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

%                                   *Date of decision: August 24, 2023*

\+        W.P.(C) 8011/2022, CM APPL. 25810/2023

THE ACCOUNTANT GENERAL, A AND E II,
UTTAR PRADESH ..... Petitioner

Through: Mr. D. S. Hooda, Mr. Aayushman Keron and Mr. Ashish Mishra, Advs.

versus

NEERJA PANT & ORS. ..... Respondents

Through: Ms. Esha Mazumdar and Mr. Setu Niket, Advs. for R-1
Mr. Anil Mittal and Mr. Kumar Shubham, Advs. for State of U.P.
Mrs. Avnish Ahlawat, SC with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**
**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**V. KAMESWAR RAO, J. (ORAL)**

**CM APPL. 25810/2023 (for early hearing)**

This is an application filed by the respondent No. 1 / applicant for early hearing of the petition.

For the reasons stated in the application and the matter is taken up for hearing.

The application is disposed of.

**W.P.(C) 8011/2022**

1. This petition has been filed by the petitioner with the following prayers:

> *"In view of the foregoing facts and circumstances, this Hon'ble Court may graciously be pleased to:*
>
> *(a) Issue a Writ, order, or direction in the nature of Certiorari quashing the order dated 12.11.2021 passed by the Hon'ble CAT in OA No. 2268/2021; and*
>
> *(b) Issue a Writ, order, or direction in the nature of Certiorari quashing theorder dated 25.03.2022 passed by the Hon'ble CAT in RA No. 29/2022 in OA No. 2268/2021; and*
>
> *(c) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. The challenge in this writ petition is to the orders passed in the Original Application being OA 2268/2021 ('OA', for short) dated November 12, 2021 and Review Application being RA 29/2022 ('RA', for short) dated March 25, 2022, respectively. The Tribunal has disposed of the OA at the admission stage itself with a direction to the petitioner herein to pay an interest of 6% per annum on the arrears of pension / family pension. The RA was filed by the petitioner and respondent Nos. 2 and 3 herein, which was accordingly dismissed.

3. The facts as noted from the record are that the husband of respondent No.1, who was a 1952 Batch IPS Officer of the UP Cadre, took premature retirement w.e.f September 31, 1979, after serving for 26 years. He expired on January 08, 2008.

4. The case of respondent No.1 before the Tribunal was that, her husband was sanctioned pension vide PPO dated May 20, 1980 w.e.f February 1, 1979. She belatedly noticed that pension of her husband was revised and reduced vide PPO dated August 7, 1998.

5. After the recommendations of the 7th CPC, Govt. of India vide DoP&T OM dated July 6, 2017, revised the family pension of pre-2016 pensioners but the pension of the deceased / family pension of the respondent No.1 was not revised. Furthermore, as per the amendment to the CCS (Pension) Rules, 1972, an additional 20% family pension was made admissible to all family pensioners who had completed 80 years of age. The respondent No.1 had also completed 80 years of age on September 18, 2016. Thereafter, she had received ₹2,45,262/- towards life time arrears during the period, January 1, 2006 to January 8, 2008 and ₹17,82,226/- towards arrears w.e.f January 9, 2008 to April 30, 2021. The family pension was also revised accordingly.

6. It was her case that the interest component towards the delayed payment was not included in the amount paid to her. The Tribunal allowed the OA by stating in paragraphs 9 and 10 as under:

> *"9. We observe that the case of the applicant is squarely covered by a catena of judgments of various Courts, and also the latest judgment of the Hon'ble Supreme Court in CA 399/2021 in* ***The State of Andhra Pradesh and Another Vs. Smt. Dinavahi Lakshmi Kameswari*** *decided on 08.02.2021, wherein the Hon'ble Supreme Court has dealt with the issue and held as under :-*

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*"15. We accordingly order and direct that in substitution of the interest rate of 12% per annum which has been awarded by the High Court, the Government of Andhra Pradesh shall pay simple interest computed at the rate of 6% per annum on account of deferred salaries and pensions within a period of thirty days from today. This direction shall however in the facts and circumstances, be confined to categories 3, 4, 5 and 6 of GOMs No 26 dated 31 March 2020. We clarify that interest shall be paid to all pensioners of the State at the rate of 6% per annum on the deferred portion, for the period of delay. Having regard to the prevailing bank interest, the rate of 12% per annum which has been fixed by the High Court, would need to be and is accordingly reduced.*

*16. The appeal is accordingly disposed of in terms of the above directions. There shall be no order as to costs.*

*17. Pending applications, if any, stand disposed of."*

*10. Keeping in view the aforementioned judgment of the Hon'ble Supreme Court in The State of Andhra Pradesh and Another Vs. Smt. Dinavahi Lakshmi Kameswari (supra) as well as the argument advanced by the learned counsel for the applicant that the applicant is a cancer survivor and unnecessary hardship is caused to the widow due to fault of the respondents, we dispose of this OA at the admission stage itself with a direction to the respondents to pay the interest @ 6% per annum on the arrears, within a period of two months from the date of receipt of a copy of this order."*

7. The submission of Dr. D. S. Hooda, learned counsel appearing for the petitioner is that the Tribunal has erred in deciding the OA against the petitioner herein as no notice was served on the petitioner and thus the petitioner was deprived of chance to put forth its contentions regarding the interest on arrears.

8. Further the Tribunal has proceeded on an erroneous presumption that, it is the petitioner which is required to pay the pension when actually, it is the State Government from which the All India Service Officer retire (in the present case Govt. of Uttar Pradesh), has the responsibility to pay the arrears, revised pension and pay interest on delay, if any.

9. He also stated that an application being CM. No. 24359/2022 was filed wherein the State of UP was impleaded as respondent No.4.

10. Dr. Hooda would also submit that, in any case, the interest on arrears of pension, which has been granted to the respondent No.1 by the Tribunal, is not justified, as there is no such provision under the Rules. He also states that the liability to pay interest is on the State of UP.

11. The State of UP has filed a counter-affidavit, wherein it is stated that the State of UP was neither impleaded before the Tribunal in OA 2268/2021 resulting in the State of UP being deprived of placing its version before the Tribunal.

12. It is stated that the respondent No.1 had not approached the State of UP for pension and as such the State of UP had no knowledge that the pension of the respondent No.1 had not been revised by the Accountant General, UP. He stated that, if she had approached the State of UP, the concerned Department would have referred her grievance to the Accountant General, UP for redressal of the same as the records pertaining to the payment of pension of retired IPS Officers prior to the year 1988 are being maintained by

the Accountant General, UP. He also state that, there is no provision or rule in UP Government for grant of interest on pension and / or arrears of pension.

13. Having heard the learned counsel for the parties, the issue is whether the Tribunal was justified in allowing the OA in the manner it did in the impugned order. The answer to the same has to be in the affirmative as the wife of the deceased employee is entitled to get the benefit of arrears of pension as well as the family pension, which were not revised pursuant to the recommendations of the $7^{th}$ CPC.

14. Having said so, the only issue which falls for consideration is, who shall pay the interest on arrears of pension/family pension, whether it should be Accountant General, UP or the State of UP. The answer in that regard is that, it is the Accountant General, UP which vide its order dated March 23, 2021 granted the family pension to respondent No.1 and pursuant thereto, she has received arrears of family pension from January 1, 2006 to April 30, 2021.

15. In so far as the plea of Dr. Hooda that the interest is not payable is concerned, we are unable to accept the same as the obligation of re-fixing the pension / family pension and pay the same was either on the petitioner or on the State of UP. This we say so because admittedly there was a delay in revising the pension / family pension to respondent No.1. Surely delay caused shall have the effect of compensating the respondent No.1. We find that the Tribunal has granted 6% interest on the arrears of pension / family pension. The same is justified.

16. Though there is an inter-se issue between Accountant General, UP and the Government of UP and the petitioner has relied upon the order dated June 3, 2004 to contend that it is the obligation of the respondent No.4, State of UP to pay the arrears, we are of the view, since the arrears of pension / family pension have been paid by the petitioner, it shall also pay the interest in terms of the order of the Tribunal. The amount paid shall be recovered by the petitioner from the State of UP, in view of the above order dated June 3, 2004.

17. The impugned order is not interfered with, except to the extent modified as above. The complete compliance of the order in favour of respondent No.1 shall be made within a period of two months as an outer limit.

18. The writ petition is disposed of.

**V. KAMESWAR RAO, J**

**ANOOP KUMAR MENDIRATTA, J**

**AUGUST 24, 2023**/*jg*