

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRESIDENTIAL BENCH: NEW DELHI

OA No. 1463 of 1993

(5)

New Delhi, this the 13th day of January, 1994.

Hon'ble Mr. J.P. Sharma, Member(J).

(Dr.) G.S. Gill  
s/o: Sr. Natha Singh,

residing at 4-A/33, Tilak Nagar,  
New Delhi-18,  
retired as Chief Medical Officer,  
C.G.H.S., New Delhi. ....Applicant  
(B)

(By advocate: Shri Gurmeet Singh &  
Shri G.B. Singh)

VERSUS

1. Union of India through Secretary,  
Department of Health, Nirman Bhawan,  
New Delhi-110011.
2. The Director General of Health Services,  
Nirman Bhawan, New Delhi-110011.
3. The Addl. Director (CGHS),  
Central Govt. Health Scheme,  
Nirman Bhawan, New Delhi-110011. ....Respondents

ORDER (ORAL.)

The applicant retired as Chief Medical Officer on 28.2.89. His grievance is that amount equivalent to earned leave encashment was delayed. 240 days earned leave was due and that has been encashed on 9.3.92. This was sanctioned in November, 91. The applicant, therefore, claims interest on delayed payment of leave encashment from the date of retirement till the date of actual payment.

2. A notice was issued to the respondents who contested the application and stated that there is no provision of payment of interest on the leave encashment and further under rule 39(3) of the CCS(Pension) Rules, 1972, the authority was competent to withhold the payment as the disciplinary proceedings were pending against the applicant.

Rule 39(3) is quoted below :

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" 39(3). The authority competent to grant leave may withhold whole or part of cash equivalent of learned leave in the case of a Govt. 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 against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Govt. dues, if any. "

3. I have heard the learned counsel for the parties. The applicant has also been heard for the second time as after concluding his arguments he said that he is not satisfied by his arguments, so another opportunity was given to him.

4. Basically, the payment of interest is in such cases where there is possibility of unnecessary enrichment to the other party. This is not the case here. The authorities under rule 39(3), referred to above, were under an apprehension that pending of disciplinary proceedings, the amount equivalent to leave due to the applicant could not be paid. However, they have subsequently released and sanctioned the amount in Nov., 91. When they have themselves sanctioned this amount, then the further delay in the payment actually been paid in March, 92, there is no justification for the future delay on this administrative lapse the applicant can only be compensated.

5. When the administrative lapse has occurred due to certain not properly understanding the provisions of rule, then it cannot be said that there was a deliberate fault in payment of the aforesaid amount. The applicant was facing

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departmental disciplinary proceedings and was served with a major penalty chargesheet. He has assailed the same in OA 59/90 before the Lucknow Bench of the CAT and ultimately, the application was allowed and the aforesaid disciplinary proceedings were ordered to be quashed. Any person taking a decision on behalf of the administration did not think proper to incur the risk of passing the sanction during the pendency of the aforesaid OA. However, when the matter was taken up at the higher levels, the sanction was made.

6. In view of the above facts and circumstances, the O.A. is disposed ~~of~~ ~~of~~ ~~of~~ of with the direction to the respondents to pay the interest <sup>at 10% p.a.</sup> ~~on~~ on the amount of the leave encashment of Rs.57,584 paid to the applicant wef 1.12.91 till the date of payment in March, 1992 92, within a period 3 months from the date of receipt of a copy of this Order. After this order has been dictated, the learned counsel further argued that he does not understand the logic that the interest on gratuity has been paid. But the order has been passed on the basis of law and reasons advanced in the body of the judgment. Arguments of the learned counsel are totally uncalled for. No costs.

*J.P. Sharma*

(J.P. Sharma)

Member(J)

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