

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3909/2017

**Reserved on : 08.05.2019.
Pronounced on :14 August, 2019**

Hon'ble Mr. Mohd. Jamshed, Member (A)

Madan Pal Singh
(aged 61 years)
Retired Inspector, Delhi Police
D-3240 (PIS No.16910119)
S/o Late Shri Harish Chand
R/o Village Salarpur, NOIDA
Distt. Gautambudh Nagar (U.P.).

.... Applicant

(By Advocate: Shri Arun Sapra)

Versus

1. The Chief Secretary
GNCT of Delhi
Delhi Secretariat, I.P. Estate
New Delhi.
2. The Commissioner of Police
Delhi Police, Police Headquarters
MSO Building, I.P. Estate
New Delhi.
3. The Deputy Commissioner of Police
Security (HQ), Security Police Lines
Vinay Marg, Chanakya Puri
New Delhi.

.... Respondents

(By Advocate : Ms. Harvinder Oberoi)

O R D E R

The applicant joined Delhi Police as Sub Inspector and was promoted as Inspector in, 2008. In 2014, while the applicant was posted in South-East Distt., New Delhi a case vide FIR No.02/2014 under Section 7/13(1)(d) POC Act, 1988 was registered against him on 04.02.2014. A departmental inquiry was conducted against the applicant. Subsequently, the applicant was placed under suspension vide order dated 05.02.2014. He was later on reinstated vide order dated 20.12.2016. The applicant retired on 31.12.2016 on

superannuation. In view of the criminal proceedings. Ongoing departmental inquiry, the respondents have withheld the Earned Leave Encashment benefits and gratuity. The applicant was, however, granted provisional pension. The applicant moved several applications for release of Earned Leave Encashment benefit from the respondents. The respondents vide Memo dated 29.09.2017 (impugned order) turned down the request for release of the same, till the finalization of DE. The applicant aggrieved by this action of the respondents has filed the present OA seeking the following relief(s) :-

- "a) call for the record of the case; and
- b) direct the Respondents to release the retiral benefits of the Applicant viz. Earned Leave Encashment benefits (for 300 days) as well as Gratuity with interest and quash and set-aside the impugned order/Memo (Annexure-A/1);
- c) pass any other order/direction which this Hon'ble Tribunal deemed fit and proper in the facts and circumstances of the present case; and
- d) award cost of the proceedings."

2. In support, the applicant in the OA has relied upon the order in OA No.4109/2012 of this Tribunal pronounced on 21.11.2013 ordering for release of retiral benefits including pension/gratuity to the applicant therein in spite of the fact that Disciplinary Enquiry and criminal case were pending against him. He has also relied upon the Hon'ble Supreme Court order in Civil Appeal No.(s) 5848-49 of 2014 titled **Dev Prakash Tiwari Vs. U.P. Cooperative Institutional Service Board** wherein it was held that there was no authority with the department to withhold retiral benefits. Similarly, in Civil Appeal No.6770/2013 (Arising out of SLP (Civil) No.1427/2009, in the matter of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava**, the Hon'ble Supreme Court of India has taken into consideration the provisions of Article 300-A of the Constitution held in the judgment passed

on 14.08.2013 that ruled that, "*A person cannot be deprived of pension without authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution.*" It is also ruled in the same judgment that executive instructions are not having statutory character and, therefore, cannot be termed as 'Law' within the meaning of Article 300-A. Reliance has also been placed upon the order of Hon'ble High Court of Madras in WP (MD) No.1484/2016, wherein a direction was issued to the respondents to settle the earned leave encashment benefit to the Petitioner which is due to him based on earned leave accumulation to his credit.

3. It is stated in the OA, that as per the information obtained by the applicant under RTI Act, the applicant had 300 days earned leave in his credit as on 05.02.2014 i.e., prior to his suspension. The applicant has sought relief only in terms of payment of encashment of earned leave of 300 days due to him, which has been withheld by the respondents alongwith gratuity and part pension. Whereas the withheld gratuity and award of provisional pension has been done in view of the ongoing Disciplinary proceeding/criminal proceeding, the applicant has sought relief only in terms of payment of encashment of 300 days earned leave due to him, prior to his retirement. The applicant has further relied upon other judgment of the Apex Court and specifically drawn the attention to the rulings in Civil Appeal No.6770/2013 in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava** (supra) passed on 14.08.2013. The relevant parts are as under :-

"14. [Article 300 A](#) of the Constitution of India reads as under:

"300A Persons not to be deprived of property save by authority of law.
- No person shall be deprived of his property save by authority of law."
Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which

is the Constitutional mandate enshrined in [Article 300 A](#) of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of aforesaid [Article 300A](#). On the basis of such a circular, which is not having force of law, the appellant cannot withhold -

even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

Attention is also drawn to order of Hon'ble Madras High Court in the matter of Veeravinothan Vs. Registrar of Cooperative Societies decided on 29.01.2016 wherein it is held that :-

"18. For all the above reasons, the Writ Petition is allowed and the impugned order, dated 07.09.2015 passed by the second respondent, is quashed and a direction is issued to the second respondent to settle the Earned Leave Encashment benefit to the petitioner, which is due to him based on the Earned Leave accumulation to his credit, within a period of six weeks from the date of receipt of a copy of this order. No costs."

4. The respondents in their counter reply have opposed the OA stating that the applicant retired on superannuation on 31.12.2016. At the time of his retirement a criminal proceedings against him vide F.I.R.No.02/2014 dated 04.02.2014 under Section 7/13(1)(D) P.O.C. Act, P.S. Vigilance Branch, Delhi and a Disciplinary Enquiry initiated vide Order No.4688-4710/P. Cell (P-III)/D.E. Cell dated 09.06.2014 were pending against the applicant. The respondents have asserted that as per Rule-9 of C.C.S. (Pension) Rules, 1972 he was authorized for Provisional Pension, which is being provided to him. It is also mentioned that amount of DCRG has been withheld in pursuance of the Provisions contained in Rule 69 of C.C.S. (Pension) Rules-1972. It is also

submitted that after considering the facts of the case, the amount of Leave Encashment has now been released to the applicant. It is further confirmed that the amount of leave encashment of Rs.4,82,460/- equivalent to applicant's leave salary on full pay in lieu of his 215 days Earned Leave (after excluding the leave period not due during the suspension period from 05.02.2014 to 20.12.2016 as this period has not yet been decided) has been paid.

5. It is further stated that conviction of the applicant in the said criminal case may lead to cut in pension/withholding of Pension/Amount of Gratuity as provided in Rule 9 of C.C.S. (Pension) Rules, 1972 and, therefore, releasing the amount of Gratuity/allowing Commutation of Pension to the applicant during the pendency of the Criminal Case would be contrary to the provisions contained in Rule 69 of C.C.S. (Pension) Rules, 1972 and, therefore, withholding of the amount of Gratuity is completely justified/reasonable/legal in accordance with the provisions contained in C.C.S. (Pension) Rules – 1972. Respondents have also stated that the representation of the applicant dated 29.06.2017 was considered by the competent authority vide order dated 29.09.2017 and the applicant was advised that the matter for releasing of Earned Leave Encashment benefits was put up before the DCP/HQ/Sec. in which DCP/HQ/Sec. has passed the remarks "Till the finalization of DE, which should be conducted expeditiously."

6. Heard the arguments of learned counsel for the applicant and learned counsel for the respondents and perused the records.

7. Learned counsel of the respondents argued that the executive order dated 18.01.2011 issued by the Finance Ministry, the DOP&T has clarified the

scope of the Rule 39 (3) of CCC (Leave) Rules, 1972 to release of withheld leave encashment in respect of retired officers against whom disciplinary proceedings are pending. The relevant paras reads are as under :-

"2. On a reference made by the Department, the DOPT has clarified the scope of the said Rule 39(3) as under:

*"Rule 39(3) of CCS (Leave) Rules, 1972 makes provision for withholding whole or part of the payment due on account of encashment of leave temporarily so that if some money is to be recovered as a result of disciplinary/ criminal proceedings, it could easily be adjustable against the amount due to the Govt. servant. However, the final withholding of the amount as a measure of punishment would not be justified under the leave encashment rules as the various forms of punishment that could be given to an individual held guilty as a result of disciplinary proceedings are specified in the relevant rules and they do not cover this type of punishment. Further withholding of leave encashment should be resorted **to only in those cases where there is a likelihood of some money becoming due, for instance, where the proceedings are on account of embezzlement of Govt. funds or loss of public money etc. Each case should be examined at the time of retirement to see whether withholding of amount is necessary keeping in view the nature of charges against the individual and the amount of possible recoveries from the individual should only be withheld and not necessarily the entire amount of encashment.**"*

3. It is clear from the provisions of Rule 39(3) of CCS(Leave) Rules, 1972 as further clarified by DoPT, that leave encashment should not be withheld in respect of a retiring employee because of pendency of a departmental proceeding etc. as a matter of course. The charges against the officer should be carefully considered before deciding whether withholding of the amount of leave encashment due to the employee is necessary keeping in view the nature of charges against the individual. Such charges should refer to or imply a specific loss to the public money because of embezzlement or other acts of misconduct of the officer. Further, where it is proposed to withhold the leave encashment at the time of retirement till the pending proceedings are finalized, the amount of leave encashment to be withheld should not exceed the amount of possible recoveries from the charged retiring officer on finalization of the proceedings.

4. All cases where the leave encashment has already been withheld but where the proceedings at the time of retirement have not been finalized so far should be reviewed in the light of the above clarification and where there is no justification for withholding the same, the amount should be released immediately."

8. Learned counsel for the applicant however argued that although leave encashment of 215 days has been released by the respondents, the amount

of 85 days of earned leave has not been released and is being withheld in contravention of rules.

9. The applicant in this OA has sought relief in terms of Rule 69 of CCS (Pension) Rules, 1972 for release of earned leave encashment and as far as gratuity is concerned, it is clear that the respondents can withhold the same and only provide provisional pension, if a criminal case or disciplinary proceeding is pending against the employee. The applicant has sought primary relief only in terms of payment of dues for encashment of earned leave of 300 days. As indicated by the respondents, the applicant has already been paid encashment of earned leave for a period of 215 days Rs. 4,82,460/- equivalent to applicant's leave salary on full pay in lieu of his 215 days Earned Leave. The amount in lieu of his earned leave salary for a period of 85 days has been withheld in view of his suspension from 05.02.2014 to 20.12.2016. In the impugned order it is stated that on the applicant's representation for release of earned leave encashment benefits the competent authority has passed the following remarks: "Till the finalization of DE, which should be conducted expeditiously".

10. In the present case, the applicant was under suspension for the period from 05.02.2014 to 20.12.2016. This period of suspension has not yet been decided by the competent authority in view of the ongoing DE. It was also argued by the respondents that on completion of the DE Competent Authority will decide the suspension period as to whether the same is to be treated as on duty or the same to be converted in leave due, etc. It was, therefore, argued that in case this period is to be treated as on duty the remaining 85 days encashment of earned leave will be released to the applicant and if on completion of DE, it is decided not to treat this period as on duty, the option

would be to treat the same against the leave due and that would directly impact the earned leave available in the applicant's account. Despite this, the respondents have paid the leave encashment of 215 days out of maximum 300 days due and only payment of 85 days earned leave is withheld.

11. It is evident that this case is different from other cases dealt with in judgment quoted where the Competent Authority withheld the gratuity and also earned leave encashment allowance in view of the ongoing criminal and DE proceedings. The rules governing these matters are considered as only the gratuity is withheld and the provisional pension can be provided till completion of disciplinary and criminal proceeding. In the present OA withholding of 85 days of earned leave encashment on grounds of pending finalization of the suspension period by the respondents is badly delayed. However, it is also a fact that the delay of finalization of DE is also causing delay in treating of suspension period as on duty and for release of other retiral benefits.

12. In view of the above mentioned, I am of the view that earned leave of 85 days due to the applicant has been rightly withheld by the respondents in view of the pending consideration of the suspension period. It is also a fact that DE in this case is going on for a considerable period of time causing unprecedented delay in finalization. FRS 54 (b)(7) clearly states about how the suspension period will be treated including its conversion into leave of any kind due to government servant.

13. The respondents are, therefore, directed to consider and decide the suspension period of the applicant in order to take a view on the release of earned leave encashment benefits for the remaining 85 days. The DE should also be completed within a period of three months from the date of issue of this order failing which the respondents shall release the due amount of

earned leave encashment benefits to the applicant for the entire remaining 85 days. Withholding of Gratuity and provisional pension will continue to be governed in terms of extant rules. The OA is, accordingly, disposed off with above directions along with M.A. There shall be no order to costs.

(Mohd. Jamshed)
Member (A)

'uma'