

# **HIGH COURT OF JAMMU AND KASHMIR**

AT JAMMU

SWP no. 1657/2012, CMA no. D-2531/2012

c/w

SWP no. 2960/2010

Date of order: 16.04.2013

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UOI and anr.	v.	Central Administrative Tribunal and anr.
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## **Coram:**

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice**  
**Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge**

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## **Appearing counsel:**

For the petitioner(s) :	Mr. Ajay Sharma, CGSC.
For the respondent(s) :	Mr. Anil Mahajan, Advocate.

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| 1) | Whether approved for reporting<br>in Press/Media | : | Yes/No |
| 2) | Whether to be reported in<br>Digest/Journal      | : | Yes/No |
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## **M. M. Kumar, CJ**

1. The Union of India and its officers have preferred the instant petition against order dated 18.10.2011 rendered by the Central Administrative Tribunal Chandigarh Bench (for brevity the Tribunal) whereby directions have been issued to the applicants to pay all retiral benefits like gratuity amounting to Rs.1,98,000/-, leave salary Rs.1,20,000/- and balance amount of GPF Rs.65,000/-.

2. The Tribunal has recorded its finding that in the criminal case before the Court of Special Judge Anticorruption, Jammu, the original applicant stands

acquitted vide order dated 30.04.2010. It is appropriate to mention that in the departmental enquiry also the original applicant-respondent was exonerated. However a disagreement note was prepared. Thereafter an adverse order was passed and challenged before the Tribunal. The Tribunal in OA no. 480-JK of 2008 held on 13.05.2010 that considerable time had elapsed and, therefore, there was no justification on the part of competent authority in withholding the claimed retiral benefits. Taking up the individual items, the Tribunal proceeded to opine that the amount of leave salary could not be withheld because it is earned by the employee by working on the days when he could have availed leave. It is in other words, salary in lieu of the unutilized period of permissible leave period. Accordingly, the balance in his GPF account by all means belongs to him and its disbursement could not have been denied on account of pendency of any matter whatsoever. Even gratuity could not have withheld for a long period because the original applicant-Ujjagar Singh Talwar had superannuated from service on 28.02.2003. The direction issued by the Tribunal would be obvious from reading of paras 8 and 9 which are as under:-

“8. There is no dispute that the applicant would be entitled to draw pension from the department from which he retired. As already noticed, the competent authority had earlier imposed 10% cut on his pension. Even if that order were to be ultimately reiterated, the applicant would still be entitled to larger part of the pension. If on the culmination of the departmental proceedings, a penalty comes to be imposed upon the applicant, the recovery thereof would always be possible from the monthly pension payable to him. If the competent authority was inclined to withhold the benefits, whether on the strength of the indicated rules or otherwise, it ought to have granted an order to that effect. It is apparent from a perusal of the counter that no order directing withholding of the retiral benefits had been granted by the competent authority. It is just not done in the departmental dispensation. The retiral benefits are not a bounty for a retired employees. He is entitled to every bit of it unless, of course, the denial thereof – in entirety or in part, comes about by means of an order granted by an authority competent in the relevant behalf. In the absence of the order authorizing withholding of retiral benefits, the denial of those benefits should be foreign to the system of administrative justice.

9. We would, accordingly, allow the O.A. and direct the respondents to release the above mentioned retiral benefits to the applicant within 15 days from the date a certified copy of this order is presented in the office of the competent authority. The applicant shall also be entitled to interest, at the rate of 9% from the date of retirement till those benefits come to be disbursed in actuality.”

3. When the matter came up for consideration before this Court on 05.03.2013, a detailed order was passed observing that the original applicant shall be paid interest on the delayed payment of leave encashment taking the due date of payment as 28.02.2003. The part of the amount of leave encashment was paid in the

month of July, 2012. Likewise, the amount of GPF was to be refunded because before the Tribunal, the petitioner had taken a stand that the amount was refundable to the original applicant. The amount was to bear interest @ 9% from the date it was payable till the date it is paid. Similarly, directions have been issued in respect of Death-Cum-Retirement Gratuity. According to the affidavit filed by the officers of the Department, the amount under the aforesaid caption has been worked out to the tune of Rs.1,74,306/- which was to be paid after the final decision of the competent authority. A direction was issued that the balance amount be paid by imposing cut off 10% in the monthly pension that was to run for a period of five years which came to an end on 28.02.2008. The same was to bear interest @ 9% and the petitioners were granted four weeks time.

4. At the time of hearing, Mr. Ajay Sharma, learned counsel for the appellants has submitted that the GPF with interest works out to be Rs.1,50,800/- and a cheque no. 222213 dated 15.04.2013 drawn on the State Bank of India, Jammu, in that regard, has been handed over to the original applicant in the Court. On account of leave encashment interest @ 9% works out to be Rs.89,685/-

and a cheque no. 222690 dated 13.04.2013 drawn on the State Bank of India in favour of the original applicant has also been handed over to him in the Court. Likewise, a cheque no. 222789 dated 15.04.2013 representing the sum of Rs.76,789/- has also been handed over to Mr. Ujjagar Singh Talwar who is present in the Court. Similarly, cheque no. 222791 dated 15.04.2013 for sum of Rs.1,61,313/- on account of interest @ 9% has also been handed over to the original applicant. A photocopy of each of the cheque has been kept on record alongwith communication dated 15.04.2013 sent by the Sr. Superintendent of Post Offices, Jammu Division, Jammu.

5. We have also heard the learned counsel.

6. It has come on record that the original applicant stands retired from service on 28.02.2003 and 10% cut out on his pension was imposed for a period of five years which has already been recovered. There is no other serious matter pending against the original applicant which may warrant withholding of any retiral benefits. Therefore, we are of the considered view that the Tribunal has correctly exercised the jurisdiction by directing the release of retiral benefits to the original applicant alongwith interest. There has been no justification for the

petitioners to delay the payment of retiral benefits. Accordingly this writ petition fails and the same is dismissed.

**SWP no. 2960/2010**

This petition has been filed by the appellants against the order dated 13.05.2013 passed by the Tribunal holding that the disagreement memo on the findings recorded by the Enquiry Officer has not been taken to its logical end, inasmuch as, before the receipt of representation of the delinquent employee, the Sr. Superintendent of Post Offices has already made up his mind and recorded finding of proving Charge No. 1. On the basis of the view taken by Hon'ble the Supreme Court in the case of ***Punjab National Bank & ors. v. Shri Kunj Bihari Misra JT 1998 (5) SC 548***, the Tribunal took the view that the findings on the basis of disagreement memo were not sustainable and proceeded to set aside those findings. The Tribunal also recorded a finding that the Court of Special Judge Anticorruption, Jammu in its judgment dated 30.04.2010 has already acquitted the original applicant. On the basis of the aforesaid view, the order passed by the Sr. Superintendent of Post Offices, Jammu was set aside by

remanding the matter to Sr. Superintendent of Post Office, Jammu to re-examine the entire matter afresh after taking into consideration the representation, if any, that might have been filed by the original applicant.

7. We have heard learned counsel for the parties and are of the view that no interference in the order of remand would be warranted because the matter has been remanded back to the Sr. Superintendent of Post Offices, Jammu to examine the matter afresh after taking into consideration the representation made by the original applicant and then record its findings. There is no legal infirmity in the view taken by the Tribunal as the same is fully supported by the judgment of Hon'ble the Supreme Court in the *Kunj Bihari's case* (supra). Accordingly, the writ petition is devoid of merit and is thus liable to be dismissed.

7. As a sequel to the above discussion, this writ petition fails and the same is dismissed.

**(Dhiraj Singh Thakur)**  
**Judge**

**(M. M. Kumar)**  
**Chief Justice**

**Jammu,**  
**16.04.2013**  
**Parshant**