

Central Administrative Tribunal Lucknow Bench Lucknow

**Civil Contempt Petition No. 99/2009
IN**

**Original Application No. 9/2009
This, the 6th day of May, 2010**

**Hon'ble Shri Justice Shiv Charan Sharma, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Mohd Farooq Khan aged about 61 years S/o Mohd Habeeb Khan R/o House No. 625, Hayat Manzil, Ist Lane, Nishatganj Lucknow.

Applicant

By Advocate :Sri A. Moin.

Versus

1. Ms Shefali Swaroop, Joint Commissioner of Income Tax, Range VI , P.,K. Complex, Madan Mohan Malviya Marg Lucknow.
2. T.K. Bose , Zonal Accounts Officer, CBDT, 18 Radha Kunti Bhawan Madan Mohan Malviya Marg Lucknow.
3. Maqbool Ahmed, Commissioner of Income Tax II, Ayakar Bhawan, Ashok Marg Lucknow.

Respondents

By Advocate Sri Deepak Shukla.

Order (Oral)

By Hon'ble Shri Justice Shiv Charan Sharma, Member (J)

We have heard sri A. Moin advocate for the applicant and Sri Deepak Shukla advocate for the respondents. We have also perused the order of this Tribunal dated 5th January, 2009 passed in O.A. No. 9/2009. Learned counsel for the applicant argued and also it is evident from the perusal of the record that there was a direction of the Tribunal that the respondents to make actual payment of the leave encashment. Learned counsel for the applicant stated that the amount of leave encashment has not been paid to the applicant. Compliance report has been submitted by the respondents and learned counsel for the respondents emphasized that there was outstanding House Building Advance towards the applicant and a sum of Rs. 91341/- was due to the applicant towards leave encashment and this amount of leave encashment was adjusted towards the outstanding amount of HBA and even after adjustment of the amount of leave encashment, there is some more amount which remain unpaid of the HBA and that compliance had already been made.

2. Learned counsel for the respondents argued in view of Rule 71(2) of CCS (Pension) Rules, if there is any outstanding amount towards retiring government employee then the amount which is payable in the head of gratuity that amount shall be adjusted towards payment of outstanding amount and amount of payable towards leave encashment cannot be adjusted for the outstanding amount and as the amount of leave encashment has not been paid hence the respondents are guilty for contempt of court's order.

3. We have considered all the facts and circumstances of the case. Although it has not been provided in the above rule that the amount of outstanding dues may be adjusted from the leave encashment but there is also no bar in adjusting out-standing of House Building Advance from the amount of leave encashment. The main emphasis of the learned counsel for the applicant is that when there is a specific provision ^{after} _{by} that how the amount of outstanding



dues shall be adjusted then it may be done in that manner as provided in the rules not otherwise. The respondents are not within their right to adjust the amount payable towards the head of the leave encashment towards outstanding dues and then ~~only~~ the amount which was payable in the head of gratuity can only be adjusted. In this context, respondents counsel argued that criminal case is pending against the applicant and hence the amount of gratuity is not payable due to that reason and they have rightly adjusted the outstanding amount from the leave encashment.

4. As there is no bar of not adjusting the outstanding amount from the leave encashment amount hence we are of the opinion that the respondents ~~have~~ rightly adjusted the outstanding dues from the leave encashment amount and thus the OPs complied with the orders of this Tribunal. In view of the compliance report, this contempt petition does not survive and the same is dismissed. Notices issued are discharged.

5. At this stage, learned counsel for the applicant drew our attention towards the judgment of Tribunal and he argued that there was a direction of the Tribunal to consider the claim for commutation of pension as per rules and pass reasoned order and there is no compliance of this part of the direction. In this context, learned counsel for the respondents argued that as a criminal case is pending against him, hence only the provisional pension is to be paid and regular pension ~~has not~~ been granted to the applicant due to that reason and hence pension ~~can be~~ commuted. Whenever, there will be an order in that case, the same shall be complied so far commutation of pension is concerned.

6. For the reasons mentioned above, we are of the opinion that this part of judgment also cannot be complied with till the regular pension is sanctioned. The applicant is at liberty to file a separate fresh O.A. for challenging the order passed by the respondents regarding commutation of pension and leave encashment.

Shiv Charan
(Dr. A. K. Mishra)
Member (A)

Shiv Charan 6.5.2010.
(Justice Shiv Charan Sharma)
Member (J)