

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No. 373/98199

Date of Decision: 5 - 2 - 1999

(12)
APPLICANT

Shri D.P. Srivastava

(By Advocate Shri J.K. Bali

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri Rajinder Nishchal

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)

Cases referred:

UDI Vs. Justice S.S. Sandhawalia(Retd.)(JT 1994(1) SC 62.
R. Kapur Vs. Director of Inspection (Planning & Publication)
Income Tax & Anr. (JT 1994(6) SC 354.
State of Kerala & Ors. Vs. M. Padmanabhan Nair
(1985(1) SCC 429(para 7)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-373/98

New Delhi this the 5th day of February, 1999.

Hon'ble Shri S.P. Biswas, Member(A)

Sh. D.P. Srivastava,
S/o Sh. Ashrafi Lal Srivastava,
R/o 5-LF, Safdar Hashmi Marg,
New Delhi-1. Applicant

(through Sh. J.K. Bali, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Communication,
Department of Telecom,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-1.

2. The Member(Services),
Telecom Commission,
Department of Telecom,
Sanchar Bhawan,
20, Ashoka Road, Respondents
New Delhi-1.

(through Sh. Rajinder Nishchal, advocate)

ORDER

Applicant, a retired Director from the office
of G.M. (Telecom)/Indore is aggrieved by A-1 order
dated 09.12.97 by which the following payments, due to
him, have been withheld:-

- (a) Death cum retirement gratuity
- (b) Commutation of Pension
- (c) Encashment of earned leave

Consequently, he seeks issuance of directions
to respondents to make payments to him for the amount
payable against leave encashment.

2. The applicant retired on 31.7.97 on attaining the age of superannuation. On his retirement, the applicant was sanctioned provisional pension only and the other amounts, due to him, on account of gratuity, commutation of pension and leave encashment have been withheld. This has been done on grounds of pendency of disciplinary cases against the applicant. Shri J.K. Bali, learned counsel for the applicant would argue that withholding of payment towards encashment of earned leave is causing financial hardship to the applicant. That payments towards leave encashment is required to be arranged by the respondents immediately after retirement and there is no rule which entitles them to withhold it. To buttress his arguments in favour of the aforesaid contention, the learned counsel for the applicant drew our attention to the decisions in the following cases:-

- (i) U.O.I. Vs. Justice S.S. Sandhawalia (Retd.) (JT 1994(1) SC 62)
- (ii) R. Kapur Vs. Director of Inspection (Planning & Publication) Income Tax & Anr. (JT 1994(6) SC 354).
- (iii) State of Kerala & Ors. Vs. M. Padmanabhan Nair (1985(1) SCC 429 (para 7)

3. Shri Rajinder Nishchal, learned counsel for the respondents submitted that since a vigilance case was pending against the applicant, he was allowed to draw provisional pension on his retirement. Two chargesheets for major penalty proceedings have since been served upon him for alleged irregularities in the purchase of certain telecom store items on two different

occasions. As per Rule 39(3) of CCS (Leave) Rules, 1972, leave encashment can also be withheld if the disciplinary or criminal proceedings are pending against an employee. The relevant extract of the rule, applicable to the facts of the present case, is reproduced below:-

"The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement 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 on conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

Keeping in view the possibility of recovery of the Government money from the applicant, the competent authority in exercise of powers conferred as per rule 39(3) as aforesaid, has withheld the encashment of earned leave.

4. I have heard both the counsel and have gone through the records made available to this Tribunal. The applicant has been paid only provisional pension but other dues including gratuity, commutation of pension and leave encashment have been withheld pending conclusion of the disciplinary proceedings. As per provisions under Rule 2(a) of Rule 39, CCS (Leave) Rules, where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall suo moto issue an order

granting cash equivalent of leave salary for earned leave, if any, at the credit of the Government servant on the date of retirement subject to maximum of 240 days. As per rule, the President may order recovery from pension or gratuity the whole or part or pecuniary loss caused to the Government when a departmental or judicial proceeding is pending against the pensioner if found guilty of misconduct or negligence during the period of service, including the service rendered upon re-employment after retirement. On conclusion of the proceedings, the said pensioner will become eligible to receive the amount so withheld after adjustment of Government dues, if any.

5. Thus, as per Rule 39(2)(a), mere fact that disciplinary proceedings are pending would not entitle the respondents to withhold the leave encashment amount. The respondents have to form a view as to whether there is a possibility of some money becoming recoverable from the delinquent official on conclusion of the proceedings against him. The respondents have not placed any material before this Tribunal to show that the competent authority was of ^a definite view that there is a possibility of some specific amount of money becoming recoverable from the applicant on conclusion of the proceedings against him. It is also seen that besides the applicant there are others who have also been found responsible and issued with chargesheets for the same alleged irregularities. The records do not reveal that specific amounts that would have become recoverable from delinquent official/officials have been worked out. It is seen that purchase orders for an

amount of Rs.44 lacs (approximately) had been placed against the materials that were supplied to the respondents. Payments were made for little over 10 lacs and the materials worth against the balance payment are lying with the respondents. Thus, the maximum amount of loss could be only for Rs. 10 lacs against which a number of other officials are also facing similar proceedings.

(V)

6. I also find that the respondents have not denied the legality of leave encashment due to the applicant. What is important to note is that the total amount of loss that had accrued to the Government or could be recoverable from the applicant has not been estimated. This could be done on realistic basis even if it is not precisely known. There is no doubt that the leave sanctioning authority is competent to withhold the whole or part of the cash equivalent of leave if there is a possibility of ~~some~~ ^{amount} becoming recoverable from the charged official on ^{leave} conclusion of the disciplinary/criminal proceedings. However, the action of the authority has to be reasonable and cannot be arbitrary. It is noted that the provision that the whole or part amount can be withheld shows that the authority has to apply its mind and determine the same with reference to the amount that may possibly become recoverable. Whether it is necessary to withhold the whole of the amount of cash equivalent of leave or whether it would suffice if a part of the leave encashment is to withhold is an issue for the respondents to estimate and come to a finding. This is very important in cases, as in the present one, where

(S)

the entire amount payable on the major heads have been withheld. In a case where the amount which is withheld is excessive compared to the maximum amount of money that may become recoverable on the conclusion of the proceedings, it will be unfair and arbitrary to keep such an excess amount withheld for a long period of several years just because proceedings are continuing.

7. In the present case, the proceedings have not been concluded even though more than ten years have elapsed since the occurrence of the events. It was, therefore, necessary for the respondents to assess what was the maximum possible loss to the respondents that would occur in the two cases in question so far as the applicant is concerned and consider whether the amount of gratuity and commutation of pension already withheld would not be sufficient enough to recover the entire loss. If the amount recoverable could not be offset against gratuity and commutation of pension, only then the question of recovery from leave salary would arise. The respondents ought to have held back only such amount of leave salary as would be necessary over and above the gratuity and commutation of pension in the event of one or both the charges could be presumed to be established against which recovery of pecuniary loss could be ordered. This is also possible that the recoverable amount could be more than what has been held back on the aforesaid three grounds. Respondents, however, have not worked out any detail on either side. On the contrary, respondents have withheld the amount of gratuity, commutation of pension as well as leave encashment payable to the applicant, not as a measure of penalty.

but as a measure of financial prudence and in terms of Rule 9(1) of the CCS (Pension) Rules, as amended by Notification dated 23.8.91.

(19)

8. It is seen that the cases relate to the period of 1988-89 and there are no indications when the proceedings will get completed. Rule 69 of the CCS (Pension) Rules, 1972 provides, inter alia, that though provisional pension should be paid to a Government servant in cases where department or judicial proceedings may be pending, the Government need not pay gratuity until the conclusion of the criminal case and the issue of final orders thereon. There is a presupposition in the above provisions that the proceedings pending against the officer concerned in the criminal court will conclude within a reasonable period. The rules do not envisage a case where there may be prolonged litigation for years before reaching the final outcome of the criminal case. In our opinion, in a case of this kind, the rules should not be made applicable in full force in view of the possibility of rounds of litigation in the High Court and Supreme Court by the losing party.

9. In the facts and circumstances as aforesaid and in the interest of justice, equity and fair play, I allow this application partly with the following directions:-

(i) Respondents shall pay at least 50% of the leave encashment amount due to the applicant within a period of three

months from the date of issue of this order subject to applicant executing a bond of indemnity with two surties to the effect that he will refund the amount to the Government in case the final verdict in the proceedings goes against him.

(ii) The amount of leave encashment to be released to the applicant as in (i) above will be liable to adjustment, depending on the out come of proceedings pending against him.

(iii) No order as to costs.


(S.P. Biswas)
Member(A)

/vv/