

Central Administrative Tribunal
Principal Bench: New Delhi.

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OA 568/95

New Delhi this the 6th day of December 1996

Hon'ble Mr R.K.Ahooja, Member (A)

M.M.Mathur
S/o Late Shri K.S.Mathur
R/o C-2/62-B Lawrence Road
Delhi - 110 035.

...Applicant

(In person)

Versus

1. Pay & Accounts Officer
Directorate General of Inspection
Customs & Central Excise
'D' Block, I.P.Bhawan, I.P.Estate
New Delhi - 110 002.

2. Chief Departmental Representative
Customs, Excise & Gold (Central)
Appellate Tribunal
West Block 2, R.K.Puram
New Delhi - 110 066.

...Respondents.

(Through Advocate: Shri V.S.R.Krishna)

O R D E R

Hon'ble Mr R.K.Ahooja, Member (A)

Applicant is aggrieved against order passed on 23.1.95 in so far as it relates to withholding of an amount of Rs. 15943/- out of retirement-gratuity amount of Rs. 1 lakh admissible to the applicant. The applicant was on deputation with Trade Development Authority (TDA). He was later absorbed in Trade Fair Authority of India (TFAI) now renamed as India Trade Promotion Organisation (ITPO), from 12th June 1975 to 21st May 1989. On his reversion, an endorsement was made on his last pay certificate that an amount of Rs. 15,942 was recoverable from him as balance amount of advance drawn by him. The applicant's case is that this recovery, the validity of which he even otherwise questions, cannot be made from

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his gratuity since this is not a government due, the TDA being an autonomous body registered as a Society under the Societies Registration Act. Respondents on the other hand state that since an endorsement was made in his LPC, the applicant was fully aware of the dues against him and since he had given an undertaking that the amount may be adjusted in TDA, his parent organisation, this is a government due recoverable from him as laid down in the relevant pension rules.

2. I have heard the applicant in person and Shri V.S.R.Krishna, counsel for the respondents. The applicant drew my attention to a letter written by Executive Director, ITPO dated 28th September 1994 which is placed on record, which states that his claim for reimbursement of clearance charges of unaccompanied baggage on transfer from Tokyo to Delhi in 1987 is still being examined. This ^{would} show that the ITPO, successor of TDA, is not even certain whether any recovery has to be made from the applicant. The applicant further submits that correspondence, copies of which he has annexed with his OA, shows that as per Annexure 'D', it was only after 4 years on 29th July 1993 that some partial claims were raised by ITPO and when the same was replied to, no further information/decision was rendered by the ITPO except the earlier mentioned letter of the Executive Director dated 28th September 1994. The applicant cited the case of R.Kapoor Vs. Director of Inspection, Income-Tax and another (C.A. No.6342/1994) decided on 29th September 1994 wherein the Supreme Court reiterated their decision that pension and gratuity are no longer any bounty to be distributed by the Government but have become, under the decisions of this Court, valuable rights and property in their hand. The Supreme Court also held that merely because claim for damages for

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unauthorised occupation is pending, the DCRG cannot be withheld. In this case also, he argued, part of the DCRG could not be withheld merely because a claim for recovery was pending. He further cited the case of Mohammad Shabbir Nadvi Vs. Jamia Milia Islamia (C.W.P. No.5330/93) decided on 21.9.94 wherein the Division Bench of the Delhi High Court found that respondent therein Jamia Milia Islamia, although is a "State" within the meaning of Article 12 of the Constitution, was not a government organisation and the dues claimed by them could not be treated as government dues. On the same analogy, the dues claimed by TDA (ITPO) could not be treated as government dues.

3. I have carefully considered the contentions of the applicant. The law is well settled now, as re-affirmed by the Supreme Court in R.Kapoor Vs. Director of Inspection, ^{Itak} the pension including DCRG cannot be withheld merely because a claim for damages for unauthorised occupation is pending. The applicant has however not right in stating that no recoveries can be made from the gratuity. Rule 71 (3) of CCS Pension Rules provides that 'the government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant shall be adjusted against the amount of the retirement gratuity becoming payable.' This includes balance of house building or conveyance or any other advance, overpayment of pay and allowances etc. In the case of Wazir Chand Vs. UOI (OA 2573/89) decided on 25.10.90, a full Bench of this Tribunal held that withholding of entire amount of DCRG is not permissible. It can be on this basis held that while government dues can be adjusted against gratuity, the whole of the gratuity cannot be so adjusted and, therefore, some part of the gratuity has to be paid.

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It cannot be withheld ^{entirely} merely because government dues are pending or government accommodation has not been vacated.

4. The question which arises, therefore, in the present case is whether the dues claimed by the ITPO are in the nature of government dues. The Government of India's decision dated 2nd September 1967 quoted in Swamy's Compilation of CCS (Pension) Rules under Rule 73 defines that the term Government dues refers only to the dues payable to the government and does not include dues while on deputation. In other words, the sum due from the officer to an autonomous organisation is not government dues and so cannot be recovered out of DCRG except where the government servant has given his consent in writing to such a recovery being made from his gratuity, which has become payable to him. The question, therefore, now is whether the applicant has given his consent for recovery of his dues to the ITPO, from his gratuity. The respondents have annexed to their reply a copy of the undertaking given by the applicant (R-1) at the time ^{of his} repatriation from TDA. Relevant portions are reproduced below:

- (a) that ~~may~~ pay and allowances for the entire period of deputation with TDA would be reviewed and calculated taking into consideration the government orders from time to time on the subject; for example, non-admissibility of deputation allowance after the fourth year, refixation of pay under NBR etc. and will be settled by TDA with my parent department i.e. the Ministry of Finance.
- (b) that if there are any over payments of deputation allowance, fees, etc. or if there are any recoveries due from me, these will be settled by TDA with my parent department;
- (c) that I will refund to TDA the amounts over paid to me; and

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- (d) that I will remit on proportionate basis the value of the Undertaking for the unexpired portion of the period of two years after rejoining TDA on return from foreign posting at Tokyo.

I hereby accept and undertake to abide by the above mentioned conditions without demur.

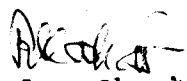
Sd/-
M.M.Mathur

Learned counsel for the respondents Shri Krishna says that as per (b) & (c), the TDA has ~~not~~^h adjusted the gratuity contributions of the applicant payable to the Government against the claim raised for recoveries from the applicant. This (b) & (c) together constitute an undertaking that the recoveries can be made by the government from his gratuity on behalf of TDA, he argued. I am unable to agree to this interpretation. Government of India's clarification referred to above speaks of a specific undertaking that the recoveries may be made from the gratuity payable to the government employee. It speaks of an undertaking in relation to gratuity to be specific which is a valuable property and right and which the government is, in terms of Supreme Court judgement, duty bound to pay to the government employee on his retirement. An undertaking to refund to the TDA any dues claimed by them later or even a consent that this could be settled between TDA and the parent department cannot make ^{the} some 'government dues' in terms of the Pension Rules unless the undertaking ~~to be~~^{is} specific to recoveries from the applicant's gratuity. A recovery which could have been effected through his salary is in a different class from a recovery which can be made from pensionary benefits. On the same analogy, while licence fee can be recovered from salary payable to an employee, ^{it} ~~but~~ cannot be recovered from pension payable to him after his retirement. In these circumstances, the undertaking given by the applicant is no more or less than an undertaking given to the TDA which is not a government organisation in terms of pension rules, to refund any over payment.

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5. In the light of above discussion, I hold that the respondents could not withhold the amount in question from the gratuity as has been stated in the impugned order. Accordingly, I allow this application. Respondents are directed to release the withheld amount within 3 months from the date of receipt of this order alongwith 12% interest.

No order as to costs.


[R.K.Ahooja]
Member (A)

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