

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.410 of 2016

Present: **Hon'ble Mr.Gokul Chandra Pati, Member (Admn.)**

Suresh Chandra Shukla, aged about 61 years, S/o. Late Krushna Chandra Shukla, permanent resident of At/Po- Jaraka-755050, PS-Dharmasala, Dist- Jajpur, retired from the post of Senior Postmaster, Cuttack GPO

.....Applicant

-Versus-

1. Union of India represented through its Secretary-cum-Director General (Posts), Dak Bhawan, New Delhi-110001
2. Tilak De, Chief PMG, Odisha Circle, At- Bhubaneswar, PO-Bhubaneswar GPO-751001, Dist-Khurda
3. R.P. Gupta, Director, Postal Services (HQ), At- Bhubaneswar, PO-Bhubaneswar GPO-751001, Dist-Khurda

.....Respondents

For the Applicant: Mr.T.Rath, Counsel

For the Respondents: Mr. A. Pradhan, Counsel

Order reserved on: 25.08.2020

Date of order on: 27.08.2020

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A):**

This OA has been filed by the Applicant seeking the following reliefs under section 19 of the Administrative Tribunals Act, 1985 as under:

- “(a) That the Respondents may be directed to release the encashment of unutilized earned leave of the applicant immediately.*
- “(b) That the respondents may be reprimanded for unnecessarily harassing the applicant. The D.G.(Posts) may please be directed to take suitable Disciplinary Action against the erring officers as per the decision of Govt. of India in para-4 of DOP&T OM dtd 21-10-2013 (Annexure-A/4).*
- “(c) Appropriate orders may be passed allowing the OA, with cost and interest @18% per annum for the period of delay in releasing the leave encashment due of the applicant.”*

2. The present dispute arose due to non-release of the leave encashment benefit due to the applicant on his retirement on 31.01.2016 from service. The applicant submitted a representation dated 19.02.2016 (Annexure-A/5) to the respondent no.2 for sanction of leave encashment benefit due to him and also registered his grievance in the website of Government of India. He followed up with representations dated 22.04.2016 to the respondent no.3 and dated 27.04.2016 to the respondent no.1 (Annexure-A/7 series). The applicant was informed that vide the letter dated 02/03.05.2016, the respondent no.1, to whom three appeals filed by the applicant against punishment of recovery imposed against the applicant in disciplinary proceedings were forwarded, was requested for disposal of the appeals so as to release his leave encashment benefit. Thereafter, the applicant filed this OA in June, 2016.

3. The respondents filed a show cause reply before filing Counter, informing that the applicant's leave encashment benefit has been released vide order dated 4.7.2016 and 8/11.07.2016, copies of which have been attached at Annexure-R/1 series to the show cause reply. It is also stated that three proceedings, initiated against applicant under the CCS (CCA) Rules, 1965 were finalized prior to his retirement, resulting in recovery some amounts from the applicant. The applicant had filed appeals before the respondent no.1 against the punishment orders and his leave encashment benefit was withheld by the respondents since the appeals filed by the applicant against the punishment of recovery were pending. It is, however, stated that taking into consideration the representation of the applicant, the leave encashment benefit has already been released.

4. The OA was considered for admission on 3.8.2020. Applicant's counsel informed about receipt of the leave encashment benefit by the applicant and submitted that although the prayer at para 8(a) of the OA has become infructuous, he would like to press for the reliefs sought for in sub-para 8(b) and 8(c) of the OA. After hearing both the sides, the Tribunal admitted the OA and directed the respondents to file Counter.

5. Counter filed by the respondents stated that the amount to be recovered as per the order of the disciplinary authority in three disciplinary proceedings against the applicant had already been recovered from the salary of the applicant for the month of January, 2016 just before his retirement and his leave encashment benefit was withheld *"as a precautionary step being the applicant had preferred appeals against the above punishment awarded to him and the same were pending for disposal by the Appellate Authority."* It is further averred that there was no ill intention in withholding the leave encashment benefit of the applicant, which has already been released vide orders at

Annexure-R/1 series. It is also stated that there is no provision under the CCS (Leave) Rules for payment of interest as claimed in the OA. The respondents have also referred to the OM dated 5.10.1999 (Annexure-R/2 of the Counter) to resist the reliefs claimed at sub-para 8(b) and 8(c) of the OA.

6. Rejoinder filed by the applicant stated that when the decision was taken in the file to withhold release of the amount in question on 1.4.2016, the appeals filed by the applicant were not forwarded to the respondent no.1 who is the Appellate Authority in this case. It is, therefore, averred in Rejoinder that the explanation for withholding as a precautionary measure due to pendency of the appeals filed by the applicant, cannot be accepted as an excuse for not releasing the leave encashment benefit, which was to be released as soon as possible as per the DOPT OM dated 21.10.2013 (Annexure-A/4 of the OA). It is averred that withholding of leave encashment benefit was done with bad intention of the respondents, for which, concerned officials are liable for disciplinary proceedings and the applicant is entitled for interest on account of delayed payment.

7. Heard learned counsel for the applicant and respondents. Besides reiterating the pleas taken by the applicant in his pleadings, the applicant's counsel submitted that the applicant's claim for interest and for a direction to initiate disciplinary proceeding against the persons found responsible for delaying the release of his leave encashment benefits, are justified as per the DOPT OM dated 21.10.2013 (Annexure-A/4 of the OA). It was also submitted that from the factual circumstances of the case, it is clear that the applicant was harassed by delaying the release of the amount in question. A written note of submissions has also been filed by learned counsel for the applicant, reiterating the applicant's pleadings on record.

8. Per contra, learned counsel for the respondents opposed the claim of the applicant for interest on the ground that there is no provision in the rules for payment of such interest for delay in release of the leave encashment benefit to the applicant. He also submitted that the amount was withheld by the respondents as a precautionary step in case the Appellate Authority decides to enhance the penalty and the amount was released after considering the representation of the applicant. It shows that there was no malafide on the part of the authorities for withholding the amount in question and no disciplinary proceeding can be initiated against concerned officers who had handled the matter. Learned counsel for the respondents also referred to the judgment of the Principal Bench of this Tribunal in the case of Dr. V.T. Prabhakaran vs. Director, Indian Agricultural Statistics Research Institute & others in OA No.

3533/2011, in which similar claim for interest for delayed payment of leave encashment was not allowed.

9. The pleadings as well as the submissions by both the sides are considered by me. The applicant had retired on 31.1.2016 and the amount towards his earned leave encashment was released vide order dated 4.7.2016 (Annexure-R/1 of the respondents' show cause reply, which after about 5 months from the retirement date. The question is whether the delay in release of leave encashment was due to the lapses on the part of the respondents.

10. Regarding claim of interest, the respondents have submitted that there is no provision in the rules for payment of interest on leave encashment and have furnished the OM dated 5.10.1999 (Annexure-R/2 of the Counter) in support of their stand that no interest is payable. The said OM states in sub-para (f) of paragraph 2 as under :-

*“(f) In the matter of delayed payment of leave encashment, the Department of Personnel & Training in their note dated 2.8.99 has clarified that there is no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility. Moreover, encashment of leave is a benefit granted under the leave rules and not a pensionary benefit.”*

11. The applicant in reply to the provision in OM dated 5.10.1999, has stated in Rejoinder that it is an outdated circular and he refers the OM dated 21.10.2013 (Annexure-A/4 of the OA), which states as under:-

“Government of India/Bharat Sarkar  
Ministry of Personnel, Public Grievances and Pensions  
Department of Personnel and Training

New Delhi, the October, 2013  
21-10- 2013

#### OFFICE MEMORANDUM

Subject: Timely payment of dues of encashment of leave to Government servants retiring on attaining the age of superannuation — need to obviate delays in payment of such dues - regarding.

The undersigned is directed to state that in terms of the provisions of rule 39 of the CCS(Leave) Rules, 1972, the authority competent to grant leave is suo mote required to issue an order granting cash equivalent of leave salary for both earned leave and half pay leave, if any, at the credit of the Government servant on the date of his retirement, subject to the prescribed limits.

2. It has since been brought to the notice of this Department that the concerned administrative authorities as indicated in First Schedule to the said rules including authorities subordinate to the leave sanctioning authorities to whom such powers have been delegated, are not ensuring that the dues, as admissible to a Government servant retiring on attaining the age of superannuation, are promptly paid. This has led to avoidable litigation where courts have been directing payment of interest on such delayed payments. It has been observed from the references received in this Department that the

delays in such payments are predominantly due to avoidable administrative reasons relating to processing of such cases.

3. It is further stated that the Leave Account of a Government servant is a dynamic document which is required to be revisited periodically to record credits of Earned Leave and Half Pay Leave in terms of provisions of rules 26 and 29 of the CCS(Leave) Rules, 1972 with entries made on each occasion the Government servant avails the leave of the kind due and admissible to him. Further, the said rules envisage that advance credits be made in the leave account of the Government servant and a constant check maintained to ensure that the total accumulations at any given time do not exceed 300+15 days.

4. Delays in reckoning the leave accumulations at the credit of Government servant at any stage, particularly at the time of his retirement on superannuation, cannot be acceptable and can be construed as administrative lapse, liable to attract provisions of the CCS(Conduct) Rules, 1964 and CCS(CCA) Rules, 1965. All cases of delay may be looked into and delays in disbursement of dues to Government servants retiring on attaining the age of superannuation be avoided.

5.....

6.....”

12. The OM dated 5.10.1999 states that there is no provision in the CCS (Leave) Rules for payment of interest on delayed payment of leave encashment or for fixing responsibility. The said OM does have provision that no interest can be paid or no responsibility can be fixed for any delay in payment of leave encashment benefit. On the other hand, the OM dated 21.10.2013 (A/4), referred by the applicant in his OA in para 4.6, provides for early payment of leave encashment benefit, stating that delay in releasing the same will attract disciplinary proceedings against the persons responsible by treating it as an administrative lapse. The respondents, in their Counter, have not contradicted the said provisions of the OM dated 21.10.2013 (A/4). In this case, there has been a delay in releasing the leave encashment benefit of the applicant by about 5 months from the date of his retirement on the ground of the pendency of appeal. The respondents have not furnished any rule or executive instructions of Government except the OM dated 5.10.1999 (Annexure-R/2), which permits such withholding.

13. In the case of Dr. V.T. Prabhakaran (supra) of this Tribunal cited by learned counsel for the respondents, admittedly a disciplinary proceeding was pending against the applicant at the time of his retirement, for which the respondents withheld the leave encashment benefit under the rule 39(3) of the CCS (Leave) Rules, 1972. The Tribunal in that case found that the respondents' action to withhold leave encashment benefit was justified since a disciplinary proceeding was pending against the applicant at the time of his retirement. But the facts of the present OA (No. 410/16) are different since the disciplinary proceedings against the applicant had been finalized at the time of the applicant's retirement, with imposition of the punishment of recovery and the said punishment had been implemented by recovering the amount fully from

the applicant's salary before his retirement. Even the respondents in their show cause reply have stated that the disciplinary proceedings were finalized before applicant's retirement. In the present OA, the applicant had filed appeals against the punishment orders and the said appeals were pending. Hence, the present OA is factually different from the case of Dr. Y.T. Prabhakaran (supra) and the cited judgment will be of no assistance to the respondents.

14. The contention in the Counter that the leave encashment of the applicant was withheld as a precautionary measure, is not acceptable since no rule or executive instruction of Government has been furnished in support of such action of the respondents. When no amount was recoverable from the applicant as on the date of his retirement, withholding of leave encashment benefit was not permissible in anticipation of the decision of the Appellate Authority on the pending appeals. Hence, the applicant's prayer for interest deserves to be considered to compensate him for the delay in payment of leave encashment benefit, which was due to lapses on the part of the respondents. However, since there is no provision in the rules for payment of interest, such interest is required to be recovered from the persons responsible for delay, by initiating appropriate disciplinary proceedings as per law against persons responsible for delay.

15. In the facts and circumstances as discussed above, the OA is partly allowed with direction to the respondents to pay interest at the rate of 8% per annum for a period of five months on the leave encashment amount released to the applicant in July, 2016 subject to the condition that such interest amount paid to the applicant will be recovered from the persons who will be found to be responsible for such delay, by following due process of law. The interest as above is to be paid to the applicant within three months from the date of receipt of a copy of this order. There will be no order as to costs.

(Gokul Chandra Pati)

Member(A)