



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

OA No. 060/853/2019

Pronounced on : 11.02.2020

Reserved on : 06.02.2020

HON'BLE MR.SANJEEV KAUSHIK, MEMBER (J)

Navraj Singh Dhillon S/o Late Sh. Beant Singh aged about 60 years, R/o # 4221, Sector 68, S.A.S. Nagar, Mohali, Punjab. Pin : 160 062.

.....Applicant

BY ADVOCATE: **Sh. G.S. Sathi**

VERSUS

1. U.T. Chandigarh through its Secretary, Engineering Department, U.T. Secretariat Building, Sector 9, Chandigarh, Pin: 160 009.
2. The Chief Engineer, Engineering Department, U.T. Secretariat Building, Sector 9, Chandigarh, Pin : 160 009.
3. The Superintending Engineer, Construction Circle No. 2, U.T. Secretariat Building, Sector 9, Chandigarh, Pin: 160 009.
4. Executive Engineer, Horticulture Division No. 2, Sector 23, Chandigarh. Pin: 160 023.

.....Respondents

BY ADVOCATE: **Sh. Navmohit Singh**



ORDER

MR. SANJEEV KAUSHIK, MEMBER(J):-

1. The applicant approached this Tribunal by filing OA under Section 19 of Administrative Tribunals Act, 1985 for issuance of a direction to the respondents to release the amount of leave encashment due on 01.02.2017 along with interest.
2. Before noticing the arguments raised by the learned counsel for the parties, we quickly recapitulate the facts which led to filing of the present OA.
3. The applicant initially joined the Chandigarh Administration as Junior Engineer on 30.11.1981 and was promoted as Assistant Landscape Officer w.e.f. 27.06.2013. He superannuated on 31.01.2017, while he was under suspension, as departmental as well as a criminal case was pending against him. After retirement, he submitted a representation on 14.03.2017 for release of retiral benefits and a reminder in this regard was also issued on 05.05.2017. It is, thereafter, respondent No. 2 granted provisional pension w.e.f. 01.02.2017, but have not released the amount of leave encashment. Thereafter, the applicant submitted another



representation based on judicial pronouncements for release of amount of leave encashment. When the applicant did not hear anything from the respondents, then, he approached the court by filing the present OA.

4. On notice of motion, the respondents have filed written statement wherein they contested the claim of the applicant for release of amount of leave encashment. It is stated therein that an FIR No. RCCHG2014A0011 dated 14.07.2014 had been registered against the applicant under Section 120-B of IPC and Section 7 of the Prevention of Corruption Act, 1988. In the meanwhile, the Department had also initiated departmental proceedings under the provisions of Punjab Civil Services Rules, Volume II read with Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules 1970 which is pending adjudication. It is submitted that in terms of Rule 8.21(aa) of Punjab Civil Services Rules, Volume I, Chapter 8, the respondents are well within their right to withhold the retiral benefits pending criminal as well as departmental proceedings against the applicant. Thus, it is prayed that the OA be dismissed being devoid of merits.

5. I have heard the learned counsel for the parties.



6. Sh. Sathi, learned counsel for the applicant vehemently argued that action of the respondents in withholding the amount of leave encashment is illegal, arbitrary and thus, their view be negated and directions be issued to them to release the leave encashment amount. To buttress his plea, he placed reliance on the judgement passed by the Single Bench of the Jurisdictional High Court in the case of **Dhir Chand Vs. State of Haryana & Ors.** in CWP No. 27383 of 2013 (O&M) decided on 19.11.2018.

7. Per contra, Sh. Navmohit Singh, learned counsel for the respondents representing the Chandigarh Administration, in equal vehemence, opposed the prayer of the applicant and argues that in terms of Rule 8.21(aa) of Punjab Civil Services Rules, Volume I, Chapter 8, the respondents are well within their rights to withhold the amount of leave encashment pending departmental proceedings. As departmental and criminal proceedings are pending against the applicant, therefore, their action in withholding the amount of leave encashment is sustainable and hence, this OA be dismissed.

8. Learned counsel for the respondents further argues that the judgement relied upon by the learned



counsel for the applicant in the case of Dhir Chand (supra) has been considered in another case by the same very Single Judge titled **Harbans Lal Vs. State of Punjab & Ors.** in CWP No. 9742 of 2019 decided on 21.09.2019 and after considering the judgement by the Full Bench of the Jurisdictional High Court in the case of **Punjab State Civil Supplies Corporation Ltd. & Ors. Vs. Pyare Lal, 2014 (4) SCT 711** decided on 11.08.2014 and in case of **Ram Kumar Ranga Vs. State of Haryana & Ors.** in CWP No. 3843/2019 decided on 15.07.2019, has held that the judgement in the case of Dhir Chand (supra) is per incuriam as the counsel for the parties in that case could not bring the rule position to the notice of the court at that time.

9. Learned counsel further argued that once the judgement relied upon by the applicant has been held to be per incuriam and not based upon rule position, the applicant cannot get the benefit arising out of that judgement. He then argued that in terms of the decision of the Full Bench in the case of Pyare Lal (supra), the present OA be dismissed. He also relies upon the order passed in the case of **Vinod Kumar Gupta Vs. State of**

Haryana and another in CWP No. 16818 of 2016 (O&M)



decided on 19.08.2016 in this regard.

10. I have given my thoughtful consideration to the entire matter.

11. In the present case, the sole issue is whether the amount of leave encashment can be withheld or not pending departmental and criminal proceedings. Rule 8.21 (aa) of Punjab Civil Services Rules, Volume I, (Chapter 8) is applicable to employees working under Chandigarh Administration. This rule is reproduced below:-

8.21(aa):-

“Notwithstanding anything contained in sub-rule(a) the authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of Government employee who retires from service on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the opinion of such authority, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against them and on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

A perusal of above-indicated rule makes it clear that the Government is well within its right to withhold the whole or part of cash equivalent to Earned Leave in case of



Government employee, who retires from service on superannuation, while under suspension or while disciplinary or criminal proceedings are pending against the employee.

11. In the present case, it is not in dispute that an FIR dated 14.07.2014 under Prevention of Corruption Act and departmental proceedings are still pending consideration before the concerned authority. Therefore, I do not find any fault in the action of the respondents in withholding of the leave encashment amount in terms of Rule 8.21 (aa) of Punjab Civil Services Rules, Volume I, Chapter 8, and the indicated judicial pronouncements on the issue noticed above.

12. In view of the foregoing discussion, the present OA, being devoid of merits, is dismissed. There shall be no order as to costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
ND*