

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

O.A. NO.2445 of 2018

This the 3rd day of September 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Tuhin Burman
s/o Shri Kisan Chand Burman,
aged about 61 years
Retired Assistant Director
Resident of 2-C/10, Kishangarh, Vasant Kunj, New Delhi.
....Applicant
(By Advocate : Shri Amit Chawla)

VERSUS

1. Secretary to the Govt. of India
Ministry of Labour & Employment,
Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Director in-Charge
Dattopant Thengadi National Board of Workers
Education and Development,
Room No. 306, 3rd Floor, Shram Shakti Bhawan,
Rafi Marg, New Delhi-110001.
3. Dy. Director, Headquarters-Incharge
Dattopant Thengadi National Board of Workers
Education and Development,
North Ambazari Road,
Near VNIT Gate, Nagpur-440033.
4. The Zonal Director, North Zone,
Dattopant Thengadi National Board of Workers
Education and Development,
Plot No.1, Pocket -2,
Rohini, Ph.III, New Delhi-110086.
5. The Regional Director,
Dattopant Thengadi National Board of Workers
Education and Development,
2nd Floor, Employment Exchange Building,
Pusa Complex, Pusa Road, New Delhi-110012.

.....Respondents

(By Advocate : Shri Vijay Kumar for Shri Manish Kumar)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following reliefs:-

- “(i) Direct the respondents to submit all the records of the case.
- (ii) Hold and declare that the Applicant was entitled for full payment of the leave encashment as per Rule 39 (3) of CCS (Leave) Rules, 1972 and interest on delayed disbursement of Leave Encashment.
- (iii) Direct the respondents to pay interest at the rate of 18% p.a. or at such other appropriate rate, on the delayed payment of Leave Encashment for the period from 01st May, 2017 till the date of disbursement.
- (iv) Considering the fact that the applicant has been forced to seek the indulgence of this Hon’ble Tribunal for availing his legitimate entitlements, award the cost of the litigation.
- (v) Grant any other relief which the Hon’ble Tribunal may deem appropriate.”

2. This case was earlier heard by this Bench on 27.8.2019 and the following observations were made:-

“The applicant is heard in detail. The short point in this OA is that after release of DCRG benefits, the applicant's leave encashment is sought to be deducted on account of certain amounts which were found due from him on the basis of an audit. The applicant has explained the rule position in this regard. Counsel for the respondents seeks and is given a last opportunity to address the same and it is made clear that this type of asking for an accommodation is not at all appreciated, especially when the issue has been raised in the OA itself.

List the case on 03.09.2019 as part heard matter.”

3. Today when this matter is taken up for consideration, learned counsel for the respondents has submitted that the recovery of Rs.1,74,845/- was effected from the withheld amount of Leave Encashment in pursuance of Audit Objections in respect of number of recoveries related to LTCs/HTCs from the period from 1994 to 2017, which have been pointed out by the Internal Audit, DTNBWED, HQ, Nagpur and Ministry of Labour and Employment as is evident from the contents of para 4.12 of the Counter Affidavit. Counsel further submitted that only on receipt of undertaking from the applicant, the amount of gratuity and pension had been released to him. However, counsel for the respondents has not disputed that in terms of provision of Rule 39 (3) of the CCS (Leave) Rules, 1972, which reads 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 proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

the competent authority has not passed any order whereunder the said leave encashment had been withheld. In fact, we also find that there is also no order of the competent authority indicating that there was any possibility of some

money becoming recoverable from the applicant, although the retiral dues of the applicant were withheld in pursuance of Internal Audit by the respondents and they have released the amount of Gratuity and Pension to the applicant pursuant to undertaking given by him but withheld the amount of leave encashment, which they released to him only vide Order dated 14/23.05.2018 after deducting the aforesaid alleged amount of recovery of Rs.1,74,845/- from the said amount. Since the applicant has disputed the aforesaid recovery and filed his reply dated 24.7.2017 and the respondents have not passed any order on the said reply of the applicant, the impugned order is not sustainable in the eyes of law.

4. It is to be noted that Hon'ble Delhi High Court in Writ Petition (Civil) No.1186/2012 (**Govt. of NCT of Delhi vs. SK Srivastava**) considered the similar issue and vide Order dated 29.2.2012 passed the following orders:-

1. The petitioner (Government of NCT of Delhi) has filed this writ petition in respect of the order dated 25.03.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 2861/2010. The only point urged before us is with regard to the interest that has been directed to be paid by the Tribunal on the amount of leave encashment due to the respondent. The same was due to the respondent on 31.12.2000, which is the date of his retirement. But, the same was not paid to him till 2011, that is, after the passing of the impugned order. The leave encashment amount, according to the learned counsel for the petitioner, had been withheld because the respondent was under suspension at the time of his retirement.

2. The learned counsel for the petitioner drew our attention to Rule 39 (3) of the CCS (Leave) Rules, 1972, which reads 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 proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.”

However, the learned counsel for the petitioner was not able to point out any such order of the competent authority whereunder the said leave encashment had been withheld. In fact, there is also no order of the competent authority indicating that there was any possibility of some money becoming recoverable from the respondent on the conclusion of the proceedings. As pointed out above, there is no order of the competent authority withholding the leave encashment amount which was due to the respondent nor was there any finding of the said competent authority as to whether there was a possibility of some money becoming recoverable from the respondent on the conclusion of the proceedings against him.

3. Consequently, the Tribunal is right in coming to the conclusion that the leave encashment amount ought not to have been withheld. It is in these circumstances that the Tribunal has directed that the leave encashment amount along with other amounts, which were due to the respondent, ought to be paid to the respondent along with interest at the GPF rate.

4. The learned counsel for the petitioner states that all other dues had been paid to the respondent along with interest at the GPF rate, but since there was no provision in the leave rules for grant of interest, that is why the present petition has been filed. We do not agree with the submission made by the learned counsel for the petitioner that because there are no rules providing for grant of interest, the respondent would not be entitled to the same. There is also no bar to the grant of interest whenever the leave encashment amount is delayed for no fault on the part of the employee. The government has retained the money from the year 2000 till 2011, which, in any event, was due to the respondent in the year 2000 itself, particularly in view of the fact that even the conditions specified in Rule 39(3) had not been complied with. Consequently, grant of interest on the said amount at the GPF rate by the Tribunal cannot be faulted. In any event, we may also point out that between 2000 and 2011, because of inflation, the real value of the amount that was due to the respondent had substantially eroded, the payment of interest at the GPF rate would only be a kind of balm applied to the injury suffered by the respondent. It may, in fact, actually

turn out that the petitioner would not be paying anything more in real terms than what it was liable to pay in the year 2000.

5. For all these reasons, the petition is liable to be dismissed. It is ordered accordingly. However, the petitioner is granted four weeks time to make the payment of the interest on the leave encashment amount at the GPF rate.”

5. In the result and for the foregoing reasons, the present OA is allowed and the respondents are directed to consider the case of the applicant in terms of the observations of the Hon'ble Delhi High Court in the case of **Govt. of NCT of Delhi vs. SK Srivastava**) and pass a reasoned and speaking order within a period of 45 days from the date of receipt of a copy of this Order and pay interest at GPF rate for any amount found due, within 45 days thereafter. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

/ravi/