

**Central Administrative Tribunal
Principal Bench**

OA No. 3257/2018

Order reserved on : 21.10.2019
Order pronounced on: 05.11.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Dr. Beer Singh, Scientist 'G' (Retired),
Senior Citizen (Group 'A')
DRDO, Ministry of Defence,
Aged about 61 years,
S/o Late Shri Om Prakash,
R/o 231, Kailash Vihar,
Near Income Tax Office,
City Centre, Gwalior-474011, M.P.

... Applicant

(By Advocate: Sh. Suresh Sharma)

VERSUS

1. Secretary,
Ministry of Defence,
South Block, New Delhi-110011.
2. Director General, DRDO
DRDO Bhawan,
Rajaji Marg, New Delhi-110011.
3. Director,
Defence R&D (Establishment),
Jhansi Road, Gwalior-474002 (MP).
4. The DCDA,
O/O AO, R&D,
Ministry of Defence,
C/o ADRDE, in front of MES
Inspection Bungalow, Agra Cantt., UP.

... Respondents

(By Advocate: Sh. Satish Kumar)

ORDER

The applicant joined DRDO as Scientist-C on 23.09.1988. He got various promotions and reached to the level of Scientist-G in the pay scale of PB-4 plus Grade Pay Rs.10,000/-. It is submitted that Disciplinary Enquiry (DE) was initiated against the applicant on 22.04.2015. Thereafter he superannuated on 31.12.2017. Pension was sanctioned to him vide order dated 29.12.2017. It is pleaded by the applicant that it was normal pension and not provisional pension, which is normally the case if disciplinary proceedings are pending. No order was passed by the competent authority to continue the said DE beyond superannuation.

Since by default, it was a regular pension, leave encashment sanction was also to be issued in terms of Rule 39 (2) of CCS (Leave) Rules, 1972, which has not yet been issued by the respondents. For such withholding of leave encashment, competent authority is required to pass an order under Rule 39 (3) of 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.”

Applicant contacted the concerned office and also issued a legal notice dated 30.07.2018 for payment of leave encashment, CGEGIS, gratuity and commutation of pension. This was not agreed. It is submitted that no hearing has taken place in disciplinary proceedings after 31.12.2017 when applicant superannuated.

2. He relies upon a judgment of Hon’ble High Court of Delhi titled **Government of NCT of Delhi vs. S.K.Srivastava**, WP(C) No.1186/2012 decided on 29.02.2012. In this case, Sh. S.K.Srivastava was under suspension at the time of his retirement on 31.12.2000. He was not paid leave encashment. This was paid in 2011. He was denied interest for such delayed payment of leave encashment. He preferred OA No.2861/2010 which was allowed vide order dated 25.03.2011. The respondents – Government of NCT of Delhi filed writ against this decision, and relied upon Rule 39 (3) of CCS (Leave) Rules, 1972 (para 1 supra). Hon’ble High Court observed as under:

“2. 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.”

Finally, the writ was dismissed and the decision of the Tribunal was upheld and direction was given to the department to pay interest if leave encashment was not released without any reason.

3. Applicant also pleaded that CGEGIS is not a terminal benefit and this has also not been paid even though relevant rules provide that “no Government dues can be recovered from the accumulation except the amount claimed by the financial institution as due from the employee on account of loans taken for house building purpose”, in accordance with DOP&PW OM dated 05.10.1999.

4. It was pleaded that leave encashment and CGEGIS are not retiral benefits and these cannot be withheld on the ground of pending DE or criminal case. No authority has come to a conclusion either that certain amount may become recoverable as a result of finalization of DE or that these amounts be withheld. Applicant relied upon the following judgments:

- (a) **I.Yesudanam vs. Union of India**, OA No.2281/2009 decided on 08.01.2010 by Principal Bench of this Tribunal.
- (b) **A.K.Bindal & anr. vs. Union of India & ors.**, TP (Civil) 8 of 2000
- (c) **DTC vs. DTC Mazdoor Congress**, (1990) Supp 1 SCR 142.

5. The applicant also relied upon judgment dated 11.12.2018 by Hon'ble High Court of Delhi in WP(C) No.9394/2017 (**Government of NCT of Delhi vs. Prem Nath Manchanda**). Sh. Prem Nath Manchanda was issued a major penalty charge sheet on 27.08.2010 as CBI has already registered a case against him in the year 2010. He superannuated on 31.08.2010. Since criminal case by CBI as well as DE was pending, only provisional pension was granted. Payment of leave encashment was ordered on 21.04.2015, at the direction of the Public Grievances Commission. It was paid but without any interest for the delay despite his representation dated 11.05.2015 to this effect. He preferred OA No.3422/2015 wherein department was directed on 15.09.2015 to consider the representation and pass appropriate orders.

The interest was denied on the plea that CCS (Leave) Rules, 1972 have no provision for interest. Sh. Prem Nath Manchanda filed another OA 3918/2015 seeking direction to respondents to pay interest. This was allowed vide order

dated 31.01.2017. This order was under challenge in this writ.

Govt. of NCT of Delhi pleaded that there was no provision of interest in CCS (Leave) Rules, 1972 and the respondent was involved in a serious scam relating to a housing cooperative society when he was posted as Assistant Registrar and criminal case as well as DE were pending at the time of his superannuation. Therefore, neither leave encashment was released nor is any interest due.

Hon'ble High Court gave following directions vide orders dated 11.12.2018:

“7. In so far as, the plea of the petitioners that serious cases were pending against the respondent and, therefore, the leave encashment was not released is concerned, the same has no merit either. Although neither the petitioners nor the respondent have been able to throw any light on the status of the criminal and disciplinary proceedings as of today, however, if this was the reason for withholding the leave encashment then the same status continues perhaps even today. The reason given for releasing the leave encashment in 2015 is an order passed by the Public Grievances Commission. We fail to understand that if the petitioners were withholding the leave encashment due to pending proceedings then they had the remedy of not implementing the order of the Public Grievances Commission. However, having complied with that order and released the leave encashment, the petitioners cannot be heard to say that the leave encashment was withheld due to pending proceedings. Learned tribunal has, thus, rightly come to conclusion that the respondent deserves interest at the GPF rate for the delayed payment of leave encashment.”

7. In keeping with above rulings, applicant has sought a direction in the instant OA to release leave encashment and CGEGIS amounts with interest.

8. Per contra, respondents opposed the OA. It was pleaded that a major penalty charge sheet, in consultation with Central Vigilance Commission (CVC), was issued on 22.04.2015. The charge was in relation to his working as Principal Investigator for project No.LIC-18, wherein he did not include the vital clause of establishing a testing facilities at the work premises of vendor in the agreement dated 06.04.2011, even though such a provision was included in the project statement prepared by him earlier and which was approved also by competent authority. Cost for such testing facilities was also not deleted from the contracted amount. As a result, payment of Rs.51.85 lakhs got released to the vendor without execution of compatible services by the firm. Thereafter, he was also instrumental in releasing Bank Guarantee of Rs.37.27 lakhs to the vendor. This lead to huge losses.

8.1 In this case, CVC had also observed that the omission and commission of the suspected official amounts to serious criminal misconduct and the case may be referred to CBI for ascertaining criminal liabilities.

9. Respondents relied upon Hon'ble High Court of Delhi order in WP(C) 8762/2015 (**K.P.Sharma vs. Union of India**). In this case Sh. K.P.Sharma superannuated on 31.07.2008. He was being prosecuted in two criminal cases on the date of superannuation. Apart from this, DE was also pending. Since he was not clear from vigilance angle, he was issued provisional pension and his terminal benefits – DCRG, leave encashment and commutation of pension were withheld. He filed OA No.1559/2014 which was disposed of on 07.05.2014 with a direction to the respondents to take a final decision within four weeks.

9.1 The respondents passed order dated 05.06.2004 wherein terminal benefits were withheld under Rule 39 (3) of CCS (Leave) Rules, 1972 and Rule 4 of CCS (Commutation of Pension) Rules, 1981. Applicant was aggrieved with this order and filed another OA No.354/2015 before the Tribunal which was dismissed. Applicant preferred a writ before Hon'ble High Court. The observation and decision of the Hon'ble High Court are as under:

“10. The short point which comes up for consideration before this court is whether the respondents are entitled to withhold the terminal benefits of the petitioner when departmental proceedings are still pending against him.

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14. Therefore, we reject the argument urged on behalf of the petitioner that if disciplinary proceedings are

initiated, yet entitlement to withhold the terminal benefits of pension and gratuity can only arise after the final order of departmental authorities or final orders in the judicial proceedings. As already held above, withholding can take place on institution of disciplinary proceedings, though recovery or permanent non-payment of the complete pension and gratuity amounts can take place after passing of the final orders of the departmental authorities or by a civil court holding the employee guilty of causing pecuniary loss to the petitioner.

15. With regard to the issue of leave encashment amount payable on retirement is concerned, the language of Rule 39(3) does not provide that on institution of departmental proceedings the department can withhold leave encashment amount after retirement of a person. By its very language, **sub-Rule (3) of Rule 39** of the leave rules applies only when proceedings are instituted by issuing of a charge-sheet prior to the retirement of a person. Since in the present case charge-sheet has been issued prior to retirement, there is continuation of disciplinary proceedings which were started before the retirement of the employee, and therefore, leave encashment amount can be withheld by the department.

16. After perusing the above mentioned Rules we are of this considered view that the respondents are entitled to withhold gratuity, leave encashment and commutation of pension of petitioner till the final orders of departmental enquiry. Thus, there is no infirmity found in the judgment of the Central Administrative Tribunal; resultantly the writ petition is dismissed.”

10. It was pleaded that the case of **S.K.Srivastava** (supra), relied upon by applicant is not applicable as instant case is still under investigation by CBI.

11. Respondents also mentioned that CGEGIS amount has since been paid to the applicant.

12. The applicant did not prefer any rejoinder. Therefore, matter relating to leave encashment has been taken up for adjudication.

13. Matter has been heard at length. Sh. Suresh Sharma, learned counsel represented the applicant and Sh. Satish Kumar, learned counsel represented the respondents.

14. The instant case is one where a charge sheet has been issued against the applicant and the imputation is that specific amount of excess payment to a vendor has taken place. Common prudence in such a situation suggests that the possibility of certain recoveries, being ordered as a punishment, cannot be ruled out when the charge is finalised. Therefore, the ratio of relied upon judgment **Prem Nath Manchanda** (supra) is not attracted.

It is for a situation of this kind only that provision has been made in Rule 39 (3) of CCS (Leave) Rules, 1972. Even if the competent authority has not yet passed an order to this specific effect of withholding the amount, this Tribunal does not consider it a fatal deficiency in view of specific imputation in the charge sheet.

Withholding of leave encashment is thus, held to be in accordance with Rule 39 (3) of CCS (Leave) Rules, 1972. Accordingly, there is no question of payment of interest on this amount till the pending cases are finalised.

15. The plea of the applicant is that while sanctioning his pension, since it was not mentioned that this is provisional

pension, it has to be treated as a normal pension. This is not acceptable in view of facts of this case, as brought out above, where DE is pending. Moreover, the PPO issued also has an item showing "Nature of Pension" where entry made is "Disciplinary".

16. Accordingly, the pleas of the applicant are not finding acceptability. OA is dismissed being devoid of merit. Respondents shall pass an appropriate order regarding leave encashment amount, within two months of finalising relevant cases, under advice to applicant. However, applicant has liberty to approach the Tribunal, if some grievance subsists after receipt of the same. No costs.

(Pradeep Kumar)
Member (A)

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