

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: May 11, 2023*
+ **W.P.(C) 4705/2019**
MADAN LAL Petitioner
Through: Mr. S.P. Sethi, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Sarvan Kumar, G.P. and Ms.
Sunita Shukla and Saksham Sethy,
Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO,J (ORAL)

1. The challenge in this Petition is to an order passed by the Central Administrative Tribunal (in short 'Tribunal') dated July 05, 2018 in O.A. 1697/2017, whereby the Original Application filed by the petitioner herein was rejected by the Tribunal by stating as under:

“3. From the above facts, it is clear that the applicant was notionally promoted though after retirement on 18.01.2011 to the post of ACM and the difference was worked out and paid to him on 14.03.2011. As such, there is no delay in payment of difference of DCRG amount. As such there is no merit in the case. Accordingly, OA is dismissed. No order as to costs.”

2. The facts as noted from the record are, the petitioner was working as Chief Inspector of Ticket (CTI), had filed an Original Application

bearing 3173/2003, wherein he had sought seniority and also promotion qua a junior. While deciding the said O.A on August 11, 2008, the Tribunal granted seniority and notional promotion, resulting in his promotion to the post of Assistant Commercial Manager (ACM) i.e. without any arrears of pay. The terminal benefits were directed to be paid. It is a conceded position that no direction was given for payment of any interest thereon.

3. Be that as it may, the judgment dated August 11, 2008 in O.A. 3173/2003, became the subject matter of W.P. (C) 8432/2008 before this Court. The said Writ Petition came to be dismissed by this Court on December 02, 2009. Resultantly, the respondents had by granting the seniority/promotion, made payments of Leave Encashment DCRG HRA to the petitioner in the year 2011. He was paid Rs.56,467/- as gratuity, as no interest was paid by the respondents, the petitioner filed O.A. 4180/2011, which was dismissed by the Tribunal on August 16, 2012, by stating in para nos. 8, 9 and 10 as under:

"8. As is noted above, the applicant was paid the revised settlement dues vide letters dated 18.01.2011 and 07.04.2011. It is not in dispute that the terminal benefits due to the applicant as Ex-Chief Inspector of Ticket were settled in due course. The applicant has claimed interest on the arrears of revised terminal dues settled on his notional promotion after his retirement. Interest is not a penalty or punishment, but it is the normal gain on capital. It accure on capital when the same is due and matured, but the person entitled to it is, deprived of the same. Normally interest flow in terms of statute or contract or as damages and compensation, In the present case, the applicant became entitled to arrears of revised terminal benefits only after being included in the panel for promotion to the post of ACM i.e. after 26.08.2010. With inclusion of his

name in the said panel, the competent authority passed an order dated 15.12.2010 for notional fixation of pay of applicant in Group-B and consequently revised terminal benefits. Since the applicant had retired from service on 31.01.2005, the consumption of some time by respondents in settling arrear of pay and terminal benefits of applicant cannot be treated as culpable. Prior to inclusion of the name of applicant in the panel of promotion for the post of ACM sometimes after 26.08.2010 no amount of arrear of revised terminal benefits had fallen due to the applicant, thus there is no substance in his claim for interest on the said amount from 31.01.2005. As far as delay in promotion of applicant is concerned, the issue was there before this Tribunal in OA-3137/2003 and Hon'ble High Court of Delhi in WP(C) No.8432/2008. In the said O.A, this Tribunal directed only for notional promotion of the applicant to the post of ACM i.e. without any arrear of pay. When the arrear of revised terminal benefit was directed to be paid, no direction was given for payment of any interest thereon. In WP(C)-8432/2008 the Hon'ble High Court of Delhi upheld the order passed by this Tribunal. There is no statutory rule, regulation or instruction providing for payment of interest or arrear of terminal benefits revised on promotion after the date of retirement.

9. As far as the judicial pronouncements relied upon by the applicant are concerned, in the case of **Vijay L. Mehrotra (supra)**, the terminal benefits due to the applicant on his retirement were paid belatedly, thus interest was directed to be paid to him. Similarly, in the case of **Gyan Prakash Sharma (supra)**, who retired in the year 1989, his retiral benefits were paid in 1998 and 1999, thus this Tribunal granted him interest on the arrear of selection grade and terminal benefits. In **Electronics Corporation of India Ltd. (supra)**, the Hon'ble Supreme Court declined to entertain the request for interest on the amount of arrear of pay, but directed payment of 12% interest only in case of non-payment of such amount within the specified period. In **Prem Kumar Aggarwal (supra)** the applicant was exonerated from, the disciplinary action, thus for the period of delay caused in payment of terminal benefits on

account of disciplinary proceedings he was paid interest.

10. In the present case, the applicant had questioned non-inclusion of his name in the panel for promotion to the ACM. While finding him entitled for being considered for his promotion, this Tribunal specifically viewed that the consequential promotion of the applicant would be only on notional basis. The applicant became entitled to revised terminal benefits on being considered fit for promotion w.e.f. 31.01.2005, but only after August, 2010. In two Contempt Petitions and one MA for revival of CPS, this Tribunal did not find the delay on the part of the respondents in considering the applicant for his promotion to the post in question i.e. ACM as culpable"

4. Thereafter, the petitioner had filed another O.A. 4342/2013, which was dismissed by the Tribunal on the ground that the same is hit by the principles of res judicata. It so happened that the petitioner had filed an M.A. 1790/2013 in O.A. 4180/2011, which resulted in the following order of the Tribunal:

"MA 1790/13 IN OA 4180/2011

"This MA has been filed by the applicant seeking liberty to file fresh OA against the orders passed by the competent authority on his representation. Now, the competent authority has decided his representation stating that there is a provision of payment of interest on death-cum-retirement gratuity, if delayed for over three months. However, according to applicant, the-gratuity has been paid more than six years after his retirement and therefore he is entitled for the interest on death-cum-retirement gratuity.

In this view of the matter, the MA is allowed with liberty to the applicant to file fresh OA for further redressal his grievance."

5. The decision of the Tribunal in O.A. 4342/2013 and also in R.A. filed

by the petitioner bearing R.A. no. 18/2015 decided on November 26, 2014 and January 28, 2016 respectively, became subject matter of W.P.(C) 2927/2016 before this Court. This Court noting the aforesaid facts, has in paragraphs no. 7 & 8 of its order dated April 04, 2016, stated as under:

“7. The petitioner therefore cannot succeed in the present writ petition. We would again clarify that the petitioner is entitled to take advantage and benefit of order dated 15.7.2011 passed in MA No.1790/2013 in OA No.4180/2011, limited to and confined to his claim for interest on the gratuity amount. To this extent, we do not express any opinion in favour or against the petitioner. He may, if so advised, file an OA.

8. With the aforesaid observations, the writ petition is dismissed.”

6. Because of the observations of the Tribunal in the aforesaid M.A. and also by this Court in its order dated April 04, 2016 in W.P.(C) 2927/2016, the petitioner had filed a fresh O.A. bearing no. 1697/2016, wherein the impugned order has been passed.
7. The Tribunal has rejected the O.A. vide the impugned order by stating in para 3, which we have reproduced above.
8. The submission of the learned counsel for the petitioner is when the petitioner got the benefit of seniority and promotion, though notionally, but the said fixation had a bearing on gratuity, any delay in releasing the benefit of gratuity in the year 2011 shall entail interest. According to him the respondents had approached this Court in W.P.(C) No.8432/2008, which was dismissed in the year 2009, whereas the actual difference of gratuity of Rs. 56,467/- was paid to the petitioner only in 2011, surely the petitioner is entitled to interest for the period

between 2008 and 2011. He prays that the interest as deemed appropriate on the above amount be granted in favour of the petitioner.

9. The submission in substance is, this aspect has been overlooked by the learned Tribunal. He also states, no doubt in the earlier round of litigation in the year 2008 the Tribunal had not granted interest on the terminal benefits, but the order passed by the Tribunal in M.A. as well as by this Court in the year 2016, granting liberty to the petitioner to approach the Tribunal and pursuant thereto, the petitioner had approached the Tribunal, the Tribunal should have considered the issue of payment of interest on merit and should not have relied upon the decision of the Tribunal in O.A. No. 3173/2003.
10. On the other hand, Mr. Shukla would submit that the Tribunal is justified in rejecting the Original Application. According to him, O.A. 4180/2011 was rightly dismissed by the Tribunal, as the Tribunal in the O.A. 3173/2003, had not granted any interest on the revised terminal benefits to be paid to the petitioner.
11. We are not in agreement with the submission made by Mr. Shukla for the simple reason that no doubt in O.A. 3173/2003, the Tribunal had not granted the interest on the pensionary benefits, but in a subsequent M.A. filed by the petitioner before the Tribunal and so also this Court in the decision rendered in the year 2016, had granted the liberty to the petitioner to approach the Tribunal and the petitioner had approached the Tribunal. The Tribunal should not have relied upon the earlier decision of the O.A. of the year 2003 and should have independently considered that after the directions were upheld by this Court in 2009, whether the Gratuity was paid to the petitioner on time.

12. It is a conceded case of the respondents that an amount of Rs. 56,467/- was paid to the petitioner on March 16, 2011.
13. No doubt the Writ Petition was pending consideration before this Court, the same was dismissed in 2009, but the Gratuity was paid only in 2011 and as such there was a delay of three years from 2008 (the dismissal of O.A. No.3173/2003) till 2011 (when, the amount of Rs.56,467/- was paid) in the payment of the difference of the Gratuity to the petitioner. Surely, the petitioner shall be entitled to the interest on the aforesaid amount of Rs. 56,467/- which we quantify @ 9% per annum, which shall be paid to the petitioner within a period of two months from today.
14. With the above, the petition is disposed of. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 11, 2023/akc