

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 291/00677/2015

**Order reserved on: 13/10/2016
Date of order: 20/10/2016**

Coram:

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Prem kumar Sharma s/o Sh Chandra Bhan Sharma retired as Accounts Officer/Enforcement Officer from Regional Office Hyderabad now residing at 81/102, Neelgiri Marg, Mansarovar, Jaipur-302017.

.....Applicant.

(By Adv: Mr. S.K. Bhargava)

VERSUS

1. The Chairman, Central Board of Trustees, Employees' Provident Fund Organization, 14, Bhikaji Cama Place, New Delhi-110066.
2. The Central P F Commissioner & Secretary, CBT, Employees' P F Organization, 14, Bhikaji Cama Place, New Delhi-110066.
3. The Regional P F Commissioner, Regional Office, EPFO Organization, 3-4-763, Bhavishya Nidhi Bhawan, Barkatpura, Hyderabad-500027.
4. The Regional P F Commissioner, Regional Office, EPFO Organization, Nidhi Bhawan, Jyoti Nagar, Jaipur – 302005.

.....Respondents

(By Adv: Mr. Amit Mathur, proxy to Mr. R.B. Mathur)

ORDER

This OA has been filed by the applicant under Section 19 of the Central Administrative Tribunals Act 1985 being aggrieved



with the non-payment of gratuity and retirement benefits and thereby seeking the following reliefs:

- a. To direct the respondents to make payment of the gratuity and leave encashment to the applicant for the period he served the respondents organization.
- b. To grant any other relief or further order(s), as the Hon'ble Tribunal deems fit and proper, keeping in view the facts and circumstances of the present case.
- c. To direct the respondents to pay the cost of litigation which they have compelled the applicant to incur in order to get his rights and entitlements.

2. When the matter came up for consideration and hearing, learned counsel for the applicant, with reference to the averments in the OA, submitted that the applicant Shri Prem Kumar Sharma retired as AO/EO from Employees Provident Fund Organization (EPFO) on 31/05/2015 and vide Pension Payment Order (PPO) dated 03/08/2015 (Annexure-A/1), he was only sanctioned provisional pension, but gratuity and leave encashment were withheld. In this regard, the applicant also submitted a representation to the respondents on 28/08/2015 (Annexure-A/2) seeking gratuity and leave encashment as he had served in the organization for 39 years and also gave a legal notice dated 28/09/2015 (Annexure-A/3) for the same. But neither the representation nor legal notice have been responded to. Counsel for the applicant contended that there is no ground to deprive the applicant from his legal right which he has earned after a long service of nearly four decades. In this regard, he referred to Rule 9 of CCS (Pension) 1972 Rules where only the President has the right to withhold or withdraw the pension and also relied upon the judgment of the Apex Court in Civil Appeal No. 6770/2013 State of Jharkhand and others Versus Jitendra



Kumar Shrivastava and another decided on 14 August, 2013 [2014 (1) AWC 159 (sc)] wherein it has clearly been held that :

".....A person cannot be deprived of his pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

He also referred to judgement of the High Court of New Delhi in W.P. (C) No. 8219/2007 dated 21/11/2014 wherein the matter also related to releasing of all retiral benefits. In view of the aforesaid position, counsel for the applicant prayed for the OA to be allowed.

3. Per contra learned counsel for the respondents, reiterating the pointed made in the reply, submitted that at the time of retirement of the applicant, a criminal case and departmental proceedings were pending against him and therefore as may be seen from Annexure-A/1 which is a Provisional Pension Payment Order (PPO) dated 03/08/2015, that the provisional pension have been released and gratuity and leave encashment have been withheld as mentioned at column No. 5 of the PPO. He further submitted that applicant did not come out clean while



filings the OA and concealed the fact that at the time of his retirement a criminal case and departmental inquiry were pending against him. In this regard counsel for the respondents referred to Rule 69 of the CCS Pension Rules 1972 which clearly provides that when departmental or judicial proceedings are pending, provisional pension will be paid but "no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon." The CCS (pension) Rules have been made applicable to its employees by the respondent organization EPFO vide notification dated 25th Sept, 2008 and schedule-I appended to it and in view of the same, withholding gratuity is fully legal and justified because a criminal case and departmental inquiry is still pending against the applicant. A copy of the said notification was asked to be submitted by the counsel for the respondents, which he submitted the next day and the same was kept on record.

4. He further submitted that Rule 9 of these Rules, referred to by the counsel for the applicant, become applicable on conclusion of judicial/departmental proceedings and are not relevant in the case of the applicant as both the departmental and judicial proceedings are pending and the gratuity has been withheld in view of the rule 69 of the CCS (Pension) Rules 1972 which is presently applicable in case of the applicant. He further contended that the judgment of the Hon'ble Apex Court in the case of State of Jharkhand and others vs Jitendra Kumar and another (supra) does not come to rescue of the applicant



because statutory rules and provisions were not there in that case, while in the present case of the applicant the CCS (Pension) Rules 1972 have been adopted by the respondents and action has been taken accordingly. He further submitted that Judgement of the High Court of Delhi, referred by the counsel for applicant, relates to continuing of disciplinary proceedings after retirement. However as far as Pension rules are concerned, which is a subject matter of this OA, the CCS (Pension) Rules 1972 have been adopted by the respondent organization and action has been taken in accordance with the statutory provisions and on these grounds prayed for dismissal of the OA.

5. In the Rejoinder filed by the applicant, it has been contended that the pendency of criminal/judicial and departmental proceedings is no justification for withholding gratuity and leave encashment benefit.

6. Considered the aforesaid contentions and perused the record. It is noted that the applicant has been issued Provision Pension Payment order dated 03/08/2015 (Annexure-A/1) after his superannuation on 31/05/2015 and, as brought out by the counsel for the respondents, in column no. 5 of the said PPO there is a specific mention that gratuity and leave encashment has been withheld. In the reply, respondents have brought out that a criminal case is pending against the applicant regarding illegal gratification and departmental inquiry is also going on under the relevant disciplinary rules. It is further noted that the CCS (Pension) Rules 1972 have been made applicable mutatis

mutandis to the employees of the respondent organization, vide notification dated 25th September, 2008 and the applicant is therefore covered by Rule 69 which pertains to Provisional pension where departmental or judicial proceedings are pending. The said Rule provides for payment of Provisional pension in such cases but withholding of gratuity till the conclusion of the proceedings & final orders thereon cases. As argued by the learned counsel for the respondents, Rule 9 of the said rules has no applicability in this case because that relates to withholding of pension or gratuity or pension or both either in part or full and withdrawing pension or gratuity or pension or both either in part or full, after conclusion of departmental or judicial proceedings but in the case of the applicant both the proceedings are still pending.

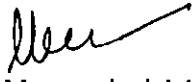
7. The order of the Apex Court in the State of Jharkhand and others Versus Jitendra Kumar Shrivastava and another also does not come to rescue of the applicant because therein it was held that "on the basis of circular which is not having force of law appellant cannot withhold even a part of pension or gratuity. As we noticed that as far as about statutory rules are concerned there is no provision to withhold pension or gratuity in the given situation. Had there been any such provision in these rules, position would have been different." In this case the position is different because respondent organization has made the CCS (Pension) Rules 1972 applicable mutatis mutandis to its employees and withheld the gratuity in view of the pending departmental and judicial proceedings against the applicant and



provisional pension is already being paid. Therefore, the applicant has not made out any legal or valid case for grant of gratuity and no relief can be granted in this regard.

8. As far as leave encashment is concerned Rule 69 of CCS Pension Rules 1972 does not mention anything about leave encashment. Therefore, it is deemed appropriate that applicant may file a fresh representation before the concerned authorities who may decide the same at the earliest and preferably within four months from the receipt of the representation, if any, in accordance with law.

9. The OA is disposed of as above with no order as to costs.


(Ms. Meenakshi Hooja)
Member (A)

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