COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1746/2024

Ex LAC Sadasukh Bishnoi ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Durgesh Kumar Sharma, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

WITH

OA 3524/2023 with MA 4738/2023

Ex LAC Ishwar Singh Rawat ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Rakesh Kumar Singh, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Aggrieved by the action of the respondents in not permitting the applicants to avail leave encashment on account of their dismissal from service, they have invoked the jurisdiction of this Tribunal by filing the above OAs under Section 14 of the Armed Forces Tribunal Act, 2007. As the questions of law involved and the facts are similar both applications are being disposed of by this common order.

2. The applicant in OA No. 3524/23 was enrolled in the Indian Air Force in the trade of Auto Technician on

30.12.2009. For being absent without authorization during various periods, he was tried by a District Court Martial (DCM) on charges of absence without leave, an offence under Section 39(a) of the Air Force Act, 1950. The DCM concluded its proceedings on 26.02.2021 and found the applicant guilty of being absent from duty during the period between 09.09.2019 and 04.09.2020. He was sentenced to undergo detention for three months, reduction in rank and dismissal from service.

3. Similarly the applicant in OA 1746/24 was enrolled in the Indian Air Force on 19.12.2001 and was posted in different Compact Areas during his tenure. Based on an anonymous complaint received on 07.11.2016, and in view of three charges levelled against him a DCM was conducted. He was found guilty of the charges in the trial proceedings and was dismissed from service. On the ground of dismissal from service the claim of the applicant for leave encashment was denied to him which prompted him to approach this Tribunal. The allegation against the applicant in the anonymous complaint pertained to the killing of a Chinkara (deer) and action was taken based on that offence.

4. In the facts and circumstances of the case the only issue that arises for our consideration in both these cases is whether on account of dismissal from service the applicants are entitled to leave encashment or not.

5. The respondents have not filed any counter affidavit. However, it was argued on their behalf that in view of the policy laid down in the Ministry of Defence (MoD) letter dated 20.08.1990, leave encashment is not permitted for persons dismissed from service on disciplinary grounds. Therefore in both these cases leave encashment was denied to the applicants.

6. The issue of denial of leave encashment to an employee who has been dismissed from service on disciplinary grounds has been considered not only by this Tribunal in various cases but also by the Hon'ble Delhi High Court, the Hon'ble Punjab & Haryana High Court, the Hon'ble Guwahati High Court and the Hon'ble Supreme Court in a series of cases. Recently, a Coordinate Bench of this Tribunal considered this issue in OA (A) No. 3506/2024 decided on 10.03.2025. In that case too the matter concerned the settlement of dues of an employee

who had challenged his dismissal from service and the issue was whether leave encashment could be granted. The respondents relied on the policy dated 20.08.1990 and tried to justify their action in denying leave encashment. The Coordinate Bench, after quoting the provisions of the MoD policy letter in Para 6 of the order dated 10.03.2025, observed in Paras 7 and 8 as follows:

> *7. From the above, it is clear that officers, JCOs, and ORs who are compulsorily retired from service on disciplinary grounds are not entitled to encashment of their accumulated leave, unless the disciplinary authority has not imposed any reduction in pension or gratuity. However, nothing has been brought to our attention to indicate that the punishment imposed upon the applicant includes a reduction in his pension or gratuity. What was stated to us was that as the applicant has been dismissed from service, he is not entitled to pension or gratuity, and therefore, leave encashment cannot be granted to him. In our considered view, this reasoning is impermissible. The implication of this order is that if the punishment is of reduction in pension or gratuity then leave encashment will not be granted, this policy will not apply in the present case.*
>
> *8. Although we have, prima facie, doubts regarding the policy laid down in the Ministry's communication of 31.03.1983, we do not want to express any opinion on the same for now, as the issue before us pertains solely to whether a dismissed employee is entitled to leave encashment. Leave encashment is something an*

employee earns through the work performed by him, and it becomes his property. The issue has been settled by a Coordinate Bench of this Tribunal in OA 216/2013 titled Ex Maj V.S. Chauhan Vs Union of India and Ors., and the Division Bench of the Hon'ble Delhi High Court in Writ Petition (Civil) No. 495/2008 has laid down the following principles:

> *"The question of the application of the relevant regulations and circulars have been examined in depth and it has been held that even in cases where an officers has been dismissed from service, the amount by way of leave encashment would be admissible being akin to a right of property in terms of Article 300 A of the constitution of India. The issue is thus, no more Res integra."*

Thereafter, the Tribunal relied on the judgments of Coordinate Benches of this Tribunal in ***OA 166/2010 Maj A.K. Lall v. Union of India, OA 550/2014 Ex LAC Jayanarayan v. Union of India,*** and ***OA 685/2022 Ex Sgt Udhojee v. Union of India,*** and also took note of the judgments of the Hon'ble Delhi High Court and the Hon'ble Supreme Court in **State of Jharkhand v. Jitender Kumar (2013) 12 SCC** and ***H.* Channaiah v. Chief Executive Officer (2024 SCC Online Karnataka 54).** In Para 12, the Tribunal laid down the principle in the following terms:

> *"In light of the above, it is evident that the right to leave encashment is akin to a right of property earned through work performed, and it cannot be withheld unless there is a specific statutory provision prohibiting it. No such statutory rule or provision has been brought to our attention, and the only provision cited is the circular, which states that if there is a reduction in pension or gratuity, leave*

encashment shall not be granted. Even this proposition, in our view, is unsustainable, but we refrain from expressing an opinion on it at present".

7. From a combined reading of the above judgments, the consistent view of the Hon'ble Supreme Court, the High Courts and this Tribunal is that even in cases where an officer of the Armed Forces has been dismissed from service he is entitled to leave encashment which is a right akin to the right under Article 300A of the Constitution. This right cannot be curtailed or withheld by Circulars or Executive Instructions. The Hon'ble Supreme Court has held that the right to receive leave encashment is a constitutional right akin to the right to property and cannot be denied.

8. In view of the consistent view as in the aforementioned judgments we have no hesitation in holding that the dismissal of the applicants cannot be a ground for denying them the benefit of leave encashment, which is a constitutional right available to them under Article 300A of the Constitution.

9. Accordingly, we allow both the OAs, quash the impugned orders and actions of the respondents and direct the respondents to grant the benefit of leave encashment to both the applicants in accordance with their entitlement and settle their claims within two months from the date of receipt of a copy of this order. In

case the amount is not paid within the said two months, it shall carry interest at the rate of 8% per annum until payment is made.

10. Both the OAs stand allowed accordingly. However, there shall be no order as to costs.

11. Pronounced in open Court on this the 25 day of April, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/Jyoti/