

10

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 475/2011

Date of decision: 26.09.2012.

CORAM:

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

Braham Puri Goswami S/o Shri Kewal Puri Goswami aged about 60 years, resident of 95, Vivekanand Nagar, Pal Basni Link Road, Jodhpur, last employed on the post of Dy. General Manager (Finance) in the Office of Sr. GMTD, BSNL, Subhash Nagar, Pal Road, Jodhpur – 342008.

..... Applicant

By Mr. J.K. Mishra, Advocate.

Versus

1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi. – 110 001.
2. The Chief General Manager Telecommunications, BSNL, Rajastahn Circle, Sardar Patel Marg, Jaipur – 08.
3. Accounts Officer (Cash), BSNL, Office of General Manager, Telecom District, Jodhpur.

..... Respondents

By Mr. S.K.Mathur, Advocate.

**ORDER
Dr. K.B. S. RAJAN JUDICIAL MEMBER**

The applicants is aggrieved by order dated 8th September 2007, whereby he has been informed that the leave encashment of the applicant due to him has been withheld by the competent authority till finalization of disciplinary proceedings against him. The applicant is also aggrieved by Annexure A-2 dated 12 September 2011 (last pay certificate) which reflects as amount of recovery, the medical advance of his 2,92,217/- paid on 28th of July 2010 by the respondents directly to the Apollo Hospital, paid towards the medical treatment of the

applicant in connection with heart surgery.

2. Briefly stated, the applicant was issued with a charge memorandum dated 18th of August 2010 in connection with certain alleged misconduct pertaining to the period of 2003 when the applicant was serving as Chief Accounts Officer and Internal Financial Adviser, in the office of Barmer. In fact, this was preceded by a questionnaire in 2008 issued by AGM (Vig), BSNL, Jaipur, regarding procurement of stores during 2003. In between, the applicant had been promoted to the grade of Deputy General Manager, equivalent to Junior Administrative Grade. He was however, reverted to the post of Chief Accounts Officer on 24-08-2010, against which OA No. 251 of 2010 has been filed and the said reversion was stayed. The applicant superannuated on 31-07-2011.

3. On retirement, the applicant was not paid the DCR gratuity and leave encashment. In addition, an amount of Rs.2,92,217/- has been reflected in the recovery column of the last pay certificate, indicating that the amount pertains to medical advances paid to the Apollo Hospital in connection with the applicant's medical treatment of heart surgery. According to the applicant, the amount by way of the aforesaid terminal benefits as well as leave encashment works out to Rs. 27 lakhs. It is the case of the applicant that as per the chargesheet issued to the applicant, the amount of probable loss to the government on account of the alleged misconduct of the applicant works out to a sum of Rs. 3,42,000/-. If this amount has to be recovered from the applicant, it is only to this extent that the amount of gratuity or leave encashment could be withheld and the respondents

ought to have paid the applicant the balance amount. In addition, it is the case of the applicant that in so far as medical advances concerned, the amount having been directly paid to the Apollo Hospital, if any amount is to be recovered, it shall be only from the hospital and not showing the same as amount recoverable from the applicants. Hence this OA seeking the following relief:-

"(i) That impugned dated 8.9.2011 (Annexure-1) passed by 2nd respondent and LPC dated 12.9.2011 (Annexure A-2) to the extent of mentioning recovery towards Medical Advance, passed by 3rd respondent, may be declared illegal, tainted with official bias and the same may be quashed. The respondents may be directed to allow all consequential benefits including to release the due amount of leave encashment to the applicant forthwith along with interest at market rate for the intervening period.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

4. Respondents have contested the OA. For withholding of the leave encashment, they have relied upon the relevant rule 39(3) of the Leave Rules. It has been decided by them that the case of payment of encashment of leave may be considered have the decision of the case pending against him. As regards reflecting the medical advance paid to Apollo Hospital in connection with the applicant's medical treatment, the explanation is that the applicant is expected to submit proper medical bill within one month and the applicant did not prefer the same.

5. In his rejoinder the applicant reiterated that in identical matters, respondents have already released leave encashment and the applicant alone has been singled out. According to him, a maximum of

19

Rs.10 lakhs would be sufficient to meet any liability, and thus the respondents have withheld the entire DC RG amounting to Rs.27,28,000 and in addition, leave encashment has also been withheld which runs to the extent of more than seven lakhs, which is illegal. As regards recovery of excess medical bill, the applicant has invited the attention of the tribunal to paragraph (iv) of Annexure R/6. In addition, the applicant stated that he had submitted the bill for his medical treatment as early as 01-09-2010 but no action as prescribed under the Rules had been taken by the respondents as per Annexure R-6 to either settle or recover the excess charged payment from Hospital concerned. After a lapse of one year and 3 months, the respondent No. 3 issues one letter to the applicant for the first time, vide letter dated 23-12-2011 for some clarification, to which the applicant has filed his reply on 09-01-2012.

6. Counsel for the applicant argued that there is no justification in singling out the officer from the rest of others in whose cases also charge-sheets have been issued against certain misconducts resulting in pecuniary loss to the government as in the case of the applicant, but all have been released the leave encashment due to them. Further, the counsel argued that even if it is assumed that the applicant is found guilty of misconduct and the amount of Rs.3,42,000/- being the alleged loss to the government arisen on account of such misconduct has to be recovered, then again, to that extent, either from the DCR Gratuity or Leave Encashment the amount could be withheld and the balance should have been released.

And, there is no justification at all in respect of reflecting as 'Recovery' of Medical Advance paid to the Apollo Hospital.

19

7. Counsel for the respondents submitted that the amount withheld by the respondents could be released only after the pending disciplinary proceedings are concluded, for the said proceedings clearly indicate that there are certain loss that have been caused due to the alleged misconduct of the applicant. As regards the so called discrimination, counsel for the respondent submitted that each case has to be dealt with on the facts of circumstances of the relevant case.

8. Arguments were heard and documents perused. First as to rule position and then, telescoping the same upon the facts of the case to ascertain whether the respondents are wrong in withholding the Leave Encashment and in reflecting the medical advance paid to the Apollo Hospital towards the medical treatment of the applicant as recovery in the Last Pay Certificate of the Applicant.

9. The following are the rules directly concerned with the facts of the case:-

- (a) Rule 39(3) of the CCS (Leave Rules)
- (b) Rule 9 of the CCS (Pension) Rules.
- (c) Relevant part of the Medical Attendance Rules.

Rule 39(3) of the CCS(Leave) Rules reads as under:-

"39(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

75

such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings he will become eligible to the amount so withheld after adjustment of Government dues, if any."

Rule 9 of the CCS (Pension) Rules, reads as under:-

"9. Right of President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave mis-conduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five.

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted.

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

10. The relevant rule relating to the Medical Attendance rules is extracted by the applicant in his rejoinder and the same is as under:-

"For settlement of advance, the employee may be required to submit the adjustment bills within a period of one month from the date of his discharge from the Hospital. (This condition was strictly adhered to by applicant. Date of discharge on 04.08.2010 & submission of adjustment bill as issued by Apollo Hospital on 01.09.2010) . In case the entire advance has not been utilized for the treatment of the patient, the Head of Office concerned (in this case the 3rd respondent) will correspondence with the hospital for refund of the unutilized balnce of medical advance".

Rule 39(3) of the Leave Rules, provides for withholding of '**whole or part of cash equivalent of earned leave**' if...**there is a possibility of some money becoming recoverable**' from the individual concerned on the 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 purpose of withholding of pension or gratuity or both, either in full or in part, is provided for under Rule 9 of the CCS (Pension) Rules, is only to to enable the respondents to impose penalty

of withholding partly or wholly, either permanently or for a specified period in the event of the government servant against whom proceedings were commenced during his service, having been found guilty of any grave misconduct.

12. It is pertinent to refer to an order of the Full Bench of the Tribunal in the case of **Amarjit Singh vs Union of India & Ors ATR 1988 (2) 637** which considered certain questions relating to continuance of proceedings even after retirement, if the individual had not been suspended but allowed to retire during the pendency of the proceedings and whether the Proceedings could be continued or initiated after retirement even where there has been no pecuniary loss for the Government by the alleged misconduct of the Government servant on which the proceedings are based. As a passing reference, the Full Bench has observed therein -

"If a public servant is placed under suspension and is not allowed to retire, he continues in service. In such an event, the disciplinary proceedings already initiated may not only continue but any of the penalties specified in the Rules may be imposed. If a public servant against whom disciplinary proceedings are initiated was not placed under suspension such public servant, on attaining the age of superannuation, automatically ceases to be in service and therefore, by continuing the proceedings no penalty can be imposed.... The provisions of rules empower the competent authorities to continue these departmental proceedings for the purpose of ordering withholding or withdrawin whole or part of pension and for recovering pecuniary loss."

(The term pension, of course, includes gratuity when the term pension is used in contradistinction to gratuity, vide rule 3(o) of the CCS (Pension) Rules.) Rules further contemplate that if a government servant under suspension attains the age of superannuation before the termination of departmental or court proceedings, he should be

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provisionally pensioned off. He will cease to draw subsistence allowance, but will be paid only provisional pension under Rule 69 of the CCS (Pension) Rules. No gratuity will, however, be paid to him until the conclusions of the proceedings and the issue of final orders.

13. A combined reading of the above provisions would lead to the rule position as under:-

(a) Withholding of Gratuity in case of an individual who was kept under suspension immediately before the date he attains the age of superannuation is with a view to enabling the authorities to impose any major penalty resulting in forfeiture of past services such as removal or dismissal in which event, the individual would not be entitled to such gratuity.

(b) Withholding of gratuity in case of an individual against whom a disciplinary proceeding was initiated for alleged '*grave misconduct or negligence*' during his service and the proceedings continue under the provisions of Rule 9 of the CCS (Pension) Rules after retirement, is with a view to enabling the respondents to impose penalty of cut in pension and or gratuity.

(c) If as a result of conclusion of the proceedings, it is found that any amount of loss to the Government is to be recovered, then, in the event of non imposition of penalty of withholding the Gratuity on a permanent measure, the amount of loss could be adjusted from the Gratuity payable and the balance

paid. Thus, withholding of gratuity is not merely for adjustment of any loss to the government.

(d) Withholding of leave encashment in full or in part is essentially with a view to adjusting from it any loss incurred by the Government if a government servant is found guilty of any grave misconduct and the same resulted in loss to the exchequer.

14. In the instant case, the applicant has not been kept under suspension. He has been paid provisional pension due to continuance of the proceedings. His Gratuity and leave encashment have been withheld. The claim of the applicant is that his leave encashment cannot be withheld as gratuity has been withheld, which is much more than the alleged loss that has been suffered by the Government on account of his alleged misconduct. As such, the respondents should be directed to release the withheld amount of leave encashment. The claim of the applicant in regard to release of the withheld leave salary is partly justified in that when provision exists for withholding of encashment in full **or in part**, the amount of probable loss having been spelt out as Rs 3.42 lakhs, the respondents could have withheld only to that extent and release the balance. According to the applicant the amount of leave salary works out to more than Rs 7 lakhs. The claim for release of full amount of leave encashment on the ground that gratuity has also been withheld is not justified as the withholding of gratuity is not merely for adjustment of the amount due to the Government, as explained above.

20

15. As far as the reflection of medical advance paid to the Apollo Hospital in respect of the medical treatment of the applicant as recovery in the Last Pay Certificate of the applicant is concerned, if the same be allowed, then it makes the provisions of para (iv) of Annexure R/6 totally redundant. Again, the applicant has already preferred his bill and it is for the respondents to realize the amount excess paid to the Apollo Hospital by themselves.

16. In view of the above, **the OA is partly allowed.** Respondents are directed to release cash equivalent to earned leave payable to the applicant to the extent the same is over and above Rs. 3.42 lakhs (the amount reflected as alleged loss suffered by the government on account of alleged misconduct of the applicant for which proceedings are pending). Further, they are directed to issue a revised LPC without reference to the recovery of the Medical Advance.

This order shall be complied with, within a period of two months from the date of communication of this order.

17. No cost.



(Dr. K.B.S. Rajan)
MEMBER (J)

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