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**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT CAMP: GWALIOR**

ORIGINAL APPLICATION NO.585 OF 2005

Gwalior, this the 6th day of November, 2006

**Hon'ble Dr.G.C.Srivastava - Vice Chairman
Hon'ble Shri A.K.Gaur - Judicial Member**

Shree Niwas Sharma, s/o Late Shri Kunwar Sen Sharma, aged 63 years, Retired from the post of Divisional Accounts Officer, Grade-I, R/o A-41, Govindpuri, University Road, Gwalior

-Applicant

(By Advocate - Shri D.P.Singh)

Versus

1. The Accountant General of Madhya Pradesh, Through: its Accountant General, Govt. of M.P., Jhansi Road, Gwalior.
2. The Accounts Officer, Administration-12, Jhansi Road, Gwalior

-Respondents

(By Advocate - Shri Madhukar Rao)

ORDER (Oral)

By Dr.G.C.Srivastava, VC.-

Heard the learned counsel of both the parties.

2. This Original Application has been filed seeking following reliefs:
 - (i) That, the enquiry report Annexure A-8 may kindly be directed to be quashed on account of giving the finding by the enquiry officer in excess of his jurisdiction.
 - (ii) That, the respondents be directed to finalize the actual retiral dues i.e. Gratuity, Leave Encashment of 10 months; commutation of pension and GPF of Rs.22,000/- and the respondents may further be directed to pay interest @ 16% on the aforesaid amount due to delay caused by themselves.
 - (iii) That the respondents be directed to treat the applicant in the service up to November 2002 as per entry made in the service

book and be further directed to grant all consequential benefits along with the interest to the applicant.

Subsequently, relief at (i) above, was dropped by the learned counsel for the applicant as the disciplinary proceedings have not yet been concluded. Regarding the other relief, the learned counsel for the respondents stated that the disciplinary proceedings have been concluded and the case has been sent to the President for orders and response from them is still awaited.

3. It is seen that the case was submitted to the Comptroller and Auditor General of India on 8.4.2005 and certain clarification sought from their side was also furnished and the case is still under consideration for final disposal. Since the case has already been delayed considerably, we are of the view that the respondents should be directed to pass final order in the case within certain specified period. We accordingly direct the respondents to pass final order in the disciplinary case within a period of three months from the date of receipt of this order.

4. The learned counsel for the respondents has also submitted that most of the retiral dues including GPF(final payment) and provisional pension have already been paid to the applicant. Only DCRG, pension commutation and leave encashment has been held up pending finalization of the disciplinary case.

5. We find that there are specific provisions regarding withholding of DCRG and pension commutation under the CCS (Pension) Rules, 1972 and CCS (Commutation of Pension) Rules,1981 respectively . So far as the leave encashment is concerned, Rule 39 (3) of the CCS (Leave) Rules,1972 lays down as below:

"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 such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible

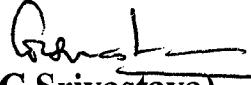
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to the amount so withhold after adjustment of Government dues, if any".

6. There is nothing on record to show that there is any possibility of any amount becoming recoverable from the applicant on conclusion of the disciplinary proceedings against him. We are, therefore, of the view that withholding of leave encashment is not warranted in the present case. We, therefore, direct the respondents to release the leave encashment amount within a period of one month from the date of receipt of this order.

7. In the result, the OA is disposed of with the directions as contained in paragraphs 3 and 6 above. No order as to costs.


(A.K.Gaur)
Judicial Member


(Dr.G.C.Srivastava)
Vice Chairman

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