

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 3437/2017

This the 26th day of October, 2018

Hon'ble Ms. Aradhana Johri, Member (A)

Sh. Jamuna Dass(Aged about 67 years)
Ex-Tax Assistant
S/o Late Sh. Sukh Pal
R/o B-47, Aruna Nagar, Magazine Road
Delhi-110054.

....Applicant

(By Advocate : Mr. Prem Chand)

Vs.

Union of India

1. The Secretary, M/o Finance
Department of Revenue
North block, New Delhi-110001.
2. The Chief Commissioner of Income Tax(CCA)
CR Building, New Delhi-110002.
3. The Principal Commissioner of Income Tax
Delhi-12, Room No.510, E-2 Block
Dr. S.P. Mukherji Civic Centre
New Delhi.
4. The Commissioner of Income Tax
Delhi-VII, Room No.D-108,
Vikas Bhawan
New Delhi-110001.Respondents

(By Advocate : Mr. M. S. Reen)

O R D E R (O R A L)

The applicant joined the respondents in the office of the Commissioner of Income Tax on 07.05.1970 in Group 'D' and was later appointed on 15.12.1973 directly as LDC, which post was subsequently re-designated as Tax

Assistant (T.A). He retired on 31.12.2011. He was given provisional pension only due to criminal case pending against him in Trial Court. The applicant was convicted in the criminal case but on appeal Hon'ble High Court, New Delhi in C.R.L. No. M.B. No. 685/2012 in Criminal Appeal No. 344/2012 vide its order dated 24.07.2012 suspended the order of sentence dated 23.01.2012 passed by the Special Judge, CBI, till disposal of the present proceedings and the applicant was released on bail. The applicant has not yet been paid the gratuity or leave encashment. Hence, this O.A.

2. It is the contention of the applicant that though he retired on 31.12.2011 and the Hon'ble High Court had not suspended the conviction but only the sentence, no disciplinary proceedings were initiated against him. Rule 9.2(b) of CCS (Pension) Rules, reads as under :-

“9. 2(b)

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in

which an order of dismissal from service could be made in relation to the Government servant during his service."

3. He has contended that, since no disciplinary or criminal proceedings are pending against him and no recovery is due, therefore, he is eligible for gratuity and leave encashment. The applicant has further stated that though he was suspended earlier but, he has been subsequently reinstated.

4. He has also stated that gratuity etc cannot be withheld since no disciplinary proceedings are pending and there is no recovery of any dues pending against him.

5. Though the facts have been admitted by the respondents but, they have stated that as per Rule 69 (1) (c) of the Pension Rules, the gratuity cannot be paid till the conclusion of the disciplinary proceedings. Further, as per Rule 39 (3) of CCS (Leave) Rules, the Leave encashment had been withheld, since he has been convicted by the lower Court and the disciplinary proceedings are to be initiated against him.

6. I have heard Mr. Prem Chand, learned counsel for applicant and Mr. M. S. Reen, learned counsel for respondents.

7. The facts of the case are not in question. The matter is of looking at the rule position and the interpretation there under.

8. The fact that though the applicant had been convicted by the CBI (Special Court) and in the appeal Hon'ble High Court has not set aside the conviction but, suspended the sentence, disciplinary proceedings have yet not been initiated. Therefore, as per Rule 9.2(b) since more than 4 years have elapsed since his retirement, and disciplinary proceedings are yet to be initiated, no reason has been assigned for non initiation of the disciplinary proceedings so far., departmental proceedings cannot now be instituted.

9. Further, on perusal of the CCS (Leave) Rules, it appears that competent authority may withhold whole or part of the cash equivalent of Earned Leave, in case a government servant who retires on attaining the age of retirement while still under suspension or while criminal or disciplinary proceedings are pending against the applicant, 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.

10. In the present matter, the applicant was not suspended at the time of reaching the age of retirement and no disciplinary proceedings are pending against him, despite the fact that the criminal case has been decided against him and the conviction has not been stayed by any higher Court and there is no claim from the employer for the recovery of money. In fact, the LPC dated 23.12.2011 shows no outstanding dues.

11. Keeping in mind the above and since no disciplinary proceedings have been initiated against the applicant and no reason given for the same, despite the fact that almost seven years have passed since the retirement of the applicant, on reaching the age of retirement, the employer cannot now withhold the leave encashment and gratuity. The respondents are directed to make payment of leave encashment and gratuity due to the applicant. No interest will be payable thereon.

12. Hence, the O.A is allowed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

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