

03.02.2022
SL No.9 wt 10 wt 11
Court No.8
(gc)

CPAN 11 of 2020

**Gobinda Chakraborty
Vs.
Abhijit Bakshi & Anr.**

**With
RVW 49 of 2020
With
CAN 1 of 2020
(Old No: CAN 2692 of 2020)
with
CAN 2 of 2020
(Old No: CAN 2693 of 2020)**

**Union of India & Ors.
Vs.
Gobinda Chakraborty & Anr.**

**In
WPCT 159 of 2016
(Via Video Conference)**

Mr. Vipul Kundalia,
Ms. Sumitra Das,
...for the U.O.I.
Mr. Bikash Ranjan Neogi,
...for the Writ Petitioner/Respondent.

**Re: CAN 1 of 2020
(Old No: CAN 2692 of 2020)**

This is an application for condonation of delay. There is a delay of 192 days in filing the memorandum of review.

Mr. Bikash Ranjan Neogi, learned Counsel appearing on behalf of the writ petitioner has orally opposed the prayer for condonation of delay. It is submitted by Mr. Neogi that there is no sufficient cause disclosed in the petition for condonation of delay.

We have perused the petition for condonation of delay. Although the explanations may not be very satisfactory, however, having regard to the fact that the applicant has deposited the entire amount with the learned Registrar General on 22nd March, 2021 in the contempt proceeding and has made out a case for consideration in the review petition, we allow this application for condonation of delay. The application for condonation of delay in presenting the memorandum of review by 192 days is allowed.

The application being CAN 1 of 2020 (Old No: CAN 2692 of 2020) is disposed of.

Re: RVW 49 of 2020

This is an application for review of the order passed by the Coordinate Bench on 26th July, 2019. Today, we have allowed the application for condonation of delay of 192 days in presenting the memorandum of review.

Mr. Vipul Kundalia, learned Counsel appearing on behalf of the applicant has submitted that an amount of Rs.2,25,705/- was deducted from the retiral benefits of the writ petitioner based upon realization of salary of the writ petitioner on his reversion from Deputy Director General of Foreign Trade in the year 2010 that is from 30th December, 2010 to 16th June, 2015, which, however, was overlooked by the Coordinate Bench in directing refund of the said amount together with interest. It is submitted that the payment of interest at the rate of 1% per day on Rs.2,25,705/- is also an act of oversight and inadvertent

error on the part of the Coordinate Bench. It is elementary that a review is not an appeal in disguise. There has to be a glaring discrepancy between the materials available on record and the findings arrived at by the Coordinate Bench. It is equally elementary that if there is an overdrawal not attributable to the writ petitioner then such amount could not have been realized from his retiral benefits. The applicant at this stage wants to argue that the deduction was in respect of the period after 28th December, 2010 for which period writ petitioner was not entitled to pay scale of Deputy Director General of Foreign Trade and reduced pay scale would be applicable to him from the date of joining the post after his reversion on 28th December, 2010. The writ petitioner would be entitled to pay scale of Assistant Director General of Foreign Trade (ADGFT) and such pay scale would be applicable to him from the date of his reversion. However, the applicant was paid without any downward revision. Accordingly, a sum of Rs.2,25,705/- was recoverable from the retiral benefits of the writ petitioner under Rule 71 of the Central Civil Services (Pension) Rules, 1972.

On the contrary, the writ petitioner filed an affidavit to demonstrate from Annexure-C to his affidavit in opposition to show that the petitioner was similarly placed with Sri P.K. Bhowmick, Ex-Assistant Director General of Foreign Trade who retired from service on 31st January, 2014. Shri P.K. Bhowmik and the petitioner were

promoted to Assistant Director General of Foreign Trade on 1st May, 2003 and were subsequently promoted to Deputy Director General of Foreign Trade on ad-hoc basis on 28th August, 2006, vide the same order by which the writ petitioner was also promoted. The writ petitioner along with Shri P.K. Bhowmik were also reverted by same order in 2010. Shri P.K. Bhowmik retired on 31st January, 2014 as Assistant Director General of Foreign Trade whilst the petitioner continued in service and subsequently got promoted to Deputy Director General of Foreign Trade on substantive basis with effect from 17th June, 2015. The pay scale of Shri P.K. Bhowmik was re-fixed and recoveries effected consequent on his reversion, similar to the petitioner vide order Part-II No.01/2014 dated 2nd January, 2014. It was stated that apart from those amounts, no amount was recoverable from the writ petitioner.

We find that an attempt has been made at this belated stage to reopen this issue which has been conclusively dealt with by the Coordinate Bench on the basis of the materials on record. The documents relied upon by the writ petitioner clearly suggest that the subsequent recoveries appear to be unauthorized. The Coordinate Bench has considered Rule 71 of the Central Civil Services (Pension) Rules, 1972 and allowed this application on the basis of the following finding:-

“2. The facts reveal that the original applicants before the tribunal, while holding the post of Assistant Director General of Foreign Trade (ADGFT), were promoted by a Presidential Order dated 28th August, 2006 as Deputy Director General of Foreign Trade (DDGFT) on ad-hoc basis. After continuing for over 4(four) years as DDGFT, the original applicants were reverted as ADGFT vide order dated 28th December, 2010. Such order was questioned in the original application which, as noted above, has failed.”

We do not find that there is any ground made out for review of the order dated 26th July, 2019, save and except, that the observation with regard to the payment of interest at the rate of 1% per day, in the event the said sum of Rs.2,25,705/- was not paid within one month which, appears to us is a clear oversight.

Under such circumstances, we allow review with regard to the payment of interest at the rate of 1% per day, however, in order to put an end to the controversy, we feel that the respondent/writ petitioner shall be entitled to interest on sum of Rs.2,25,705/- on and from the date following expiry of one month so fixed by the Co-ordinate Bench in the order dated 26th July, 2019 till date of depositing the same with the Registrar General on 22nd March, 2021.

The writ petitioner shall be entitled to interest at the rate of 10% per annum for aforesaid period.

With the aforesaid observation, the review application being RVW 49 of 2020 stands disposed of.

The learned Registrar General shall issue a bank draft in favour of the writ petitioner Sri Gobinda Chakraborty by prematurely encashing the fixed deposit created in terms of the order dated 23rd April, 2021 within two weeks from date, and the balance amount, if any, shall be paid back to the review applicant by issuing another bank draft upon deducting necessary charges.

The contempt application being CPAN 11 of 2020 and the application being CAN 2693 of 2020 also stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

After the order is dictated Mr. Kundalia has prayed for stay of operation of the order which is considered and rejected.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)