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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

C.P. NO.409/2005
M.A. NO.83/2006
M.A. NO.137/2006
in
O.A. NO.2915/2004

This the 8th day of June, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

R. K. Shukla,
Addl. DIT (R) (Retd.),
110/232, Jawahar Nagar,
Kanpur-208012 (UP).

... Applicant

(By Shri M. K. Bhardwaj, Advocate)

versus

1. K. M. Chandershekhar,
Secretary (Revenue),
Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Berjinder Singh,
Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Government of India,
North Block, New Delhi.

... Respondents

(By Shri V. P. Uppal, Advocate)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A)

M.A. No.137/2006

MA No.137/2006 in C.P. No.409/2005 has been made by respondents in the OA seeking modification of the Tribunal's order dated 12.12.2005. The learned counsel of respondents in the OA stated that the counsel of respondents had given assurance about payment of provisional pension and group insurance only, which are admissible in accordance with law. He pointed out that the

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amount of leave encashment can be adjusted against the excess payment already made for which a show cause notice has been issued by respondents. The words "leave encashment" in the subsequent part of the order have been recorded inadvertently and as such these words be deleted from the said order.

2. The learned counsel of applicant in the OA in response to MA No.137/2006 stated that the orders dated 12.12.2005 were made in the presence of the counsel of both parties; provisional pension and group insurance had not been paid as per entitlement, and that there is no error in the order dated 12.12.2005. The words "leave encashment" have been mentioned in the order consciously.

3. We have considered the contention of both sides. On 12.12.2005 the learned counsel of respondents in the OA had stated that applicant was paid the amount of commutation of pension wrongly, therefore, the amount of provisional pension, leave encashment and group insurance would be adjusted against the said recovery. It was pointed out that recoveries cannot be made from pension and insurance. The learned counsel had submitted that he would file an affidavit after paying the amount to applicant in accordance with law. In the latter part of these orders it has been recorded, "He assured us respondents would be paying provisional pension, Dearness Allowance, Leave Encashment as well as group insurance etc." Perusal of these orders indicates that the expression "leave encashment" used in the latter part of the order does not flow from the first part of the order. As such, the use of expression "leave encashment" in the latter part of the orders is nothing more than a clerical error, which is directed to be deleted from the order dated 12.12.2005.

4. MA No.137/2006 is allowed accordingly.

M.A. No.83/2006

5. Through this MA respondents in the OA and the CP have stated that applicant had been paid an excess amount inadvertently than what was due to

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him. As such, show cause notice dated 29.11.2005 (Annexure RC-V) was issued to him. He further pointed out that in compliance of the directions of the Tribunal applicant had been paid an amount of Rs.59,560/- being group insurance amount vide cheque No.596309 dated 29.12.2005, and an amount of Rs.1,05,868/- being provisional pension for the period 1.11.2004 to 31.10.2005, after adjusting the commuted value of pension already paid to the applicant. In regard to the payment of the above amounts, Annexure RC-VI dated 30.12.2005 has been annexed. No submissions have made in this regard on behalf of applicant in the OA. As such, this MA is allowed taking Annexure RC-VI on record.

C.P. No.409/2005

6. OA No.2915/2004 was disposed of vide order dated 4.8.2005 with the following observations/directions:

“The position has become simple. This is for the reason that the applicant had superannuated but he is facing a criminal trial with respect to the offences punishable under Section 7 read with Section 13 of the Prevention of Corruption Act before the Special Judge, Delhi. Keeping in view the above said fact, it is not disputed at either end that respondents would calculate the provisional pension in accordance with law and also calculate the leave encashment due to him besides group insurance. Regarding other claims, decision shall also be taken after the decision of the criminal case.

2. Therefore, we dispose of the present petition directing that the provisional pension of the applicant, leave encashment and group insurance should be calculated and paid to the applicant preferably within two months from today. So far as the other claims of the applicant are concerned, he can only press the same after decision of the criminal trial pending against him.”

7. The learned counsel of applicant contended that respondents have not complied with the aforesaid directions of this Tribunal particularly with reference to payment of leave encashment and as such, they are guilty of having committed contempt of court.

8. On the other had, the learned counsel of respondents contended that while applicant was liable to refund the sum of Rs.5,33,547/- received from

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the Directorate on 2.11.2004 as the commuted value of pension to which he was not legally entitled under the rules, he did not refund the said amount and as such criminal case under the Prevention of Corruption Act, 1988 is pending against applicant. He is also stated to have been liable to refund an amount of Rs.33,144/- in respect of LTC advance vide letter dated 13.10.2005. He is alleged to have failed to refund the aforesaid amount. Applicant is stated to be entitled to a sum of Rs.5,16,607/- in respect of leave encashment, group insurance and provisional pension vide letter dated 11.11.2005. He has been paid an excess amount for which respondents have issued a show cause notice dated 29.11.2005 (Annexure RC-V) to applicant for refund of excess amount. The learned counsel further submitted that while group insurance and provisional pension have been paid to applicant as per Annexure RC-VI, leave encashment amount cannot be paid to him as per rules.

9. The issue involved in the present case is whether in terms of Tribunal's orders dated 4.8.2005 and the related rules, leave encashment amount ought to have been paid to applicant as per Tribunal's orders dated 4.8.2005 read with Tribunal's orders dated 12.12.2005, which has been modified as above.

10. Under rule 68 of the CCS (Pension) Rules, vide Government of India decision OM No.38/64/98-P.&P.W.(F) dated 5.10.1999 it has been clarified that encashment of leave is a benefit granted under the Leave Rules and is not a pensionary benefit. Under rule 69 *ibid*, not even gratuity can be paid to the government servant until conclusion of the departmental or judicial proceedings and issue of final orders thereon. Rule 39(3) of the CCS (Leave) rules provides as follows:

“(3) 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

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becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

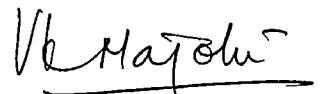
11. The above rule provides that encashment of leave can be withheld while disciplinary or criminal proceedings are pending against a government servant when there is a possibility of some money becoming recoverable from him on conclusion of the proceedings.

12. It is not disputed that criminal trial under the Prevention of Corruption Act is pending against applicant. While leave encashment as per the Pension Rules is not a retirement benefit, government dues can be adjusted against leave encashment amount. Respondents have stated that they do not deny that provisional pension, group insurance etc. are payable to applicant but government dues can be adjusted against amounts like leave encashment. Directions contained in Tribunal's orders dated 4.8.2005 do not imply that first the dues of applicant should be paid to him and then government dues should be recovered from applicant thereafter. Respondents have issued a show cause notice dated 29.11.2005 (Annexure RC-V) to applicant providing an opportunity to applicant to file his objection to recovery of government dues and their adjustment against amounts like leave encashment. No fault can be found with the procedure adopted by respondents in regard to the proposed adjustment of government dues from the amount of leave encashment etc.

13. In the facts and circumstances of the case as also the position under law and related rules, as described above, no contempt is made out. Accordingly, the CP is dropped and notices to respondents discharged.



(Meera Chhibber)
Member (J)
/as/



(V. K. Majotra) 8/6/06
Vice-Chairman (A)