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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP No.455/2002 in  
MA No.693/2002  
OA No.846/2002

New Delhi this the 29th day of January, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)  
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Chain Dass,~  
S/o Sh. Milkhi Ram,  
R/o B-112, Moti Bagah,  
New Delhi.
2. Mir Singh,  
S/o late Shri Nohwat Singh,  
R/o 46/2C, DIZ Aareas II,  
Gole Market,  
New Delhi-110 001.

-Petitioners

(By Advocate Shri G.S. Chaman)

-Versus-

1. Sh. Kanwal Sibal,  
Secretary,  
Ministry of External Affairs,  
Govt. of India, North Block,  
New Delhi.
2. Sh. Sohan Prakash,  
Regional Passport Officer,  
RPO, Trikoot No.3,  
Bhikaji Cama Place,  
New Delhi-110066.

-Respondents

(By Senior Counsel Shri N.S. Mehta)

O R D E R (Oral)

By Mr. Shanker Raju, Member (J):

Heard Shri G.S. Chaman and Shri N.S. Mehta,  
learned counsel for the parties.

2. Petitioners allege wilful and contumacious  
disobedience of an interim order passed on 1.4.2002 in  
OA-846/2002.

3. OA-846/2002 has been filed by  
applicants/petitioners, seeking quashment of orders passed  
by respondents and a direction to restrain respondents not  
to deduct revised military pension from their revised pay

on re-employment and also accord of financial benefits under the ACP Scheme. By way of an interim order it is sought that their retiral benefits be protected till the final disposal of the OA.

4. By an order dated 1.4.2002 respondents have been directed not to effect any recovery, but the other aspects are not touched. By referring to respondents' order passed on 15.3.2002, 18.4.2002 it is contended that a sum of Rs.48,196/- has been recovered as well as retirement gratuity amounting to Rs.56,188/-, leave encashment of Rs.29,800/- as well as gratuity of petitioner No.2 amounting to Rs.55,875/- have been withheld. According to Sh. Chaman Rule 71 (2) of CCS (Pension) Rules, 1972 prescribes that in the event any outstanding dues remain till the date of retirement of the government servant are adjusted against the retirement gratuity and the recovery would not be made if stay have been granted. In this backdrop it is stated that under no circumstance no recovery can be effected from commuted value of pension or leave encashment. He refers to Section 60 of the CPC.

5. On the other hand, learned Senior Standing Counsel, appearing for the respondents stated that a fresh OA filed by applicants (OA-846/2002) was received by respondent No.2 on 19.4.2002 along with court's order dated 1.4.2002 as well as an order passed by the court on 16.4.2002 where interim orders have been continued till 13.5.2002. As the recoveries of over payments have been effected from outstanding dues during March, 2002 prior to receipt of the interim order of this court, there is no contempt of the directions of this court.

6. It is stated that a sum of Rs.1,04,384/- was required to be recovered from the outstanding dues from applicant No.1, gratuity amounting to Rs.55,875/- and leave encashment Rs.29,800/- of applicant No.2 towards overpayment of more than Rs.1,00,000/- is withheld until final decision on the applicant and as per Rule 73 of the CCS (Pension (Rules) 172 in some cases an amount due from a person has to be written off on the ground that he is no longer in government service and, therefore, no recovery is possible. In this light of this, it is stated that in case of applicant No.1 outstanding amounts were available for recovery, as such recovery was effected before the stay orders have been received. In the event the case is finalised in favour of applicants outstanding amounts withheld will be released in their favour.

7. We have carefully considered the rival contentions of the parties and perused the material on record. The restraint order has been passed on 1.4.2002, directing not to give effect to the recovery, but before that, by an order dated 15.3.2002 a decision has been taken to recover the amount, as such in absence of any status quo being directed ante the recovery effect through letter dated 15.3.2002, by no stretch of imagination would constitute wilful, intentional or deliberate disobedience of this court. The matter is still sub-judice and as the pleadings are complete the same is to be finally disposed of. In the event applicants have any grievance they should raise it in the OA and any recovery effected would be subject to the final outcome of the OA.

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8. In the result, finding no wilful or contumacious disobedience of our directions, CP is dismissed. Notices are discharged.

9. Let OA be listed for P.F.N. on

20-2-2003 <sup>6</sup>

S. Raju  
(Shanker Raju)  
Member (J)

(Govindan S. Tampi)  
Member (A)

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