

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00118/2015

Jodhpur, this the 25 day of August, 2016

• Reserved on 23.08.2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

V P Meena S/o Shri Deoji Meena, aged about 63 years, R/o 1-J-10, Hiranmagri, Sector-5, Udaipur-313 002, last employed on the post of Postmaster, Chittoregarh HO.

.....Applicant
Mr. J.K. Mishra, counsel for applicant.

Versus

1. The Union of India through the Secretary to the Govt. of India, Ministry of Communication and Info Technology, Department of Posts, Sanchar Bhawan, New Delhi.
2. The Director of Postal Services, O/o the Post Master General, Rajasthan Southern Region, Ajmer.
3. Superintendent of Post Offices, Chittoregarh Division, Chhitoregarh.

.....respondents

Mr. K.S. Yadav, counsel for respondents.

ORDER

The current OA has been filed by the applicant on the limited point of non-payment of interest on delayed payment of his leave encashment.

2. The brief facts of the case as stated in the OA are that the applicant was initially appointed as Postal Assistant in Udaipur on 19.09.1972 and after



getting various promotions became HSG -II on 11.02.2008. He superannuated as Post Master Chittorgarh on 30.04.2012. While working as Post Master, he remained under suspension from 10.09.2010 to 08.06.2011. He was issued a charge sheet vide memo dated 30.05.2011 under Rule 14 of CCS (CCA) Rules, 1965 alleging five articles of charges. It was alleged that he facilitated the misappropriation of government money by Shri Pankaj Kumar Nigam as mentioned therein. After completion of the enquiry proceedings, the applicant was furnished a copy of the enquiry report dated 31.03.2012 vide communication dated 11.04.2012. All the charges except charge No.5 have been held as proved by the inquiry officer. To this, he responded by way of an exhaustive representation dated 30.04.2012. The disciplinary authority did not pass any final order on his representation and the applicant retired on 30.04.2012. At that point of time the disciplinary proceeding was taken as deemed to be pending under Rule 9 of the CCS (Pension) Rules, 1972.

3. The applicant was allowed provisional family petition. He was, however not paid the due amount of leave encashment. He submitted a representation on 09.03.2013 in respect of grant and release of due amount towards leave encashment. The same was rejected on 20.03.2013. Subsequently the same was released vide letter dated 09.05.2013 (Annexure-A/3). The applicant, now submits, that this delay of one year is totally unjust and seeks interest on the leave encashment of Rs.3,08,790/- released to him after a delay of about one year. Subsequent to non-payment of interest on

leave encashment, the applicant filed an OA No.213/2013 before this Tribunal claiming interest of delayed payment on leave encashment, amongst other reliefs. The OA was partly allowed and disposed of vide order dated 22.01.2014 with the following directions:-

- "(a) The respondents are directed to finalize the inquiry by passing an appropriate order within 3 months from the date of receipt of this order.
- (b) The applicant is directed to file his representation for claim of interest on leave encashment amount without 1 month. Thereafter, the respondents shall decide the claim of the applicant within 3 months from the date of receipt of such representation, in the light of judgment passed in the case of S.K. Dua v. State of Haryana and Another passed by the Hon'ble Supreme Court and reported at (2008) 1 Supreme Court Cases (L&S) 563."

4. The applicant avers that the amount of leave encashment was due to him on the date of retirement of his superannuation i.e. on 13.04.2012 but it was paid to him on 09.05.2013 i.e. after a delay of over one year. He submits that the delay was attributable to the administration and that pendency of the criminal case, was not an impediment for release of the same. Hence the applicant is entitled to grant of interest, on the due amount, for the delayed period, since it is violative of the Articles 14, 21 and 300 A of the Constitution of India. He further goes on to submit that had the same been paid to him on time, he would have earned interest on the same, which is now his loss-on account of arbitrariness of respondents. In support of his contention, the applicant has relied on para 14 of the judgment of Hon'ble Apex Court in the case of S.K. Dua v. State of Haryana & Anr (2008) 1 SCC (L&S) 563, which reads as under:

"If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions,

Guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of 'bounty' is, in our opinion, well-founded and needs no authority in support thereof."

5. The ratio of the same fully applies to the facts of this case and therefore the impugned order is *ex-facie* illegal. It is submitted that the basic issue is entitlement, and, exoneration or otherwise, in departmental proceedings is of no consequence since the delay in payment of leave encashment was not due to pendency of such case. In this background the applicant has sought the following reliefs:-

"(i) That impugned charge sheet dated 25.11.2014 (Annexure-A/1), may be declared illegal and the same may be quashed. The applicant may be allowed the interest @ of 9% p.a. on the amount of Rs.3,08,790/- for the delayed period of one year.

(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 interest of justice.

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

6. Per contra, the respondents have submitted that due to pendency of disciplinary proceedings against the applicant his retiral benefits were withheld. They further add, that there is no provision under the Central Civil Services (Leave) Rules, 1972 for making payment of interest in the matter of delayed payment of leave encashment. The provisional pension, in any case was allowed to the applicant. The respondents have cited instructions from Ministry of Personnel PG and Pension, Department of Pension & Pensioner's Welfare, New Delhi vide letter dated 01.05.2012 on the subject.

7. The respondents have sought to differentiate the decision rendered by the Hon'ble Supreme Court in the case of *S.K. Dua v. State of Haryana and another* 2008 (A) SCC (L&S) 563 stating that in the above cited case Shri S.K. Dua was completely exonerated in the disciplinary proceedings whereas in the instant case, four charges out of five have been proved against the applicant. Hence, these two cases cannot be said to be par at each other.

8. Heard the rival contentions of both the parties and perused the record.

9. Learned counsel for the applicant, Shri J.K. Mishra, while reiterating the contentions already raised in the OA stated that the leave encashment was released by the respondents suo moto on 09.05.2013 (Annexure-A/3). In other words, the respondent department, realised its mistake that leave encashment does not come within the purview of pensionary benefits and hence could not have been withheld. The fact, however, remains that the delay has taken place on account of negligence/carelessness of the respondents for which the applicant should not be punished. To strengthen the argument, he submitted that once the amount of leave encashment, without any change of circumstances was suo moto released by the competent authority, which they had wrongly withheld, the applicant's claim for interest is further fortified and needs to be redressed being a just claim.

10. The learned counsel for the respondents, Shri K.S. Yadav, reiterated that there is no provision of payment of interest on delayed payment of leave encasement. He emphasized that para 2 (vi) of the Circular dated 01.05.2012 of Ministry of Personnel PG and Pension, Department of Pension & Pensioner's Welfare, New Delhi clearly stipulates that:-

"2 (vi) In the matter of delayed payment of leave encashment, the Department of Personnel & Training in their note dated 02.08.1999 had clarified that there was no provision under CCS (Leave) Rules for payment of interest for fixing responsibility. Moreover, encashment of leave is a benefit granted under Leave Rules and not a pensionary benefit."

In view of the same, the interest on leave encashment is not admissible.

11. It is a fact that the amount of leave encashment in respect of leave remaining to the credit of the applicant was due to him on the date of retirement i.e. on 30.04.2012. The said amount was withheld and later released by the respondents after a delay of almost 13 months. However, the fact remains that the Department of Pension & Pensioner's Welfare has given categorical clarification on the subject that there is no provision under CCS (Leave) Rules for payment of interest or for fixing responsibility for delayed payment for leave encashment. In view of the clear cut directions to this effect, I feel that the claim of the applicant for grant of interest on leave encasement cannot be entertained. The ratio of case of S.K. Dua (supra) cited by the learned counsel for the applicant is not applicable in this case because in the above cited case Shri S.K. Dua was completely exonerated in the

disciplinary proceedings whereas in the instant case, four charges out of five have been held as proved against the applicant.

12. Accordingly, the OA is rejected. No order as to costs.


[Praveen Mahajan]
Administrative Member

Rss

DK RC
2/9/16 14/9/16