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

+ **W.P.(C)No.1253/2014**

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Reserved on : 23rd May, 2014

Date of decision : 13th June, 2014

BACHA RAM

..... Petitioner

Through : Mr. Sachin Chauhan, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Ms. Meera Bhatia, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J.

1. This writ petition has been filed by the petitioner challenging the order dated 26th August, 2013 passed in M.A.No.2752/2012 in O.A.No.2004/2009 as well as the order dated 28th October, 2013 in R.A.No.170/2013 whereby the review of the order dated 26th August, 2013 was sought.

2. Both these orders were passed in the proceedings filed by the petitioner before the Central Administrative Tribunal, Principal Bench Delhi.

3. The petitioner, when posted as Private Secretary to the Chief Engineer – I, CCW, All India Radio, Ministry of Information and Broadcasting was alleged to have counter signed exorbitant telephone bills and was suspended by the respondents. This suspension was revoked on the 29th of April, 2002 and he resumed duties. The petitioner was charge sheeted on the 7th of October, 2002 by the CEO of the Prasar Bharti and subjected to disciplinary proceedings.

4. The petitioner challenged the issuance of the charge sheet on the ground that the CEO was not competent to initiate disciplinary proceedings against him. In the meantime, on 31st of July, 2004, the petitioner superannuated.

5. It is pointed out that at the time of superannuation, the petitioner was facing disciplinary proceedings.

6. On the 16th of April 2008, the Secretary of the Ministry of Information and Broadcasting, i.e., the petitioner's disciplinary authority closed the case but ordered recording of government displeasure with regard to his conduct. On the 16th of August, 2008/3rd October, 2008, the CEO of the Prasar Bharti issued an

order holding that the petitioner's suspension was unjustified and directed that the entire period of suspension be treated as spend on duty for all purposes.

7. So far as release of amounts to the petitioner is concerned, in March, 2009 an amount of Rs.1,52,195/- was released to the petitioner towards leave encashment.

8. The petitioner filed an application being O.A.No.2004/2009 before the Central Administrative Tribunal in the year 2009 challenging the order whereby government displeasure was recorded and also prayed for grant of interest at the rate of 24% per annum on the delayed payment of his retiral benefits.

This application was decided on the 6th of May, 2010 whereby it was held that the petitioner was entitled to interest at the rate of 9% per annum on the belated payment of all his retiral dues from 15th October, 2008 and not from the date of retirement.

9. On the 16th of July 2009, the Disciplinary Authority passed the final order in the disciplinary case against the petitioner. On 8th August, 2009, an amount of Rs.1,89,989/- was released towards the gratuity dues of the petitioner.

10. O.A.No.2004/2009 was decided by the order dated 6th May, 2010. In para 10 of this order the Tribunal observed that the date of retirement of the petitioner was known in advance to the respondents and that disposal of the disciplinary cases ought to have been expedited. If this had been done prior to the date of his retirement, the payment of gratuity, leave encashment could have been disbursed to the applicant on the date he retired or on the following day and pension and gratuity at the expiry of the following month. The relevant extract of the order dated 6th of May, 2010 reads as follows:-

“10. Since the date of retirement of the Applicant was very much known in advance to the Respondent we fail to appreciate why the process of finalisation of disciplinary case was not expedited within his service period. Had it been done prior to the date of his retirement, the payment of gratuity, leave encashment amount could have been disbursed to the Applicant on the date he retired or on the following day and pension and gratuity at the expiry of the following month. As the applicant was allowed to retire while the disciplinary case on misuse of telephone was pending, at that time decision should have been taken to identify the pecuniary loss because of the Applicant and with holding the said amount, prompt payment of the remaining retirement dues to the Applicant immediately after his retirement could have been done. Thus the nonresponsive attitude of

the Respondent to the occasion resulted in the belated payment of the pensionary benefits and, therefore, they should be visited with interest for such belated payment, and it would not be unreasonable to direct that the liability to pay interest on those dues at the current market rate should commence at the expiry of three months from the date of retirement. In this context we are guided by the following dicta of the Honourable Apex Court in an earlier judgment at ***State of Kerala v. M. Padmanabhan Nair [AIR-1985-SC-356]***

“Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

11. In para 12, the Tribunal further held as under:-

“Our perusal of the pleadings, it is revealed that the Applicant has not been released pension since its regular pension was due for revision. It is noted that there has been delay in payment of Gratuity and Leave Encashment to the Applicant. It is also noted that the Commutation of pension and other associated pensionary benefits have been released or are in the process of release but there is no doubt in our mind that the Respondents have not acted promptly after the closure of the disciplinary case by passing only a Government Displeasure of the Applicant. Therefore, we are of the considered opinion that the Applicant is

entitled to the interest on the belated payment of all his retiral dues. Normally, about three months time is required for the Respondents to work out the Pension, Gratuity, Commuted Pension, Leave Encashment and other associated retiral dues meant for the Government employees. Therefore, we would grant three months from the date on which the Respondents finalised the disciplinary case against the Applicant. As the final order was passed on **16.07.2008**, the time that would have been required to pay him all the retiral dues and pensionary benefits must have been so on or before **15.10.2008**. **Therefore, the delay that has been taken place in paying the retiral dues to the Applicant, he is entitled for interest to be paid on such amount w.e.f. 15.10.2008 to the actual date of payment.** Taking into account the present rate of interest which normally, the Applicant would have received, if he would have put the same in certain recognized investment, he would have got about 9% of interest on the investments. **We, therefore, fix that the rate of interest admissible for the belated payment of retiral dues to the Applicant at 9% per annum.** It is needless to mention that full details need to be worked out by the Respondents in a statement clearly indicating itemwise payments made furnishing the amount and the date of payment and release the interest, as stated herein at 9% per annum on the said belated reitral benefits released to the Applicant. In case any of the pensionary/retirement benefits so far not released, the same shall be released alongwith the interest at 9% per annum within a period of two months from the date of receipt of the copy of this order.”

12. The petitioner sought review of the order dated 6th May, 2010 by way of R.A.No.174/2010 seeking the interest from the

date of retirement and not from the date of final order, i.e, 16th July, 2008 as directed.

On 19th July, 2010, this review was dismissed by circulation.

13. The petitioner challenged the order dated 19th July, 2010 passed in R.A.No.147/2010 in O.A.No.2004/2009 by way of writ petition being WP(C)No.7192/2010. This petition was disposed of by an order passed on 24th November, 2010 setting aside the order dated 19th July, 2010 and directing fresh adjudication in the R.A.No.174/2010 by the Tribunal.

Consequently, the review application was heard afresh and disposed of by the Tribunal by its order dated 22nd February, 2012 whereby it reiterated its previous order observing thus:-

“14. Yet another point, which would be relevant to be noticed in the context, is that there is a precise averment in the O.A. (para 5.4) that the charge sheet issued to similarly circumstanced named employee had been withdrawn. Apparently, that withdrawal came about on realization that the CEO of Prasar Bharti was not competent to grant orders in the relevant behalf. The corresponding para of the counter filed by the official respondents does not controvert it.

15. In the light of the foregoing discussion, the O.A. shall stand allowed. It is held that the CEO,

Prasar Bharti had no jurisdictional competence to initiate and conclude the relevant proceedings against the applicant. In view, however, of the fact that the applicant retired from service quite sometime ago, he has already undergone the ordeal for long and we do not propose granting liberty to the competent authority to proceed afresh in the matter.

16. Having said that on merits of the controversy qua competence of the C.E.O., Prasar Bharti to act in the matter, we may pointedly notice that the applicant was only charged with the accountability of having signed the relevant telephone bills without verifying the same. It is otherwise apparent from the documentation aplenty on the file that he was not charged for the wrongful use of the telephone. In fact, there is a precise finding available on record that the telephone was not in his charge during the relevant period.

17. In reiteration of the orders dated 6.5.2010, granted by the learned Coordinate Bench of this Tribunal, though this order is based upon our own view as well, we would uphold the entitlement of the applicant to interest at the rate of 9% per annum for the period the retiral benefits came to be denied to him.”

14. The petitioner’s pension was commuted by an order dated 27th January, 2011 passed by the Central Pension Office to the extent of Rs.2,629/- from the petitioner’s revised pension of Rs.9,899/-. In the meantime, the petitioner filed an application being M.A.No.2752/2012 in O.A.No.2004/2009 seeking a

direction to the respondents to comply with the above judgment of the Tribunal dated 22nd February, 2012. The petitioner was making a grievance that the respondents were paying interest with effect from 15th October, 2008 and not from 1st August, 2004 when he had actually superannuated. This application was disposed of by an order dated 26th August, 2013 which stands assailed before us. In this order, we find that the Tribunal has noted that the respondents were relying on a legal opinion which has been extracted in the impugned order and reads thus:-

“The CAT has directed to pay interest on delayed payment of retiral benefits. Under the rules interest is payable on admissible items and not on non-admissible items like leave encashment etc. The admissible items are Gratuity and Commutation on which if delayed interest is to be paid.

He will not be entitled to interest w.e.f. 1.8.04 to 15.10.08 but only from the date the D.E. was finally decided conveying displeasure of Govt. on item of Gratuity. As regards interest on Commutation, since he refused to get pension commuted no matter for whatsoever reason his entitlement for interest shall be from the date he was declared fit by Competent medical authority, because under the Rules, if commutation is requested after retirement, medical fitness is pre-requisite. During pendency of departmental proceedings until final decision is taken Gratuity is legally withheld and it is payable only

after final decision is arrived at and from date of final decision the gratuity is to be paid and if delayed from that date interest is payable.”

15. The Tribunal was of the view that the stand of the respondent was completely unacceptable for the reason that by the order dated 22nd February, 2012, the disciplinary proceedings initiated against the petitioner had been quashed for the reason that the CEO of the Prasar Bharti who had initiated the same had no jurisdictional competence to do so or to conclude the same against the petitioner. For this reason, the order of the disciplinary authority so far as disciplinary proceedings are concerned was held to be without jurisdiction. In fact, the Tribunal noted, that by the order dated 22nd February, 2012, not only were the disciplinary proceedings quashed, but liberty was also given to the respondents to proceed afresh against the petitioner. Therefore, the Tribunal has concluded that the petitioner became entitled to his retiral dues from the date when he superannuated, i.e., 1st August, 2004 and was thus entitled to interest from that date. It was directed by the Tribunal that the respondents shall pay interest at the rate of 9% per annum on the retiral dues with effect from 1st August, 2004 and

not from 15th October, 2008.

16. So far as the petitioner's claim for interest on the benefits of the commuted portion of his pension are concerned, the Tribunal had agreed with the contention of the respondents that commutation of pension required a declaration of medical fitness by a competent medical authority. Consequently so far as commutation of pension was concerned, interest would be payable from the date on which the petitioner was declared medically fit by the authority. Time bound directions to comply within six weeks from the date of receipt of the certified copies were issued.

17. The petitioner was not satisfied even with this relief and has filed the present writ petition contending that inasmuch as the initiation of the disciplinary proceedings against him was without jurisdiction, he was entitled to interest on the commuted pension as well with effect from the date of his retirement, i.e., 31st July, 2004 as was allowed on his retiral dues.

18. The petitioner claims that on 9th of March, 2004, he had submitted his pension papers including the application for payment of commuted pension as per procedure followed in Government

departments.

19. The Tribunal called for the original file of O.A.No.2004/2009 before passing the order dated 28th October, 2013, rejecting the review application. Unfortunately the petitioner does not inform us about his subsequent conduct. In this order so far as the request for commutation is concerned, the Tribunal has noted that the present petitioner had withdrawn his request for commutation of pension vide a letter dated 17th July, 2009. Thereafter, vide his letter dated 26th February, 2010, the petitioner requested commutation of a fraction of his pension. The respondents have stated that as per the applicable rules, a pensioner is allowed commutation of pension only after he has been subjected to medical examination and declared fit by the appropriate medical authority. Consequently as per rules, the applicant was, thereafter, referred to RML Hospital, New Delhi for medical examination and he was declared fit by the medical board only on the 11th of October, 2011. Therefore, the respondents computed interest as ordered by the Tribunal on the amount of commutation of pension for the purpose from 11th October, 2010

(when petitioner was declared medically fit as per rules) till 27th January, 2011 (which was the date of actual payment) amount of Rs.6,152/- at the rate of 9% per annum as ordered had been paid to the petitioner. The Tribunal has noted that in a representation dated 31st July, 2012, the petitioner had himself admitted that he had withdrawn his request for commutation of pension on 17th July, 2009 and renewed it only by his letter dated 25th January, 2010.

20. In this background, the petitioner was clearly entitled to interest on commutation of pension only from the date on which he was declared fit and nothing more.

21. The above narration of facts and the discussion of the orders by the Tribunal would show that the all reliefs admissible to the petitioner has been granted to him. The petitioner had himself withdrawn his request for commutation and reiterated the same after passage of several months. The petitioner thus was himself not sure of whether he wanted his pension to be commuted. Given the fact that the request was reiterated after more than one year of his retirement, the petitioner become entitled to pension only after being declared medically fit.

22. For all these reasons, the challenge to the decision of the Tribunal is not sustainable and is hereby rejected.

23. The writ petition is therefore hereby dismissed.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JUNE 13, 2014
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