HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-22369-2022 (O&M)
Decided on 25.03.2026

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Jaswinder Singh ... Petitioner

VS.

Union of India & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. SS Khaira, Advocate for the petitioner

Ms. Archana Vashisht, Advocate for
Mr. Gaurav Pathak, Sr.Panel Counsel for the respondents

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<u>Sandeep Moudgil, J.</u>

(1). The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondents to release the benefit of leave encashment along with accrued interest to the petitioner.

<u>Brief Facts</u>

(2). The petitioner, an ex-serviceman, served the Indian Army from 13.02.1979 to 28.02.2007, and was thereafter appointed as Security Assistant in CSIR-CSIO, Chandigarh on 23.06.2008, from where he retired on 30.11.2020. Despite a clear CSIR clarification dated 02.08.2011/20.08.2011 (Annexure P-3) that leave encashment on retirement from CSIR is in addition to leave encashment already availed from previous Government service, and despite similarly situated ex-servicemen like Sh. Yograj Singh having been granted full 300 days leave encashment, the petitioner's case was kept pending with repeated references to CSIR Hqrs., and leave encashment of 290 days EL + 10 days Half Pay Leave (HPL) was sanctioned only vide OM dated 22.12.2022 and paid on 29.12.2022, giving rise to the present challenge on grounds of arbitrariness, discrimination and delayed payment of retiral dues.

Contentions of the Petitioner

(3). Learned counsel for the petitioner contends that the petitioner's case is squarely governed by letter/clarification dated 02.08.2011/20.08.2011 (Annexure P-3) issued by the Central Scientific Instrument Organisation (CSIR) which explicitly provides that encashment of Earned Leave on retirement from CSIR shall be in addition to the leave encashment already availed from the previous Government department, and that leave encashment already received at the time of absorption is not to be linked with the encashment payable on retirement and being absorbed in CSIR-CSIO in 2008, the petitioner is entitled to full and independent leave encashment in CSIR up to 300 days, without any deduction on account of his Army service.

(4). He further submits that DoPT OM No. 14028/1/2017-Estt.(L) dated 27.06.2017, which allows re-employed pensioners leave encashment up to a maximum of 300 days including the period for which encashment was allowed at the time of retirement, pertains to Central Government employees re-employed in Central Government, and, in any case, cannot dilute the more beneficial and specific CSIR policy for autonomous bodies/absorbed employees

(5). It is urged that the respondents themselves have followed this beneficial interpretation in the case of similarly placed ex-servicemen, including Sh. Yograj Singh, who was granted full 300 days leave encashment, and therefore denial of equal treatment to the petitioner violates Article 14 of the Constitution of India and as such, the alleged ground of non-furnishing of details of past leave encashment is stated to be illusory, since the respondents could have obtained such information from official records, and in any event, internal data collection cannot justify withholding or delaying a vested retiral benefit and the two-year delay in sanction and payment i.e. from 30.11.2020 to 29.12.2022, according to the petitioner, is wholly unjustified, which thus entitles him to interest on delayed payment and to correction of any shortfall so that he gets the same benefit of 300 days as other similarly situated ex-servicemen.

Contentions of the Respondents

(6). Short reply dated 24.01.2025 has been filed by the respondents wherein it has been averred that the petitioner, after serving in the Army from 13.02.1979 to 28.02.2007, joined CSIR-CSIO on 17.06.2008 and retired in November 2020, and that, in view of DoPT OM No. 14028/1/2017-Estt.(L) dated 27.06.2017, a re-employed pensioner can be granted leave encashment only up to a maximum of 300 days including the period for which encashment was allowed at the time of previous retirement and therefore, it was necessary to ascertain from the petitioner the number of days of leave encashment already availed in the Army, for which OM dated 18.11.2020 was issued. According to them, the petitioner failed to provide the required information, compelling CSIR-CSIO to refer the matter to CSIR Hqrs. vide letters dated 07.12.2020 and 20.04.2021 and subsequent reminders, and hence no mala fides or deliberate delay can be attributed to the respondents.

(7). He further argued that after due examination, the competent authority at CSIR Hqrs. communicated its decision vide letter No. 4-10(27)/2021-HR-II dated 25.11.2022, pursuant to which CSIR-CSIO issued

OM dated 22.12.2022 sanctioning encashment of 290 days Earned Leave and 10 days of HPL, and the amount was duly credited to the petitioner's bank account on 29.12.2022, thereby satisfying his claim for leave encashment in full. On this basis, it is contended that no further amount is due, and that the writ petition has become infructuous and merits dismissal.

Analysis

(8). From the undisputed material on record, it is evident that CSIR's own clarification dated 02.08.2011/20.08.2011 (Annexure P-3) declares that leave encashment availed at the time of absorption in a Central Autonomous Body/PSU is not to be linked with the encashment payable by the autonomous body/PSU on retirement, and that encashment of Earned Leave on retirement from CSIR service is in addition to the leave encashment already availed from the previous Government department, which position is also consistent with later CSIR policy clarifications reading DoPT OM 27.06.2017 as applicable only to re-employment in Central Government and not to re-employment in CSIR as an autonomous body.

(9). The beneficial nature of this clarification and the parity granted to other similarly situated ex-servicemen such as Sh. Yograj Singh, who received full 300 days leave encashment, make it clear that the petitioner too ought to have been extended similar treatment and any attempt to rely on the 2017 DoPT OM to curtail or postpone this benefit runs contrary to CSIR's own binding instructions and offends the equality mandate of Article 14 of the Constitution.

(10). Further, the two-year delay between the petitioner's retirement on 30.11.2020 and the sanction/payment of leave encashment on 22.12.2022 /

29.12.2022 has not been satisfactorily explained. The plea that the petitioner did not furnish information regarding his earlier leave encashment cannot justify withholding a retiral benefit which the respondents were otherwise bound to compute and pay promptly, particularly when they had access to official records and chose instead to keep the matter pending under the guise of "clarification". Retiral dues are not a matter of grace but of right, and unjustified delay in their disbursement warrants award of interest, while differential treatment vis-à-vis similarly placed ex-servicemen warrants correction by directing parity in computation up to 300 days wherever a shortfall is found.

(11). Insofar as the delay in release of leave encashment is concerned, the petitioner retired on 30.11.2020, whereas his leave encashment was sanctioned only on 22.12.2022 and released on 29.12.2022. Courts have consistently held that retiral dues, including leave encashment, once earned, are a vested monetary right and cannot be arbitrarily withheld, and that unjustified delay in their disbursement entitles the employee to interest as compensatory relief. The Bombay High Court, in ***Dattaram Atmaram Sawant & Anr. v. Vidharbha Konkan Gramin Bank, W.P. No. 12161/2019***, held that leave encashment is akin to salary and, once earned, constitutes the employee's property, and directed the employer-bank to pay the due leave encashment along with interest @ 6% per annum, deprecating any attempt to deprive an employee of pension, gratuity or leave encashment in the absence of statutory authority.

> *"Leave encashment is akin to a salary, which is property. Depriving a person of his property without any valid statutory provision would*

violate Article 300A of the Constitution of India. Leave encashment paid on account of unutilised leave is not a bounty. If an employee has earned it and the employee has chosen to accumulate his earned leave to his credit, then encashment becomes his right. The Hon'ble Supreme Court, in the case of the State of Jharkhand and Others, held that a person could not be deprived of his right to pension without the authority of law, which is the constitutional mandate enshrined in Article 300A of the Constitution of India. The Supreme Court, in the case of ***D.S. Nakara and Others v. Union of India, (1983) 1 SCC 305****, has established the legal position that pension is a statutory right, not subject to the whims of the authorities, but is governed by statutory rules. In the case of Jitendra Kumar Srivastava, the Apex Court emphasised that the right to property cannot be infringed upon without due process of law. Thus any attempt to deprive an employee of pension, gratuity, or leave encashment without a statutory provision, is untenable."*

(12). Accordingly, this writ petition is allowed and the respondents are directed to release the interest on the amount of leave encashment @ 6% p.a., calculated from the date on which the said benefits became due i.e. 30.11.2020 up to the date of actual realization. Such payment shall be made expeditiously and in any case within a period of *2 months* from the date of receipt of a certified copy of this order.

(13). The respondents are further directed to ensure that no undue delay occurs in the disbursement of the said amount, and that the interest is calculated in accordance with the above directions.

(14). Pending application(s), if any, stands disposed of.

25.03.2026
V.Vishal

(Sandeep Moudgil)
Judge

*1. Whether speaking/reasoned? : **Yes/No***
2. Whether reportable? : Yes/No