CENTRAL ADMINISTRATIVE TRIBUNAL,PRINCIPAL BENCH
NEW DELHI

(7)

O.A. No.1649 of 1998 decided on 9.2.1999

Name of Applicant : Shri K.D.Kaushal

By Advocate : Shri S.B.Upadhyay with Shri Ashutosh Bhattacharjee

Versus

Name of respondent/s: Union of India through the Defence Secretary,Min. of Defence & anr.

By Advocate : Shri S.M.Arif

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. -Yes/No

(N. Sahu)
Member (Admnv)
9.2.99

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1649 of 1998

New Delhi, this the 9th day of Feburary, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Shri K.D.Kaushal s/o late Sh.S.N.Kaushal,
r/o C-74,Duggal Colony,Devli Road,
Khanpur,New Delhi-110062. ....Applicant

(By Advocate: Shri S.B.Upadhyay with Shri Ashutosh Bhattacharjee)

Versus

Union of India, through

1. The Defence Secretary,
Ministry of Defence
South Block,DHQ PO
New Delhi-110 011.

2. The Chief Administrative Officer and
Joint Secretary(Training)
Ministry of Defence,
C-II Hutments, Dalhousie Road,
DHQ PO, New Delhi-110011. ....Respondents

(By Advocate: Shri S.M.Arif)

O R D E R (Oral)

By Mr. N.Sahu, Member(Admnv)

The relief prayed for in this Original Application is for a direction to the respondents to release the applicant's retiral benefits without deduction of any portion of the reimbursed amount of medical claim with interest at the rate of 18% since 31.8.1996 i.e. the date of retirement. This relief is claimed in the background of the following admitted facts.

2. The applicant superannuated on 31.8.1996 while he was working as an Assistant in the pay scale of Rs.1640-2900/-. He claimed reimbursement of medical expenses in respect of his son Shri Arun Kaushal from 1990 to 1993. The material claims are

mostly in the year 1990 and in the years 1992 and 1993. His son was treated admittedly for tuberculosis at the L.R.S. Institute of Tuberculosis and Allied Diseases, New Delhi. The reimbursement of Rs.68,950/- was made in this period and certain other amounts had been reimbursed in 1990. The total amount reimbursed to him was an aggregate of Rs.75,699/-. By an order dated 26.8.1996 the applicant was proceeded against under Rule 14 of the CCS(CCA) Rules, 1965 on the ground that he made a false declaration that his son Arun Kaushal was wholly dependent on him. He was charged with lack of integrity and was accused of conducting himself in a manner unbecoming of a Government servant, thereby violating Rule 3(1) (i) and (iii) of CCS(Conduct)Rules, 1964. The subject matter of the proceedings need not detain us. Eventually, by an order dated 8.9.1997 the disciplinary authority, who is respondent no.2 in this OA held that the charge on the applicant having made a false declaration that his son was dependent on him, was not sustainable. He arrived at this conclusion on the basis of the enquiry report submitted to him on 12.5.1997. I shall do no better than extract the findings of the enquiry report, which are absolutely material to the whole question at issue -

"(a) The affidavit dated 5.01.95 filed by the son in the court of Additional City Magistrate II, Agra declaring that he was in possession of a shop (for use as advocate's chamber), was not relied upon by the Court. Because the Site-Inspection

Report by Tehsildar Agra and Order dated 14.7.95 of City Magistrate, Agra produced by Shri KD Kaushal during the inquiry proceedings clearly brought out that initially Shri RB Tomar and later Shri AK Sharma and Shri MK Sharma were in possession of the Shop. In other words, Shri KD Kaushal's son was never in possession of the shop in Agra.

(10)

(b) There is no evidence that Shri KD Kaushal's son was deriving some income from any source or means. Though he was registered as an Advocate, he did not handle any case possibly due to his illness."

3. The disciplinary authority considered the enquiry report and dropped the main charge. He, however, stated as under -

> "NOW THEREFORE, the undersigned hereby orders that the disciplinary proceedings against the said Shri KD Kaushal, Assistant (Retired) are hereby dropped without prejudice to the administrative action for recovery of the amounts claimed by Shri KD Kaushal in r/o medical expenses of his son".

4. The learned counsel for the respondents made the following points in the counter affidavit -

(i) Respondent no.2 came to know that the applicant's son was in possession of shop no.4 adjacent to Lady Layall Hospital near Rajamandi, Agra, from 1986 till 1994. It was initially a Cold-drink shop converted subsequently into a Music Centre and eventually was converted into a Lawyer's chamber.

(ii) The learned counsel for the respondents submits that even though on the basis of the enquiry they came to the conclusion that the applicant's son was dependent on him, he having stayed in Agra, must be assumed to be earning independent income at the rate of Rs.500/- per month. Although admittedly, Ministry of Health OM No.B-12614/7/92-CGHS(P) dated 31.12.1993 has prospective effect that a son attaining the age of 25 years cannot be a subject matter of medical reimbursement irrespective of his dependency, yet, in an earlier circular of the DGHS if the son does not earn an amount of Rs.500/- per month, then only the dependency test would be satisfied and the medical reimbursement could be allowed. Shri Arif's contention is that the applicant's son having stayed in Agra must be presumed to have been earning Rs.500/- per month.

(iii) His next contention is that the order dated 8.9.1997 authorises recovery of the amount claimed by way of medical expenses as an administrative measure and, therefore, if the applicant had nurtured any grievance against the said order, he should have filed an appeal. The statutory appeal is also

prescribed in the CCS(CCA)Rules and the order dated 8.9.1997 could have been appealed against. Filing of the OA is premature and not availing the alternative remedy is a defect which makes the OA ineligible for consideration. He also submits that after the proceedings were dropped, except the sum of Rs. 75,699/-, the rest of the amount had been paid as under -

(a) Pension	-	PPO sent to Bankers on 20 Aug 96
(b) CGEIS	-	10 Oct 96
(c) Leave Encashment	-	05 May 98
(d) Pay Commission Arrears (1st instalment)	-	11 Feb 98
(e) Pay Commission Arrears (2nd instalment)	-	31 Aug 98

5. Shri Arif states that the payment of gratuity and commuted value of pension had been withheld under the provisions of sub-rule (1)(c) of Rule 69 of CCS (Pension)Rules, 1972. He finally draws my attention to Rule 73 (3) of the CCS (Pension) Rules,1972 which authorized adjustment of recovery dues other than the dues pertaining to Government accommodation. His stand is that gratuity has been rightly withheld under Rule 73(3) ibid.

6. The learned counsel for the applcant contests each and every aspect of the submissions made by the learned counsel for the respondents. On the question of not availing alternative remedy,

learned counsel makes some important submissions. He has drawn my attention to the Statement of Article of Charge at page 18 of the OA, and just enclosed to the same is the order eventually passed on 8.9.1997. He states that the applicant was completely exonerated of the charge no.1. There is, therefore, nothing left for the applicant to file an appeal against. He has also drawn my attention to page 10 of the counter affidavit which states that the suppression of the fact that the son of the applicant was not dependent on him and claiming medical reimbursement are two independent actions. While the department has dropped the proceedings with regard to the first fact, the department is free to recover the amount of medical reimbursement, that has been claimed. An aggrieved citizen can always approach the Tribunal directly in an appropriate case and availing of alternative remedy cannot be invariably insisted upon. He cites for this purpose a Constitution Bench decision in the case of A.V.Venkateswaran vs. R.S.Wadhwani - AIR 1961 S.C. 1506. He relies on paragraphs 8,9 and 10 of the said judgement. The authority cited by the learned counsel is absolutely conclusive of the proposition of law relating to the subject. The Hon'ble apex court has held that an aggrieved citizen can approach the court under Article 226 of the Constitution and the existence of the alternative remedy is not a bar when -

(i) There was a complete lack of jurisdiction in the officer or authority to take the action impugned.

(ii) Where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or nonest.

7. Learned counsel for the applicant thereafter cited another celebrated decision in the case of Tata Engineering & Locomotive Co. vs. The Assistant Commissioner of Commercial Taxes & anr. - AIR 1967 S.C. 1401. In this case also, the Supreme Court has stated that where the action has been taken under an invalid law or arbitrarily, a court may interfere to avoid hardship to a party under Article 226, which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked. Shri Upadhyay, learned counsel for the applicant developed his point by saying that this is a case where the applicant has been denied the right of being heard and the order of recovery was premptorily passed without giving him an opportunity of hearing. He cited several decisions in support of his stand.

(i) AIR 1967 SC 1269 - State of Orissa vs. Dr.(Miss) Binapani Dei

(ii) 1993 (3) SCC 259 - D.K.Yadav vs. J.M.A. Industries Ltd.

8. I have already extracted the operative portion of the Order under Section 14 of the CCA Rules. This order does not per se authorise recovery of medical reimbursement. It only gives liberty to resort to administrative action for recovery. A premptory order of recovery without hearing the applicant is bad in law. As the impugned order of recovery has been passed without affording an opportunity of being heard, there is justification for the applicant to approach this court without availing any alternative remedy. The other limb of Shri Upadhyay's argument is that the notification referred to above dated 31.12.93 is expressly prospective in its effect and it is admitted by the respondents themselves in the counter at page no.2. The applicant having availed of the entire benefit of medical reimbursement between 1990 and 1992, the said O.M. cannot be pressed for making recovery. For this purpose, he relied on another Constitution Bench case of the Supreme Court in Chairman Railway Board and ors. vs. C.R.Rangadhamaiah & ors. - (1997) 6 SCC 623. This decision has laid down the law for all times to come and therefore, I shall cull out the following propositions of law laid down in this case.

(i) Retrospective amendment of Statutory Rules, adversely affecting pension of employee who already stood retired on the date of the notification was held to be invalid.

(ii) The second proposition of law is that right to pension, gratuity and other retirement dues is a right to property and infringement of this right violates the constitutional guarantees.

9. Learned counsel for the applicant also stated that any administrative action involving civil consequences can only be effected after affording a reasonable opportunity to the person concerned of being heard and for this purpose, he has relied on a number of other well known decisions of the Supreme Court.

10. I have carefully considered the various submissions made by the learned counsel for both the parties. I shall take up the provision of Rules 73(3) which Shri Arif states justifies the recovery. I am afraid, the respondents have misunderstood the purpose and import of Rule 73(3). The word 'dues' or the words "debt due" has already received judicial interpretation of the Supreme Court in a number of cases while interpreting fiscal legislation. The respondents cannot wake up one fine morning stating that such and such amount has been paid to such and such employee erroneously and start effecting the recovery. It is illegal. 'Debt due' as the Supreme Court has defined it is ascertained liability which stands on record without dispute or doubt. What has heppened in this case during the period 1990 to 1993 is that the respondents have accepted and approved the claims of medical reimbursement and passed the Bill. The amount has been paid. The recovery of

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this amount can only be done in a manner known to law and in accordance with the procedure approved by law. I have already stated above that the main charge for which the disciplinary proceedings had been initiated, was dropped on the basis of inquiry report. The applicant's son was found to be dependent on him by the Inquiry Officer. Shri Arif's contention that because the son of the applicant was residing at Agra for a number of years and there is a reasonable presumption that he would be earning Rs.500/- per month is in the realm of conjecture and once the inquiry report exonerated him and the disciplinary authority accepted the inquiry report, the proceeding stood concluded and no other finding or conclusion which is contrary to this can be the subject matter of another proceeding. Rule 73(3) mentions dues outstanding. A contemplated recovery of medical reimbursement is not a "due", much less an outstanding due. There is nothing on record to show that the respondents have found out by proper material to show that the son had more than Rs.500/- per month as income and, therefore, the earlier allowance of medical reimbursement was erroneous and can be withdrawn. Since there is no material on record and such a radical conclusion is unsustainable on mere presumption, the recovery is bad in law.

11. I now come to rule 69 (1) (c) of CCS (Pension) Rules which is reproduced below.

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"69(1)(c) - No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules,1965, for imposing any of the penalties specified in clauses (i),(ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant."

12. Once the departmental proceedings stood dropped by order dated 8.9.97, there can be no further justification for retaining any portion of the retirement dues. The Hon'ble Supreme Court in the following decisions have held that no recovery can be effected without providing an opportunity to the official of being heard:

(i) Bhagwan Shukla vs. Union of India - SCC (L&S) 1320

(ii) Shyam Babu Verma vs. Union of India - 1994 SCC (L&SW) 683

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13. As the respondents themselves have said that recovery of medical reimbursement is independent of the disciplinary proceedings, they cannot, under any law, effect recovery without observing the due process. I, therefore, hold that the order of recovery of a sum of Rs.75,699/-, when the order dated 8.9.97 exonerated the applicant of all the charges, cannot be sustained. With regard to the claim of interest, the applicant has claimed 18% interest. The Hon'ble Supreme Court in the case of O.P.Gupta vs. Union of India & ors. - 1987(5) SLR SC 288 has only allowed 12% interest. I, therefore, direct interest to be paid at the rate of 12% only on the following amounts.

(i) On pension, there is no scope for payment of interest.

(ii) CGEIS paid on 10.10.96 - The delay is nominal. No interest is due.

(iii) Leave encashment on 5.5.98. Three months is normally allowed from the date of retirement for settlement of reitrement dues. On the remaining period of delay, interest at the rate of 12% will be paid.

(iv) Pay Commission arrears - Shri Arif submits that it took time to implement the recommendations and I am satisfied that the delay is not on account of any administrative lapse. No interest on this amount.

(v) With regard to the withholding of medical reimbursement, I am satisfied that this action is arbitrary and without any authority of law and, therefore, I direct that from 1.12.96 till the amount is paid, interest at the rate of 12% shall be paid on the amount withheld.

14. As the O.A. itself has been disposed of,M.A.2318/98 has admittedly become redundant and no separate orders need to be passed on the same. The above directions shall be implemented within a period of 16 weeks from the date of receipt of a copy of this order.

15. The O.A. is disposed of as above. No costs.

(N. Sahu)
Member(Admnv)

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