

1/12

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 22/2011

Date of decision: 01.10.2012.

CORAM:

HON'BLE DR. K.B.S.RAJAN, MEMBER (JUDICIAL)

D.N. Gupta S/o Shri Radhey Shyam Gupta aged about 62 years resident of D-29, Sector 'D' Saraswati Nagar, Basni, Jodhpur, last employed on the post of Chief Pharmacist, Health Unit, North Western Railway, Phalodi.

..... Applicant

By Mr. J.K.Mishra, Advocate, for the applicant.

Versus

1. Union of India through the General Manager, North Western Railway, Headquarters Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan.
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.

..... Respondents

By Mr. Salil Trivedi, Advocate, for the respondents.

O R D E R (Oral)

Heard the learned counsel for the parties.

2. The brief facts of the case are that certain criminal proceedings are still pending against the applicant and the charges are stated to be grave. When the applicant approached this Tribunal for stay of departmental proceedings, by an order dated 26th September, 2008 passed in OA No. 159/2007 and a batch,

proceedings were pended for two years which has ~~been~~ expired in 2010. However, the proceedings have not commenced thereafter. The applicant has now come up with this OA, inter alia, seeking the following reliefs :

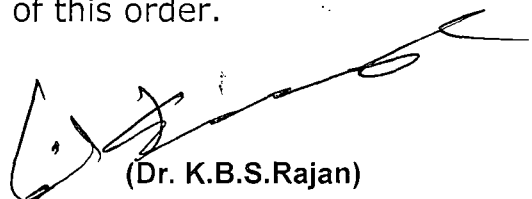
"(i) That impugned order dt. 21.7.2010 (Annexure A-1) may be declared illegal to the extent of refusal to grant DCRG and Leave Encashment amounts and the same may be quashed. That the respondents may be directed to forthwith release the due amounts towards the leave encashment along with interest at market rate from the due date to the date of actual payment of the same.

(ii) The respondents may also be directed to release the due amount of DCRG or at least half of the due amount DCRG, to the applicant as per the verdict Bombay Bench of this Tribunal in case of P.R. Das vs. Union of India and Ors., (1994) 28 ATC 799."

3. The respondents have contested the OA. According to them, retiral benefits like commutation of pension, DCRG and Leave Encashment cannot be released as claimed by the applicant as a major penalty charesheet is pending. The applicant has filed his rejoinder reiterating his contentions as contained in the O.A. The counsel for the applicant submits that after retirement, no order can be passed by the disciplinary authority and all the powers are vested with the President of India. As no decision has been taken in the disciplinary proceedings, it is beyond the powers of the disciplinary authority to pass any order now. He has submitted that since there is no question of any loss to the Government, the authorities are bound to release the Death-cum-Retirement-Gratuity as well as the Leave Encashment. He relies upon a decision delivered by this Tribunal in **P.R. Das Vs. Union of India and Ors.** reported in (1994) 28 ATC 799.

4. The counsel for the respondents relies upon the judgment of High Court of Delhi in Writ Petition No. 13191/2009 **Lakhminder Singh Brar Vs. Union of India and Ors.**, which states that of the terminal benefits, except provisional pension, no other retiral benefits, can be released.

5. Arguments being heard and the documents produced, have been produced. In so far as the encashment of leave is concerned, provision (3) under rule 39 of the Leave Rules provides for withholding of full or part of the leave salary, if any criminal or departmental proceedings are pending, which on finalization may result in recovery of any loss to the Government on account of the misconduct of the individual. But, this is not the position in this case. As a matter of fact leave encashment is not a part of the terminal benefits. It is the earned leave salary accumulated which is only released at the time of retirement. As such, there should be no bar for releasing leave encashment to the applicant notwithstanding the fact that some cases are pending against him. The Original Application is thus partly allowed and the respondents are directed to release the leave encashment to the applicant while they are at liberty to with-hold the DCRG and other terminal benefits. No costs. This order may be complied with within a period of three months from the date of communication of this order.



(Dr. K.B.S. Rajan)

MEMBER (J)