

Central Administrative Tribunal  
Principal Bench

O.A. No.3157 of 2001

New Delhi dated this the 24th April, 2002

Hon'ble Mr. M.P. Singh, Member (A)

Shri H.R.K. Bhatnagar (Retd.)  
R/o G-263, Preet Vihar,

(By advocate: Sh. G.S. Lobana)

.....Applicant

Versus

1. Union of India, Through  
Secretary Department of Revenue  
Ministry of Finance -North Block  
New Delhi-110001.

2. The Chief Commissioner,  
Central Excise,  
Central Revenue Building,  
I.P. Estate, New Delhi-110002.

3. The Deputy Commissioner,  
Central Excise (M.O.D IV)  
G-80, Preet Vihar,  
Vikas Marg,  
New Delhi-110092.

(By advocate: Sh. R.R. Bharati)

.....Respondents

O.R.D.E.R. (ORAL)

Shri M.P. Singh, Member(A)

The applicant is seeking for directions to the respondents to release his retiral dues viz; gratuity, leave encashment and commuted value of pension.

2. The brief facts of the case are that the applicant retired as Superintendent of Central Excise on attaining the age of superannuation w.e.f. 31.3.1991. Prior to his retirement, he was facing prosecution as well as departmental proceedings for allowing fraudulent export under Duty Drawback at Foreign Post Office, New Delhi. Both the proceedings are still pending. He has, therefore, been sanctioned provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement under Rule 69 of the CCS (Pension) Rules,1972 w.e.f.1.4.91. The same has been revised w.e.f.1.1.96 on the

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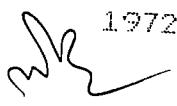
(2)

recommendations of 5th Central Pay Commission. However, other retiral benefits such as gratuity, commutation of pension and leave encashment have not been released to the applicant. Aggrieved by this, he has filed this OA claiming the aforesaid relief.

3. According to the respondents no gratuity can be paid to the applicant in view of sub-rule (c) of Rule 69 of the CCS (Pension) Rules, 1972. The amount of Commutation of Pension is withheld for the reason that the same is not payable during the pendency of departmental proceedings as provided under Rule 4 of the CCS (Commutation of Pension) Rules, 1981. As regards, the payment of leave encashment, Rule 39 (3) of CCS(Leave) Rules, 1972, provides that authority competent to grant leave may withhold whole or part of cash equivalent of earned leave if disciplinary/criminal proceedings are pending against the Government servant at the time of his retirement.

4. Heard the learned counsel for rival contesting parties and perused the material placed on record.

5. During the course of the argument the learned counsel for the applicant has drawn my attention to the judgement of the Co-ordinate Bench of the Tribunal dated 6th April, 1999 in OA-1832/1998, wherein the Tribunal has allowed the release of leave encashment and gratuity. In the aforesaid case also criminal proceedings were pending against the applicant at the time of his retirement. He has, therefore, submitted that the retiral dues of the applicant viz; gratuity and leave encashment should be released as the applicant in the present OA is also similarly placed. On the other hand, learned counsel for the respondents has submitted that the aforesaid retiral benefits of the applicant have been withheld as per the provision of Statutory Rules i.e. CCS (Pension) Rules 1972.



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6. After perusal of the aforesaid judgement of this Tribunal dated 6th April, 1999 in OA No.1832/98, I find that the applicant in the present OA is also similarly placed. In the aforesaid judgement, the Tribunal has allowed the release of (i) leave encashment dues and (ii) DCRG on the production of two sureties by the applicant to the respondents as it was not known when the criminal case against the applicant which commenced in November, 1984 would be concluded. In the present OA also the applicant is involved in the criminal proceedings and it is not known as to when the criminal proceedings in the court would be concluded. I respectfully agree with the Judgement dated 6th April, 1999 in OA-1832/1998 and accordingly, the respondents are directed to consider the release of (i) Leave encashment dues and (ii) DCRG on production of two sureties by applicant to the respondents full satisfaction within a period of 3 months from the date of receipt of a copy of this order. If upon the conclusion of the criminal case against the applicant any sums are ordered to be recovered from him, the same can always be adjusted against the sureties furnished.

7. The present OA is disposed of in the aforesated terms. No order as to costs.

  
(M.P. Singh)  
Member (A)

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