

CAT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(13)

O.A. No. 2001/95
T.A. No.

199

DATE OF DECISION 17-10-1996

Shri J.N. Srivastava

Petitioner

Shri Gyan Prakash.

Advocate for the Petitioner(s)

Versus
Lt. Governor and others.

Respondent

Shri Jog Singh through
proxy counsel Ms Kiran Chhabra

Advocate for the Respondent

CORAM

The Hon'ble Mr. s. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr.

1. To be referred to the Reporter or not? *Y*

2. Whether it needs to be circulated to other Benches of the Tribunal

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(14)

O.A. No. 2001/95

Date of decision 17.10.1995

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri J.N. Srivastava,
s/o Late Shri H.N. Srivastava,
resident of 358, Deepali, Pitampura,
Delhi-110034

(By Advocate Shri Gyan Prakash) ... Applicant

Vs.

1. Lt. Governor,
National Capital Territory of Delhi
through Chief Secretary, NCT,
Shamnath Marg, Delhi-110054

2. Director of Education,
N.C.T. of Delhi
Sham Nath Marg, Delhi-54

(Shri Jog Singh through proxy counsel
Ms Kiran Chhabra) ... Respondents

ORDER (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant who had retired from service as
Principal of the Govt. Boys Senior Secondary School, No.2
Moti Nagar, New Delhi on 31.5.1991, is aggrieved by the
order passed by the respondents dated 4.11.1992 (Annexure
A.1)

1. By the impugned order dated 4.11.1992, the respondents have recovered 14 days Earned Leave encashed on account of Census work done by the applicant from the arrears of revision of pension. Shri Gyan Prakash, Ld. counsel for the applicant submits that the impugned order is not only against the statutory rules but also in violation of the principles of natural justice. The amount recovered from the applicant in pursuance of the impugned order is Rs 2991/-

AS

3. I have also perused the reply filed by the respondents. They have submitted that the order dated 4.11.1992 has been passed in pursuance of the clarification received regarding non encashment of special earned leave circulated by the Joint Secretary, Planning dated 25.8.1992 to all Heads of Department (Ann.A.3). It is clear from a perusal of the circular that it has been issued much after the applicant retired from service on 31.5.1991. The respondents have nowhere controverted the averments made by the applicant that the impugned order has been passed without any show cause notice or compliance with the principles of natural justice.

4. The applicant has also filed rejoinder more or less reiterating the same stand as in the O.A. Since the respondents' counsel is not present, in the light of the order dated 9.10.1996, I have carefully considered the pleadings on record and the submissions made by the learned counsel for the applicant.

5. The circular relied upon by the respondents dated 25.8.92 which has been passed after the retirement of the applicant cannot be applied retrospectively. The impugned order of recovery of ^{the} amount Rs 2991/- from the retired employee has been passed admittedly violating the principles of natural justice, and such recovery is not permissible under the rules. The Supreme Court in Gahib Ram Vs. State of Haryana and Ors. (1995) SCC (L&S) 248 and Shyam Babu V. U.O.I. & Ors (1994)(27) ATC SC 121 has held that no recovery of excess payment can be made where the same has been made on wrong calculation by the authority concerned without misrepresentation by the employee. In this case, the special earned leave ^{amount is} ~~has~~ ^{is} been paid to the applicant in terms of the then existing orders and the respondents cannot, therefore, rely on a subsequent order to make recoveries.

18.

6. At this stage Ms Kiran Chhabra, proxy counsel for Shri Jog Singh, ^{ad.} counsel for the respondents appears and submits that action taken by the respondents is in pursuance of the circular dated 25.8.92(Ann.A.3). She further states that thereafter the respondents have intimated their action to the applicant.

7. Learned counsel for the applicant has also submitted/letter dated 1.2.1996 ~~which~~ was addressed by the A.O.(GOI) to the applicant, to see the Joint Secretary (Edn.) on any working day within a week. Learned counsel however, submits that in pursuance of this order, in spite of the fact that the applicant had visited the office two times, the respondents have not taken any action during the pendency of this O.A.

8. I have carefully considered the submissions of both the learned counsel and have perused the aforesaid judgments of the Supreme Court. This application succeeds. The respondents cannot rely on a subsequent policy/circular to deprive the applicant the benefit he had earned in accordance with the then existing rules/instructions. Apart from that, this action has also been taken in violation of the principles of natural justice.

9. In the result, this application succeeds and the impugned order dated 4.11.1992 is quashed and set aside. The respondents are directed to refund the amount of special leave which they have deducted from the pension of the applicant forthwith and in any case within a period of two weeks from the date of receipt of a copy of this order.

10. O.A. is disposed of as above. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)