Department of Personnel and Training clarified that there is no provision under leave rules for payment of interest. Leave encashment benefit is under the Leave Rules and since there is no provision for grant of interest in Leave Rules, interest cannot be granted. The C.A.T. after hearing learned counsel for the respective parties, allowed the OA and awarded interest @ 8% p.a. from the date of withholding of the amount till the date of its actual payment.

5. Learned counsel for the petitioners submits that the disbursement of leave encashment amount accrued in favour of the respondent/ applicant was withheld on account of disciplinary action initiated against him by issuing charge-sheet. It is also pointed out that under the service rules, there is no provision for awarding any interest on the delayed payment of the leave encashment amount. Mainly on the aforementioned ground the learned counsel for the petitioners submits that the impugned order passed by C.A.T. requires interference. In alternate, he also submitted that the rate of interest as awarded to the respondent/ applicant was on higher side.

6. We have heard learned counsel for the petitioners and also perused the document available on record.

7. Perusal of the pleadings available on record, demonstrate that on the date of superannuation of the respondent/ applicant, a charge-sheet was issued against him. Looking to the date of issuance of charge-sheet, in particular, we

have specifically put question to the learned counsel for the petitioners that as to the period in which the misconduct as alleged against him in charge-sheet has been committed; but no satisfactory reply came from him, there is no pleading in the memo of petition, showing the period in which the misconduct as alleged was committed by the respondent/ applicant. Perusal of the impugned order would show that the petitioners/ employer issued office order dated 30-11-2012 (Annexure A-7) for grant of provisional pension and withholding the commuted value of pension and the amount of DCRG till conclusion of the disciplinary case against the respondent/ application. This fact recorded by the C.A.T. is not disputed by the learned counsel for the petitioners. When there is no order of withholding any amount of leave encashment, pending disciplinary proceedings then the action made on the part of the petitioners in non-payment of amount of leave encashment to the retired employee immediately after the date of retirement is arbitrary. When there is no mention of withholding the amount due towards leave encashment, means the officer issuing office order dated 30-11-2012, consciously not directed for withholding the amount of leave encashment.

8. The learned C.A.T. in its impugned order taken note of the order passed by Principal Bench of the Tribunal in **OA No. 1014/2011** (**Smt. Raman Munjal v. Govt. of NCT and others**), wherein the Tribunal considered the judgments passed by Hon'ble Supreme Court in the matter of ***S.R. Bhanrale v. Union of India and others*** reported in **(1996) 10 SCC 172** and ***Vijay L. Mehrotra v. State of U.P. and others*** reported in **JT 2000(5) 171** and held as under while allowing the OA:

> "7. Learned counsel for the applicant placed reliance on a decision of Principal Bench of this Tribunal in Original Application No.1014/2011 dated 19.07.2011 (**Smt. Raman Munjal** vs. **Govt. of NCT & others**), wherein it has been held by the Principal Bench that, the Hon'ble Supreme Court in the case of **S.R.**

Bhanrale vs. **Union of India and others** (1996) 10 SCC 172 and **Vijay L. Mehrotra** vs. **State of U.P. & Ors.,** JT 2000 (5) SC 171 has granted interest on the amount of terminal benefits, which included leave encashment also. The relevant Para 5 of the order reads as under:

> '7. As far as the claim of the applicant for enhancement of interest already on the amount of gratuity is concerned, I find that the respondents have allowed interest at the rate applicable to GPF deposits under Rule 68 of CCS (Pension) Rules and there is no justification to enhance the same. As is noted above, the issue of interest on leave encashment is covered by the decisions of the Hon'ble Supreme Court, I direct the respondents to grant interest to the applicant on the amount of leave encashment for the period from 01.09.2002 to 17.07.2007 at the rate of 8% per annum within a period of two months from the date of receipt of a copy of this order.'

8. In the instant case, if the Annexure A-7 is seen, there is no order regarding withholding of leave encashment and it only speaks about withholding of DCRG and Commuted Value of Pension. Thus, withholding of leave encashment from the retiral dues of the applicant is not justified and the applicant is entitled for interest on the delayed payment of leave encashment in view of the findings given by the Principal Bench of this Tribunal in the case of **Smt. Raman Munjal** (supra)."

9. There is no doubt that the retiral dues of Government Employee is his hard earn money; normal procedure for disbursement of the retirement dues of an employee which accrued in his favour is to be released/ disbursed as soon as the employee retires from his services, unless some specific reasoned order is otherwise passed. In the instant case, even if some amount was required to be withheld, pending disciplinary proceeding against the respondent/ applicant, the department had specifically issued an office order dated 30-11-2012, mentioning therein the withholding of amount of particular head i.e. commuted value of pension and the amount of DCRG. There was no order of

withholding the amount of leave encashment which is to the tune of Rs. 2,93,170 + Rs. 3,25,000 i.e. total amount of Rs. 6,18,170/-, which could have been utilized by the employee in an appropriate manner or he could have deposited this amount to his bank account in Fixed Deposit and earn interest at the rate payable for Fixed Deposit. By not disbursing the amount of leave encashment in the account of the respondent employee, the said amount was lying in the account of the petitioners-employer and fetching interest, therefore the submission made by learned counsel for the petitioners is not acceptable that there is no rule for awarding of interest on delayed payment of leave encashment, the interest could not have been awarded.

10. Sofar as, the submission made by learned counsel for the petitioners that the rate of interest awarded is on higher side is concerned, the amount which was withheld by petitioners-employer was in the year 2012 and it was disbursed only on 28-09-2013 in part and balance amount on 29-04-2014. The Fixed Deposit interest rate, in our view, cannot be less than 8% per annum at that relevant point of time and awarded by the C.A.T. The submission made by the learned counsel for the petitioners therefore is not sustainable.

11. For the foregoing discussion, we do not find any error or infirmity in the order passed by C.A.T. in awarding interest to the respondent/ applicant on delayed payment of leave encashment amount. The petition being devoid of any substance which is liable to be and is hereby dismissed accordingly.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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