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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

**Original Application No. 47/2004**

**Date of Decision: 25.02.2005**

**HON'BLE MR. KULDIP SINGH, Vice Chairman.**

Suresh chandra Ajmera S/o Shri Kaser Ial Ji, aged about 60 years, R/o 13-A, Umaid Bhawan Road, Near Circuit House, Official Post Rtd. Inspector, Income Tax Department, Jodhpur.

...Applicant

(Mr. Kamal Dave, Counsel for applicant.)

**V E R S U S**

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. Commissioner of Income Tax (1), Aya Kar Bhawan, paota-C-Road, Jodhpur.
3. Principal Chief Controller of Accounts, Central Board of Direct Taxes, Through its Chairman, North Block, Central Secretariat New Delhi.

...Respondents.

(Mr. Vinit Mathur, Counsel for respondents.)

**: O R D E R :**  
**Per: Mr. Kuldip Singh, Vice Chairman**



The applicant has filed this O.A. whereby he assailed the order dated 12.6.2003 (Annexure A/1) and has asked for quashing and setting aside the same, particularly in respect of the objection requiring approval of Secretary, Deptt. of Revenue for reconstruction of service book of the applicant. It is further stated that respondents may be directed to release the leave encashment for 278 days.

The facts in brief, as alleged by the applicant are that he had joined the respondent department on 05.04.1965 as U.D.C. He was further promoted to the post of Inspector, Income Tax in July *[Signature]*

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1981. Thereafter, he was served with a charge sheet in the year 1986 whereby he was dismissed from the service. He assailed the order of dismissal by approaching this Bench of the Tribunal vide O.A. No. 26/1995. This Bench of the tribunal vide judgement dated 31.8.2000 quashed and set aside the order of disciplinary authority as well as the order of the Appellate Authority without back wages with a further direction of treating the period of dismissal from 8.12.1993 till the date of reinstatement to be counted only for the purpose of pensionary benefits. The applicant thereafter joined the service on 26.09.2001 and on completion of 60 years of age, he was superannuated on 31.8.2002. The learned counsel for the applicant further submitted that the applicant had completed all the required formalities in respect of pension papers for disbursement of pension but the respondent department withholds his rightful monetary benefit arising out of the superanuation by raising objections in piece meal. In the present O.A, the applicant has prayed for leave encashment of earned leave, which was earlier calculated as 300 days vide order dated 27.7.2002, which is now re-calculated the earned leave as 278 days vide corrigendum dated 04.12.2002 as per Annexure A/2 and A/3.

It is further submitted by the learned counsel for the applicant that the amount of leave encashment was required to be paid to the applicant on the date of superannuation as Income Tax Inspector on 31.02.2002 but the respondent department had started raising objections with regard to release of all the monetary benefits; with the result the payment of leave encashment have not yet been made. Thus, the matter with regard to the release of payment of leave encashment is going from desk to desk; but the

applicant has not been paid his retiral benefits. The learned counsel for the applicant has also submitted that applicant is entitled to the release of the payment of leave encashment due alongwith interest at the rate of 12%.

The respondents are contesting the O.A. It is stated that the formalities which are required, particulary with regard to the approval for the reconstruction service book had been completed and sanctioned has also been obtained from the competent authority and as per competent authority's direction, a Bill of Rs. 126768 for leave encashment has been prepared for the payment of the leave encashment to the applicant. The learned counsel for respondents submitted that balance payment after deduction of dues from the applicant are being paid very shortly. The dues from the applicant, which have to be deducted from this amount are House Building Advance and interest thereon upto date of retirement i.e. 31.08.2002 including penal interest. He further submitted that the claim of leave encashment are not withheld by the department arbitrarily. Since the service book of the applicant was lost, the entire record was to be reconstructed and for that the procedure provided is that it requires the approval of the competent authority and hence, in the process it took some time which was unintentional and without any bias or malafide against the applicant and it is necessary that for making any payment, the Department is required to follow the prescribed procedure.

I have heard the learned counsel for the parties and gone through the records. The learned counsel for the applicant submitted that as regards the question of reconstruction of service book of the applicant is concerned, no fault lies on the part of the applicant. It is the Department which had lost the service book of

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the applicant and by virtue of the prescribed procedure, it had taken so much time for reconstruction of the same. Normally one year before the date of superannuation, the department is supposed to prepare all the retiral documents of an employee and to release the payment of the grautuity and leave encashement etc. on the date of retirement possibly. The leave encashment is normally paid on the date of retirement itself. And in this case, since delay has been taken place the applicant is entitled to release of payment alongwith interest.

The learned counsel for the applicant further submitted that the department has no right to withhold the payment of leave encashment on account of recovery of Government dues. In support of his contention, the learned counsel for the applicant submits that under the Central Civil Service (Pension) Rule 1972 recovery and adjustment of government dues can only be made against the amount of retirement gratuity and the Rule 71 and Rule 73 of the CCS (Pension) Rules 1972 are clear in this respect. The rule 71 (3) defines the expression "Governement dues" which includes-

"(a) Dues pertaining to Government accommodation including arrears of licence fee, if any:

(b) dues other than those pertaining to Government accommodation, namely, balance of house bbuilding or conveyance or any other advace, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)."

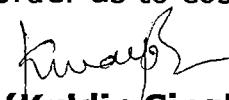
The same can be adjusted from the gratutiy amount payable to the government employee on his retirement. Relying upon these provisions, the learned counsel for the applicant submitted that since dues are pertaining to the House Building Advance, it can only be recovered out of gratuity and the dues

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towards house building advance cannot be recovered from leave encashment amount. In reply to this, the learned counsel for the respondents has submitted that applicant has already filed another O.A before this Tribunal wherein the dispute is with regard to the House Building Advance and so the Government should be allowed to withhold the payment till the decision of that O.A. In my view, since another O.A pertaining to the withholding of amount on account of House Building Advance is already pending, I need not make any observation about the right of the Department for withholding the part of the leave encashment amount against the dues pertaining to the House Building Advance. Since the service book has been reconstructed and according to Annexure A/1, the leave encashment was being withholding on account of reconstruction of the service book which has now been completed, I feel that the respondents are now liable to pay the leave encashment amount to the applicant forthwith.

In view of the above discussion, I allow the instant O.A and direct the respondents to make payment of leave encashment amount with 9% interest from the date it became due till the date of actual payment.

However, in the interest of justice, the respondents are at liberty to withhold the amount pertaining to the House Building Advance which is the subject matter of another O.A. Release of the withheld amount will be only after the decision of the said O.A. O.A. stands Disposed of with no order as to costs.

  
(Kuldip Singh)  
Vice Chairman

Part II and III destroyed  
in my presence on 8-1-14  
under the supervision of  
section officer (1) as per  
order dated 18/12/13

~~Section officer (Record)~~

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