

Central Administrative Tribunal
Principal Bench

OA No.1545/2016

Reserved on: 09.04.2018
Pronounced on: 13.04.2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Shri Munna Lal Paul, Aged about 65 $\frac{1}{4}$ years,
s/o late Sh. Kishore Lal,

R/o 18/213, Prem Nagar Kanker Khera,
Sardhana Road, Meerut

Presently superannuated w.e.f. 31.12.2010

while last posted as LDC (Lower Division Clerk)
in the organization of the Commissioner of
Income Tax Office, Meerut, Ministry of Finance,
Dept. Of Revenue, Govt. of India.Applicant

(By Advocate: Sh. V.P.S. Tyagi)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue, New Delhi.
2. The Chief Commissioner of Income Tax,
At Vaishali, Meerut.
3. The Additional Commissioner of Income Tax (HQ),
Meerut (UP).Respondents

(By Advocate: Sh. Ashok Kumar)

O R D E R

The applicant has filed this Original Application under
Section 19 of the Administrative Tribunals Act, 1985
seeking the following main reliefs:-

(a) *Release the full amount of the Leave Encashment amount relating to the accumulated 300 (Three Hundred days Leave) which became due on superannuation of the applicant which is illegally withheld and 12% interest thereon be also directed leviable from date the same fell due till the date it is paid.*

(b) *Direction may also be issued to release 75% of the DCRG to the applicant on furnishing requisite*

undertaking by him in similar manner as is propounded in a judgment by this Hon'ble Tribunal in similar case.

2. Brief facts of the case are that the applicant was initially appointed as Peon in Group-D cadre on 18.03.1970 and was subsequently promoted as Record Keeper in July, 1982 and thereafter as L.D.C. w.e.f. 21.03.2001 in the pay scale of Rs.3050-4590 and his last pay drawn on 01.08.2004 was Rs.4270/-. It is the contention of the applicant that unfortunately he was implicated in a criminal offence and thus was detained in custody on having arrested by CBI on 12.01.2005 and the bail was granted after exceeding the period of 48 hours. Therefore, he was placed under deemed suspension vide order dated 25.01.2005. However, the applicant was superannuated on 31.12.2010 and his DCRG and leave encashment amount was withheld invoking Rule 39(2)(a) and sub rule (3) of FRSR Part-II Leave Rules. It is further submitted that the charge in the criminal case is that Sh. S.P. Verma, ITO and the applicant, while posted in Salary Ward-I, Income Tax Department during 2001 were involved to cheat the Income Tax Department to the tune of Rs.4,40,866/- related to refund of income tax in respect of about 60 income tax returns based on false and forged documents/information in connivance with their advocates. The applicant, however, submits that the said amount has already been recovered

from those whom the refund is said to have been made. He also contends that since Mr. S.P. Varma, ITO, who was also party in the criminal case which is pending adjudication, has been released all his dues including the leave encashment, the applicant cannot be meted out a differential treatment and he is, therefore, also entitled to get his leave encashment and gratuity. To support his contention, the applicant has relied upon the decision of the Tribunal in a similar case of **R.P. Gupta vs. Union of India & Ors.** [OA No.1942/2001 decided on 03.05.2002]

which was allowed in the following terms:-

“7...The respondents shall within three months from the date of receipt of a copy of this order, release the applicant his full leave encashment and 75% of DCRG, subject to his executing a bond with appropriate surety, undertaking to refund the amount in the event of his conviction in the criminal proceedings. He would be entitled for interest @ 12% on the above amounts from the dates when the above payments became due to the date of their actual release in the event of his being acquitted in the case.”

3. The respondents have filed their counter reply denying the averments made by the applicant in the OA. The respondents stated that the representation of the applicant qua release of leave encashment and gratuity has been replied by passing a detailed and speaking order dated 19.01.2016 based on rules and legal position applicable to the issue involved in this matter. The respondents submit that provisional pension has been sanctioned to the

applicant but in so far as release of leave encashment and gratuity is concerned, the respondents contend that since the criminal proceedings are pending against the applicant, the respondents are well within their right to withhold the leave encashment and gratuity in view of Rule 39(3) of CCS (CCA) Rules, which fact has been admitted by the applicant himself in the OA. For the sake of convenience, the rule position is reproduced as under:-

“3. 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 proceeding, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

4. The respondents further submit that pending criminal case against the applicant and other accused, it is not possible for them to ascertain the exact due amount recoverable, if any. However, if the applicant is acquitted from the criminal case, he will be paid the leave encashment and gratuity, but in case some amount is found to be recovered from him, the same shall be adjusted from the amount so withheld by the respondents as per rules.

5. The applicant has filed the rejoinder reiterating the averments made in the OA. However, the applicant

contends that his deemed suspension upto the date of his retirement on superannuation is absolutely illegal and untenable as he cannot be held to have retired with continuance of deemed suspension. He, therefore, prays that the instant OA may be allowed by release the leave encashment and gratuity to the extent of 75% forthwith subject to his executing a bond with appropriate surety, undertaking to refund the amount in the event of his conviction in the criminal proceedings as has been held by the Tribunal in **R.P. Gupta's case** (supra).

6. Heard the learned counsel for the parties and perused the material on record.

7. Taking into account the nature of the case, I am of the view that the criminal case against the applicant pertains to a misconduct having financial implication, and, therefore, this will have to be kept in mind while considering the plea of the applicant for releasing the gratuity and leave encashment. Had it been a case where the charges against him were such which did not have any financial implication, the applicant would have had a better case. Assuming, on conclusion of the criminal case some amount is required to be recovered from the applicant, it will be difficult for the respondents to recover the same, but if he is acquitted, the applicant will be compensated by

paying interest over the withheld amount of gratuity and leave encashment.

8. Coming to the decision of the Tribunal in case of **R.P. Gupta** (supra), I am of view that the facts and circumstances of this case are slightly different. In this case the applicant was exonerated in the department enquiry but that is not the case in hand. Hence, this case is not applicable to the instant case.

9. The rule position in this regard is evident and unambiguous. Rule 39(3) of the CCS (CCA) Rules does give discretion to the respondents to hold back the retiral dues of the applicant i.e. DCRG and leave encashment. The only requirement is that there has to be, in the disciplinary or criminal proceedings, charges that have pecuniary implications and there may be a possibility of some money becoming recoverable on conclusion of the proceedings against him. Therefore, it becomes necessary to look at the nature of the charges against the applicant whose retiral dues with regard to DCRG and leave encashment are proposed to be withheld, which read thus:-

“Investigation has further revealed that the sixty Income Tax Returns based on false and forged documents/information were entertained, processed/assessed and issue under Salary Ward-1. It has also come to light that 35 Income Tax refunds orders addressed to the assesses were in fact directly dispatched at the residential addresses of Advocates. The dispatcher Shri Munna Lal Paul whereas the remaining 25 Income Tax Refunds were dispatched at

the addresses of assesses by post and out of which some refunds were sent through speed post and some were delivered by hand. However, almost all the assesses have stated that they received the Income Tax Refunds through aforesaid Advocates by hand by paying 40 to 50 percent of the refunds amount of the Income Tax to the Advocate.

It has also been revealed during investigation that the Income Tax Returns so processed/assesses in Salary Ward-1 were beyond the jurisdiction of the ward as well as beyond the jurisdiction of Sh. S.P. Verma, ITO. The jurisdiction of salary ward-1, was from alphabet A to alphabet M whereas, the said 60 Income Tax Returns were beyond the jurisdiction of salary ward-1 but in furtherance of criminal conspiracy most of these 60 Income Tax Returns were received by Shri Munna Lal Paul, LDC, Shri S.P. Verma, ITO/Assessing Officer has passed the refunds orders dishonestly and fraudulently under his own signature within a very short period of time and these refunds were purportedly received by the assesses and thus the Income Tax Department was cheated to the tune of RS.4,40,866/-.

The aforesaid acts of omission and commission constitute offences punishable under Section 120B, 420, 467, 468, 471 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988.”

10. Reading of these charges very clearly show that nature of the misconduct of the applicant does have pecuniary implications because, according to the chargesheet, he has purportedly cheated the Income Tax Department to the tune of Rs.4,40,866/-.

11. The applicant has argued that these dues have been released to one Mr. S.P. Verma, ITO, who is also a party in the criminal case which is pending adjudication. The respondents in their reply have stated that the basis on which the Commissioner of Income Tax-II, Kanpur has supposedly been released this amount is not known to

them. However, they have asserted that even if such a release, rightly or wrongly, has been made, this cannot supersede the provisions of Rule 39 (3) of CCS (Leave) Rules & Rule 69 of CCS (Pension) Rules. The applicant has not been able to show whether his case and that of S.P. Verma had been processed in an identical manner by the same authority and in one case the relief has been given while the same has been declined to the applicant. For want of this information which is not on record, I am unable to really grant the relief to the applicant only on the basis of his assertion which is not supported by any evidence. In any case, the predominance of rule over precedences of this kind is an accepted principle of law and the same shall apply in this case also.

12. Given this situation and the fact that criminal case is still pending against the applicant, it would, therefore, be difficult to fault the respondents for withholding his leave encashment and DCRG amount. The submission made by the applicant does not clarify whether any departmental proceedings are also pending against him. What appears from the record is that he superannuated while he was under deemed suspension. There is nothing on record to show that his deemed suspension has been revoked at any point of time.

13. As has been discussed earlier, the applicant's reliance on ***R. P. Gupta's case*** (supra) cannot become the basis of relief in the instant case because as explained in paragraph 8 above, the fact and circumstances of that case do not replicate in the instant OA.

14. Considering all aspects of this matter, I am of the considered view that there is no necessity to interfere with the decision of the respondents with regard to withholding of leave encashment and DCRG of the applicant as the same will not be in accordance with the rules and law in this regard. OA is accordingly dismissed. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/