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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.296 of 1998 decided on 12.2.1999.

Name of Applicant : Sh. R.K.Mishra

By Advocate : Shri J.K.Bali

Versus

Name of respondent/s Union of India & another

By Advocate : Shri Rajeev Bansal

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes
2. Whether to be circulated to the other Benches of the Tribunal. -No

N. Sahu
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.296 of 1998

New Delhi, this the 12th day of February, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Sh. R.K.Mishra, S/o late Sh.
A.M.Mishra, C-4H/52, Janakpuri, New
Delhi.

- APPLICANT

(By Advocate Shri J.K.Bali)

Versus

Union of India through

1. The Secretary, Ministry of
Communication, Department of
Telecom, Sanchar Bhawan, 20, Ashoka
Road, New Delhi-110001

2. The Member (Services), Telecom
Commission, Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road, New
Delhi-110001.

- RESPONDENTS

(By Advocate Shri Rajeev Bansal)

ORDER (O r a l)

By Mr. N. Sahu, Member(Admnv)

The prayer in this Original Application is to direct the respondents to make payment of the amount due to him on account of leave encashment along with interest at 18% per annum.

2. The applicant worked as an Assistant Director General in the Telecom Commission and retired on 31.10.1996 on superannuation. One major penalty proceeding and two minor penalty proceedings were initiated against him during service. The first charge-sheet dated 26.4.1994 was for an alleged irregularity which was stated to be committed 11 1/2 years before. After going through his defence this charge-sheet was dropped. The 2nd and third

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charge-sheets for irregularities committed during 1986-87 were initiated on 26.4.1994 and 9.9.1994. The applicant replied to the said charge-sheets on 23.11.1994. It is very clear that these proceedings have not been concluded even till date, i.e. for nearly five years after the date of initiation. The applicant's counsel states that the decision to withhold leave encashment is not in accordance with law. Besides the cases cited in the OA he cited the following decisions in the course of argument - (i) T.S.Manickavasgam Vs. Union of India, (1996) 32 ATC 309. The decision in that case is that the competent authority should apply its mind as to whether withholding of gratuity would suffice or in addition leave encashment amount must also be withheld in whole or in part in order to make recovery from the employee. Withholding of the applicant's leave encashment in that case without going into these aspects was held to be invalid. The Bench considered Rule 550(C) of Indian Railway Establishment Code and Rule 39(3) of the Central Civil Services (Leave) Rules, 1972. The next decision cited by the applicant's counsel is in the case of D.P.Sinha Vs. Union of India and others, (1991) 16 ATC 70. In that case the Tribunal found that there was no material to justify ~~that~~ the competent authority's view that there was a possibility of some money becoming recoverable on the conclusion of the disciplinary proceeding. A mere pendency of the proceeding after the date of retirement would not entitle the competent authority to withhold leave encashment.

The learned counsel has also placed before me a

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Single Bench decision of this Court in the case of Sh.D.P.Srivastava Vs. Union of India and another, O.A. No. 373 of 1998 decided on 5.2.1999 wherein the Bench directed the respondents to pay at least 50% of the leave encashment due to the applicant on the ground that the alleged irregularities related to 1988-89 and there are not even indications as to when the proceedings would be concluded. That was a case where the respondents have withheld the amount of gratuity, commutation of pension as well as the leave encashment payable to the applicant as a measure of financial prudence in terms of Rule 9(1) of Central Civil Services (Pension) Rules, 1972 as amended by Notification dated 23.8.1991.

3. The learned counsel for the respondents on the other hand submits that the respondents were advised by Vigilance Monitoring Cell that as two minor penalty proceedings are still pending against the applicant, the Union Public Service Commission whose advice is mandatory before the conclusion of the proceedings might advise recovery of amount from the applicant. The competent authority DDG Personnel accordingly recorded that the amount of leave encashment payable to the applicant be withheld till the proceedings against the applicant are concluded and the UPSC gives clearance for release of retiral dues. Refer to Para 4.2 of the counter affidavit. The learned counsel vehemently argued that under Rule 39(3) *ibid* the competent authority may withhold whole or part of cash equivalent to earned leave "in case of a Government servant who retires from service on

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attaining the age of superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him".

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4. The learned counsel for the respondents has produced for perusal of the Court the relevant file where the decision of the competent authority has been taken. The opinion of the subordinate staff was that no amount has been recovered from the firm or any other person in these cases and, therefore, on conclusion of the disciplinary proceedings the UPSC may advise recovery of amount of loss from the pensionary benefits of the applicant (note submitted on 31.10.1996). On the basis of this opinion the request for release of leave encashment was rejected.

5. The applicant's leave encashment has been computed at Rs. 1,07,928/-. The view of the competent authority on withholding of leave encashment dues was before the dropping of the major penalty charge-sheet. This major penalty charge-sheet was dropped on 9.12.1998. Thereafter the case was again put up for consideration and on 11.2.1999 the competent authority decided "payment may not be released till the case is decided".

6. The applicant's counsel submits that only provisional pension has been paid and neither commuted pension nor gratuity nor leave encashment has been released to him.

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7. I am satisfied that the powers under Rule 39(3) ibid do not authorize withholding leave encashment as a matter of routine. The major penalty proceedings have been dropped. As far as the commutation of pension and gratuity are concerned, they have been withheld. This OA is not directed against withholding of those amounts. As far as leave encashment is concerned, the reasons recorded are extremely vague, tenuous and do not show proper application of mind. The sum and substance of the reasons seems to be that on the ground that the UPSC might advise recovery, the authorities decide to authorize withholding. An application of mind means that the conclusion arrived at must have a logical and rational nexus to the facts on which such conclusion is going to be based. The respondents should show on the strength of the facts of the case, that there was a possibility that charges would be proved against him and secondly they should also arrive at a conclusion that a portion exceeding the withheld amount is likely to be recovered and, thereafter they should exclude the possibility of recovery from the other parties who are directly involved and then come to the conclusion as to whether wholly or partly leave encashment should be recovered. I respectfully agree with the decision of the Madras Bench of the Tribunal that the findings should be as to whether recovery of gratuity would be adequate or not and thereafter whether it would be further necessary to withhold only a part of the

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leave encashment and/or other retiral benefits. I do not see any application of mind in the decision-making process on the above lines.

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8. The next important point is that this decision should be taken at the time of retirement of the official. The decision has not been reviewed after the major penalty proceeding has been dropped. Retiral benefits have been held to be of the characteristic of property in rem. Deprivation from the dues can only be done in accordance with the procedure established in law.

9. In the circumstances explained above it appears to me that withholding the whole amount of leave encashment besides commutation of pension and gratuity appears to me to be iniquitous, arbitrary and without application of mind. Nearly five years have passed after the initiation of the disciplinary proceedings and there is no indication as to when these proceedings are going to conclude. Two minor penalty charge-sheets were issued as stated above during April, 1994 and September, 1994 for irregularities alleged to have been committed by the applicant during 1986-87. It is stated by Shri Bali, learned counsel for the applicant that after the charge-sheets were issued the applicant had furnished his defence on 23.11.1994. Till now the respondents have not taken any decision on these minor penalty proceedings. It appears to me that this indefinite prolonging of the proceedings cannot be countenanced by any judicial authority particularly when the

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retiral benefits which are due for a life-time of service are withheld. I am also informed that for one minor penalty proceeding the alleged loss was approximately Rs.6,00,000/- and in the other charge-sheet it is approximately Rs.6,000/-. Since gratuity had also been withheld, I direct that 75% of the leave encashment due shall be released within two weeks from the date of receipt of a copy of this order. If within the next three months the disciplinary proceedings are not concluded, the balance of 25% shall also be released.

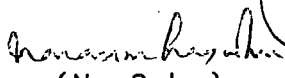
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10. With regard to claim of interest, I do not agree with the claim of the applicant. I have seen the departmental file, produced by the respondents' counsel at the time of hearing. There is no administrative lapse involved. The respondents were alive to the payment of retiral benefits due to the applicant and at several stages they were considering the applicant's claim. It is now established by the decision of the Hon'ble Supreme Court that interest cannot be paid automatically when retirement benefits can be withheld by provisions of a statute. Claim of interest can be considered only when there is administrative lapse. I find from the file that the respondents have been considering at various stages whether they should withhold the leave encashment or not, though adequate reasons have not been recorded for this purpose. Under the circumstances there is no justification for claiming payment of interest.

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11. In the result the OA is disposed of with the above directions.


(N. Sahu)
Member (Admnv)

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