

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1853/2004

Tuesday, this the 13th day of September 2005

Hon'ble Shri Justice M.A. Khan, Vice Chairman (J)
Hon'ble Shri M. K. Misra, Member (A)

Shri J.B. Gupta
Ex. Sr. Auditor a/c No.8312329
Last posted in LAO (CVD)
Delhi Cantt.
R/o X/3368/6, Gali No.2
Raghubarpura No.2
Gandhi Nagar, Delhi-31

..Applicant

(By Advocate: Shri G.S. Lobana)

versus

1. Union of India
through Secretary
Ministry of Defence
New Delhi-11
2. The Controller General of Defence Accounts
West Block V, RK Puram
New Delhi-66
3. The Principal Controller of Defence Accounts Duplex
Road 'G' Block, New Delhi-11
4. The Principal Controller of Defence Accounts
Western Command, Sector 9-C
Chandigarh - 1601017
5. The Secretary
Department of Personnel & Administrative Reforms
Govt. of India North Block
New Delhi-1

..Respondents

(By Advocate: Shri Mohar Singh)

O R D E R (ORAL)

Justice M.A. Khan:

After hearing the learned counsel for the parties, we had dismissed the OA on merits. We are now recording the reasons.

2. The applicant has filed this OA for setting aside the orders, which are at Annexures A-I and A-II and he is also seeking a direction to the respondents to make payment of the amount of leave

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encashment due to him on his retirement w.e.f. 1.9.1999 with 12% interest for delay in payment.

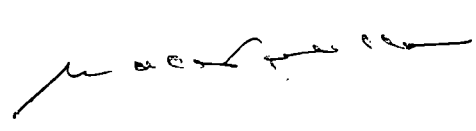
3. Facts are short and simple. The applicant is an Auditor in Defence Department. He was served with a charge memo for holding disciplinary proceedings against him under Rule 14 of CCS (CCA) Rules, 1965 for major penalty on 2.1.1998. On conclusion of the disciplinary inquiry, disciplinary authority has imposed a penalty of removal from service. In appeal, the penalty was reduced to compulsory retirement from service with a cut of 20% in pension for 5 years and 20% cut in gratuity (Annexure A-IV).

4. The applicant has retired from service w.e.f. 1.9.1999. He has not been paid leave encashment for the leave due to his credit. He has challenged the orders of the respondents in this regard primarily on the ground that the denial of the leave encashment is hit by the doctrine of double jeopardy enshrined in Article 20 of the Constitution of India and further that Rule 39 (5-A) of FRSR Part-III CCS (Leave) Rules, 1972 is arbitrary, illegal, unconstitutional and violative of Article 20 of the Constitution of India. He further stated that two similarly situated persons, namely, S/Shri T.P. Venugopalan and C.S. Chandna, however, have been paid leave encashment amount on their retirement from service.

5. In the counter reply, the respondents have repudiated the claim of the applicant and have stated that the applicant was not entitled to the leave encashment in view of Rule 39 (5-A) of the CCS (Leave) Rules. As regards, Shri T.P. Venugopalan, it was stated that the penalty in the disciplinary proceedings was imposed upon him much after his retirement from service and the payment of leave encashment amount was made to him. With regard to Shri C.S. Chandna, the payment of leave encashment amount was made wrongly and the steps have been initiated for recovery of the amount paid to him.

6. In the rejoinder, the applicant has reiterated his own case.

7. We have heard the learned counsel for the parties and have perused the material placed on record.



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8. Sub para (5-A) of Rule 39 of CCS (Leave) Rules, which has been invoked by the respondents for denying the amount of leave encashment to the applicant, is extracted below:-

“(5-A) Where a Government servant is compulsorily retired as a measure of penalty under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the disciplinary authority has not imposed any reduction in the amount of his pension (including gratuity) under Rule 40 of the Central Civil Services (Pension) Rules, 1972, the authority competent to grant leave shall suo moto issue an order granting cash equivalent of leave salary for earned leave, if any, at credit of the Government servant on the date of such retirement, subject to a maximum of two hundred and forty days in the manner indicated in Clause (b) of sub-rule (2).”


9. Learned counsel for the applicant has challenged its vires. It is submitted that withholding of the leave encashment amount amounted to a penalty in addition to the penalties imposed upon the applicant in the disciplinary proceedings, so would be hit by doctrine of double jeopardy and would violate Article 20 of the Constitution. The grant of amount of leave encashment under CCS (Leave) Rules, by no stretch of reasoning, could be said to be a penalty imposed upon the applicant. If it is not a penalty, the principle of doctrine double jeopardy would not be attracted. It would also not violate Article 20 of the Constitution. Indeed, sub Rule (5-A) of the CCS (Leave) Rules, which is extracted above, would show that it is a consequence of the order, which has been passed against the applicant in the disciplinary proceedings but, in itself, it is not a penalty. In fact, it is not a pensionary benefit. As a result, the first contention of the applicant has no merit.


10. As regards the second ground that the order of withholding of leave encashment amount is discriminatory since two other similarly situated persons have been paid this amount, suffice to say that the learned counsel for applicant has agreed that Shri T.P. Venugopalan, who has also been imposed a similar penalty as that of the applicant, was paid leave encashment amount after his retirement much prior to the imposition of penalty and his facts were distinguishable. But he laid a great deal of emphasis on the payment of leave encashment amount to Shri Chandna, whose facts were also similar. The respondents, however, have stated that he has been paid leave encashment amount wrongly in contravention of rules, so action has been taken for recovery of the amount. It is now well settled that

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wrong orders could not be made foundation for claiming equity for enforcement of same order. In **State of Haryana v. Ram Kumar Mann**, 1997 (3) SCC 321, it was held that wrong fixation of the pay by the Government did not give a right to enforce the wrong order and claim parity or equality since two wrongs could not make a right. Similarly, in **Faridabad CT Scan Centre v. D.G., Health Centre**, 1997 (95) ELT 161 (SC), it was held that Article 14 cannot be attracted in a case where wrong orders were issued in favour of others. Similar view was taken in **Union of India (Railway Board) and others, v. J.B. Subhaiya and others**, 1996 (2) SCC 258.

11. The result of the above discussions is that the present OA has no merit and it is accordingly dismissed leaving the parties to bear their own costs.


(**M. K. Misra**)
Member (A)


(**M. A. Khan**)
Vice Chairman (J)

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