



2025:DHC:76-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 26/2025 AND CM APPLs.63-65/2025

DELHI POLICE THROUGH COMMISSIONER OF POLICE
AND ANRPetitioners

Through: Mr. Ashish K. Dixit, Central
Govt. Standing Counsel with Mr. Shivam
Tiwari, Ms. Urmila Sharma, Ms. Deepika
Kalra and Ms. Venni Kakkar, Advs.

versus

OM PRAKASHRespondent

Through: Mr. B.S. Jarial, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT (ORAL)

07.01.2025

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C. HARI SHANKAR, J.

1. The respondent was recruited as Head Constable in the Delhi Police. While he was working as Constable, FIR 764/1980 was registered against him under Sections 302/34 and 330/34 of the Indian Penal Code, 1860¹. He was convicted by the learned Session Judge by judgment dated 2 February 1993 and awarded life imprisonment. Successive appeals, thereagainst, before the High Court and the Supreme Court failed.

2. Invoking proviso 2 to Article 311 of the Constitution of India,

¹ the IPC



the respondent was dismissed from service *vide* order dated 4 January 2007. He appealed against the said order. The appeal was dismissed by the appellate authority on 9 August 2007.

3. Aggrieved thereby, the respondent approached the Central Administrative Tribunal, Principal Bench², by means of OA 1755/2007. The Tribunal, *vide* judgment dated 18 December 2007, set aside the order of dismissal and directed that the respondent be reinstated in service from the date of his dismissal from 4 January 2007. In the interregnum, the respondent retired from the service on 31 May 2008.

4. In compliance with the order dated 18 December 2007 passed by the Tribunal in OA 1755/2007, the respondent was reinstated in the service *vide* order dated 27 September 2009, w.e.f., 4 January 2007. He was, therefore, deemed to have superannuated on 31 May 2008.

5. Consequent on dismissal of the SLP challenging the conviction and sentence imposed on the respondent, by the Supreme Court, on 16 December 2015, the petitioners instituted proceedings under Rule 9 of CCS (Pension) Rules, 1972, for withholding his pension and gratuity. The proceedings were initiated *vide* chargesheet dated 21 September 2015. These proceedings culminated in an order dated 20 June 2017 passed by the disciplinary authority, withholding the entire pension and gratuity payable to the respondent.

6. The withholding of the respondent's pension and gratuity was



2025:DHC:76-DB



apparently challenged by the respondent before the Tribunal, but unsuccessfully.

7. As the respondent's leave encashment had not been disbursed to him, the respondent instituted OA 1939/2021 before the Tribunal. During pendency of the OA, the petitioners disbursed the respondent's leave encashment on 22 September 2021.

8. By the presently impugned judgment, the Tribunal has directed the petitioners to pay interest for the delay in disbursing of the respondent's leave encashment from 31 May 2008 till the date when the leave encashment came to be paid, at GPF rates.

9. Aggrieved thereby, the Delhi Police has instituted the present writ petition before this Court.

10. We have heard Mr. Ashish Dixit, learned Central Govt. Standing Counsel for the petitioners and Mr. Jarial, learned Counsel for respondent at some length.

11. Mr. Dixit emphasises the seriousness of the allegations against the respondent and submits that a person such as the respondent would not be entitled to any discretionary relief under Article 226 of the Constitution of India. He submits that the Tribunal is also, therefore, not justified in directing payment of interest to the respondent for the delay in disbursal of his leave encashment benefit. Mr. Dixit points out that, on the due date of respondent's superannuation, he already

² "the Tribunal" hereinafter



2025:DHC:76-DB



stood dismissed from service and it was only subsequent thereto that the Tribunal, by order dated 18 December 2007, set aside the dismissal and directed his reinstatement.

12. Having heard learned Counsel for both sides, we are of the opinion that no occasion arises for us to interfere with the decision of the Tribunal. There is no reasonable justification for the delay in release of the respondent's leave encashment benefits at least from 27 September 2009, till the benefits ultimately came to be released on 22 September 2021. This period of 12 years remains unexplained.

13. The allegations against the respondent in the criminal case which was instituted are entirely foreign to his entitlement to leave encashment. Those allegations constituted subject matter of disciplinary proceedings instituted against the respondent under the second proviso to Article 311 of the Constitution of India, which ultimately resulted in his dismissal from the service, and upholding of the said decision by the Tribunal and by this Court.

14. On the basis of the said decision, the respondent's pension and gratuity were withheld, and the respondent has fairly not chosen to challenge the said decision.

15. Those considerations, however, are foreign to the aspect of leave encashment. The circumstances in which leave encashment can be withheld are limited to Rule 39(3) of the Central Civil Service (Leave) Rules, 1972 which reads thus:



“39. Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service:

(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.”

16. As such, the only circumstance in which leave encashment can be withheld is if, on the date when the employee retires from service, he is under suspension, or disciplinary or criminal proceedings are pending against him and, in the view of the Disciplinary Authority, there was a possibility of money being recovered from him on conclusion of the said proceedings.

17. The Tribunal has held that, therefore, before leave encashment could be withheld, a conscious decision had to be taken by the authority concerned that, on the conclusion of the disciplinary proceedings which were pending against the employee on the date of his retirement, there was a possibility of money being recovered from him. No such decision was taken in the present case and, therefore, there was no justification to withhold leave encashment.

18. We have had occasion, recently, to examine a similar dispute in *GNCTD v Anang Pal Singh*³ in which we reiterated the principle

³ 2024 SCC OnLine Del 7704



thus:

“16. Apropos leave encashment, the only provision under which leave encashment can be withheld, in whole or in part, is contained in Rule 39(3) of the CCS (Leave) Rules. The said sub-Rule applies *only where there are disciplinary proceedings or criminal proceedings pending against the officer on the date of his retirement*. In such a situation, the competent authority is entitled to withhold leave encashment in whole or in part if in his view there is possibility of some money becoming recoverable from the employee concerned *on conclusion of the proceedings against the officer.*”

19. In any event, there was no justification for the petitioner holding onto the respondent’s leave encashment for twelve years between 29 September 2009 and 22 September 2021 when the leave encashment was ultimately released.

20. Though Mr. Dixit sought to contend that there is no provision in the rules which provides payment of interest on delayed release of leave encashment, that aspect stands covered by the judgment of the Supreme Court in *S.K.Dua v State of Haryana*⁴ in which the Supreme Court has held that, even if there is no statutory provision for payment of interest on delayed disbursement of retiral dues, the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, is entitled to direct payment of such interest. The Tribunal exercises the same jurisdiction as was earlier exercised by the High Court under Article 226 of the Constitution of India and, therefore, the principles in *S.K.Dua* would apply *mutatis mutandis* to the power of the Tribunal to award interest in an appropriate case.

21. We, for all the aforesaid reasons, find no reason to interfere



2025:DHC:76-DB



with the decision of the Tribunal directing payment of interest to the respondent at GPF rate for the delay in disbursement of his leave encashment. However, we clarify that the interest would be liable to be computed from 27 September 2009, which was the date on which the order reinstating the respondent in service was passed.

22. Subject to the aforesaid limited modification, the impugned order of the Tribunal is upheld.

23. The writ petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

AMIT MAHAJAN, J.

JANUARY 7, 2025

dsn/p

Click here to check corrigendum, if any

⁴ (2008) 3 SCC 44