

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3735/2016

Reserved on: 25.10.2017
Pronounced on: 27.10.2017

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

S.P. Mishra, Ex.DDG (Retd.), Aged 63 years,
s/o Late A.K. Mishra,
TEC Staff No.02173
R/o C-29, Sector 47,
Noida – 201301.

...Applicant

(By Advocate: Ms. Soumyasree Mishra)

Versus

Union of India through

1. Secretary,
Department of Tele Communication,
Ministry of Communication & IT,
Sanchar Bhawan, 20-A, Ashok Road,
New Delhi – 110 001.
2. Sr. D.D.G.,
T.E.C. Kurshid Lal Bhawan,
Janpath,
New Delhi-110 001.

...Respondents

(By Advocate: Sh. Rajesh Katyal)

O R D E R

The instant OA has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985 seeking to quash the impugned order dated 13.06.2016 issued by the respondents whereby his request to release the leave salary equivalent to 300 days has been rejected.

He has also prayed for interest over the said amount of leave encashment @ 18% per annum till the actual

payment is made, apart from cost of Rs.20,000/- towards litigation expenses.

2. On perusal of the OA one cannot help to notice that the applicant has been amiss in providing adequate information about his case. Among others, he has not even mentioned the fate of departmental enquiry conducted against him as also the outcome and punishment, if any, meted out to him. He has also not mentioned that he has been sanctioned provisional pension, which he is availing. Therefore, one has relied upon the counter reply filed by the respondents and have taken some of the following facts from the respondents' reply.

3. The applicant retired as Dy. Director General (TEC) on 31.01.2012. While he was in service, a criminal case filed by CBI was pending against him in Gujarat and on conclusion of the same, he was convicted by the Special Judge (A.C.B.) Saheb of Kheda District, AT. Nadiad [hereinafter referred to as 'Special Judge (A.C.B.)'] under Sections 7 and 13(1) read with 13(2) of the Prevention of Corruption Act, 1988. Against the conviction order, the applicant filed a Criminal Appeal No.2561/2009 before the Hon'ble High Court of Gujarat, which is pending adjudication. Consequent upon his conviction, the applicant was placed under suspension vide order dated 09.03.2010 and departmental proceedings were initiated

against him under CCS (CCA) Rules, 1965. Since the applicant stood retired on 31.01.2012, the departmental proceedings were deemed to be continued under Rule 9 of the CCS (Pension) Rules, 1972 [hereinafter referred to as 'Pension Rules']. On conclusion of the departmental proceedings, penalty of withholding of 100% monthly pension otherwise admissible to the applicant on permanent basis and forfeiture of his entire gratuity was imposed upon him by the disciplinary authority in consultation with the UPSC vide order dated 14.12.2015. However, he was allowed the provisional pension under Rule 69 of the Pension Rules. Thereafter, the applicant made a representation to the respondents requesting them to release the amount of leave encashment due to him. When this request was not acceded to by the respondents, the applicant filed OA No.635/2015 before this Tribunal, which was disposed of vide order dated 16.02.2015 with a direction to the respondents to consider the representation of the applicant by passing a reasoned and speaking order. Subsequently, the applicant filed CP No.143/2016 for initiating contempt proceedings against the respondents for not complying with the Tribunal's order dated 16.02.2015. However, during the pendency of the CP, the respondents had complied with the Tribunal's order by passing a speaking order dated 13.06.2016 vide which claim of the

applicant was rejected and resultantly the CP came to be dropped.

4. Aggrieved, the applicant has filed the present OA seeking to challenge the said order of the respondents dated 13.06.2016 on the ground that the action of the respondents in not releasing the amount of leave encashment is contrary to Rule 39 (3) of CCS (Leave) Rules, 1972 [hereinafter referred to as 'Leave Rules'] as they have neither sanctioned the leave encashment nor passed any other withholding the leave encashment under Rule 39 (3) (1) of Leave Rules before retirement or within 60 days of retirement. The applicant would contend that sanction of leave salary may be withheld to meet the recoveries on conclusion of proceedings, but in his case no recovery is involved, and even the judgment of the Trial Court in criminal case is very clear and there is neither any finding about financial loss to the government nor there is any demand of recovery by the department itself from the applicant. Hence, the action of the respondents qua withholding of his leave salary is not sustainable in law.

5. The respondents have filed their counter reply and opposed the claim of the applicant on the ground that the impugned order dated 13.06.2016 has been passed by them strictly as per Leave Rules. The respondents have further submitted that the case of the applicant was

referred to the Vigilance Section of the DoT, which opined that as in the CBI case, a criminal appeal No.2561/2009 has been filed by the applicant consequent upon his conviction by the trial court and the said appeal is still pending in the High Court of Gujarat, therefore, the vigilance clearance will remain withheld till outcome of the court case. Hence, the request of the applicant for releasing the leave salary was rightly declined following due process.

6. I have thoroughly gone through the pleadings, carefully perused the case law relied upon by the respondents and heard the arguments so advanced by the learned counsels for both the parties.

7. The main issue that needs my attention is whether the Rule 39(3)(1) of the Leave Rules should apply to the case of the applicant? The respondents have themselves quoted this rule in para 11 of their counter reply, which is reproduced hereunder:-

“When an employee retires on superannuation while under suspension or while disciplinary or criminal proceedings are pending against him, the whole or part of cash equivalent to leave salary may be withheld to meet recoveries from him possible arising on conclusion of the proceedings. On conclusion of proceedings, payment may be released after adjustment of Government dues, if any.”

8. A close reading of this Rule makes it clear that if an employee retires on superannuation and at that time he was under suspension or even when any disciplinary/ criminal proceedings are pending against him, the whole or

part of cash equivalent of leave salary may be withheld. However, this rule also gives a rational for such act of withholding and the rationale is to meet any recoveries from him possibly arising on conclusion of the proceedings. Applying this rule to the case in hand, it is not in dispute that the applicant superannuated while under suspension as also criminal proceeding is still pending against him, in the sense that although he has been convicted by the lower court, his appeal is still pending in the High Court. However, it is also to be seen whether the charges against the applicant the criminal proceedings give rise to any possible recoveries to be ordered against him.

9. The applicant has produced before us the judgment dated 15.12.2009 passed by the court of Special Judge (A.C.B.) and a copy of the appeal filed by him before the High Court of Gujarat. The applicant has been convicted for demanding and accepting bribe of Rs.35,000/- and was caught in the process of accepting the same. The charges framed against him under the Prevention of Corruption Act do not mention any material to show that because of the applicant any pecuniary loss has occurred or is likely to occur to the government or that his prosecution will lead to any recoveries to be made from him. The punishment given to the applicant by the Special Judge (A.C.B.) is three years of rigorous imprisonment and a fine of Rs.15,000/- failing

which another year of rigorous imprisonment. From perusal of these facts, it cannot be concluded that there is a possibility of recovery of government money after his conviction in the criminal case.

10. Learned counsel for the respondents very emphatically argued that the Government is entitled to withhold the leave encashment if an employee retires while under suspension or if criminal/departmental proceedings are pending against him. However, he was not in a position to explain as to how his conviction, if at all, will lead to any recoveries from the applicant. Learned counsel for the respondents placed before me a judgment of High Court of Delhi in case of ***Union of India & Anr. Vs. S.K. Gupta*** [2016 (230) DLT 793]. I have gone through this judgment carefully. The fact of the matter is that in this writ petition, which was filed against the order of the Tribunal, the prayer of leave encashment was, as a matter of fact, granted by the respondents themselves. Paragraph 8 of this judgment records as under:-

“8...As has been noticed in the impugned order itself, an amount of Rs.8,68,375/- towards leave encashment of 254 days of earned leave was paid to the respondent...”

Therefore, while the High Court in paragraph 20 has held that a government servant should not be allowed to comfortably walk into the sunset with full retirement

benefits simply because he was allowed to retire or superannuate from his service without any objections and has quashed the orders of the Tribunal. There is no finding of the court on the issue of leave encashment because the leave encashment had already been paid to the applicant in that OA before the Tribunal. Therefore, this particular ruling is not applicable in the facts and circumstances of the present case.

11. In view of the above discussion, I am of the considered view that the ends of justice will be met if the respondents are directed to release the leave encashment amount due to him within a period of three months from the date of receipt of certified copy of this order. Respondents are directed accordingly.

12. No costs.

(UDAY KUMAR VARMA)
Member (A)

/Ahuja/