

**Central Administrative Tribunal
Lucknow Bench Lucknow**

C.C.P. 12/2011

In

O.A. 127/2009(D)

This is 26th day of July, 2012

Hon'ble Dr. K.B. S. Rajan, Member (J)

Hon'ble Shri S. P. Singh, Member (A)

Jhabbar Yadav, aged about 62 years, son of Late Sri Ram Roop Yadav, permanent resident of Mohalla Bishunpurwa, Gandhi Nagar, Basti (Presently residing at Kalyanpur West, Lucknow) (Lastly working as Senior Tax Assistant in the Income Tax Office, Basti).

Applicant

By Advocate: By Advocate Sri Prashant Singh for Sri R. C. Singh.

Versus

1. Sri Sunil Mitra, IAS, Secretary, Ministry of Finance, New Delhi-110001.
2. Sri Pankaj Kumar Gupta, Chief Commissioner of Income Tax, Lucknow.
3. Sri K. M. Bali, Commissioner of IncomeTax, Faizabad.
4. Sri Alok Mitra, Additional Commissioner of Income tax, Gonda Range, District Gonda.

Respondents

By Advocate: Sri Asheesh Agnihotri.

Order (Oral)

By Hon'ble Dr. K. B. S. Rajan, Member (J)

Heard counsel for the parties.

2. The contempt petition has been filed in O.A. 127/2009/ the O.A.

127/2009 was decided on 23rd April, 2010.

3. The relevant portion of the order dated 28.8.2008 is reproduced below:

"The competent respondent authority is deiced to dispose of the claim towards the interest payable in respect of delay which cannot be attributed to laches on his part. It may be mentioned that incase the respondent authority finds that the demand of the applicant is legitimate, then simple prevailing interest at GPF rate may be paid to him. The respondent authority should dispose of this the claim of the applicant for interest within two months from the date of receipt of copy of this order."


4. According to the respondents, interest on DCRG as per the rules has already been released. Interest on commutation is not admissible as clarified by the DOP&T and interest on leave encashment is not provided in the leave rules since the same is not a part of retiral benefits. The applicant submits that due to delayed payment of commutation of pension, the applicant is entitled to interest thereon and also in respect of leave encashment.

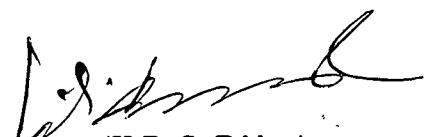
5. Commutation is a concession given by the government and till commutation was permitted, the applicant has been paid full pension. As such, the question of payment of interest on commuted value of pension, does not arise, because the commuted value is only from a prospective date and not retrospective.

6. Leave encashment is not a part of retiral benefits; the same having become due on the retirement of the applicant, the respondents are duty bound to release the payment of leave encashment immediately withholding of leave encashment is permissible only in cases any recovery of loss caused by an employee is to be made. Failure to release the same would mean there withholding the leave encashment amount for no reason. The Apex Court in the case of Union of India Vs. S.S.Sandhawalia (1994) 2 SCC 240, has held as under:-

"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest @ a rate considered reasonable by the Court."

7. In view of the above, we are of the considered opinion that order of this Tribunal is not fully complied with. Four weeks time is given to the respondents to workout interest payable on leave encashment @ 9% per annum from the date of order of the Tribunal and respondents shall file their compliance report. The contempt petition is closed in anticipation of compliance by the respondents of this order. Liberty is given to the applicant to revive the CCP if necessity arises. It is made clear that interest is payable if there is no recovery due from the applicant.


(S. P. Singh)
Member (A)


(K.B. S. RAjan)
Member (J)

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