

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

RA No. 65 of 1998 (in OA 827/96) decided on 16.11.1998.

Name of Applicant : Sh. P.S. Bhatnagar

By Advocate : None

Versus


Name of respondent/s Union of India & others

By Advocate : Shri R.L. Dhawan

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)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Review Application No.65 of 1998  
(in O.A.No.827 of 1996)

New Delhi, this the 16<sup>th</sup> day of November, 1998

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

Sh. P.S. Bhatnagar

(By Advocate -None)

-APPLICANT

Versus

Union of India and others

(By Advocate Shri R.L. Dhawan)

-RESPONDENTS

ORDER

By Mr. N. Sahu, Member (Admnv)

Heard Shri R.L. Dhawan, learned counsel for the respondents.

2 This review application is filed by the respondents on 16.3.1998 against the order dated 7.11.1997 in O.A. 827 of 1996. A certified copy of the judgment was issued on 13.11.1997. There is, therefore, delay in filing the RA. The reasons for the delay are not acceptable. The Hon'ble Supreme Court in K. Ajit Babu and other Vs. Union of India and others, JT 1997 (7) SC 24 has held that the right of review is available if such an application is filed within the period of limitation.

3. Even on merits, the contention of Shri Dhawan is not acceptable. The order on the main O.A. held that the recovery of damages and licence fees from gratuity is permissible. After the said recovery the defaulter had still to pay Rs.15,399/- on account of arrears of rent and electricity charges

... 2 ...  
and this was recovered from the relief in pension. I held in the order dated 7.11.1997 that this recovery is not in order and directed refund of the same with interest at 12% per annum. Shri Dhawan relied on Rule 16(6) of the Railway Services (Pension) Rules, 1993. Rule 16(6) is extracted hereunder -

"The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement if allottee shall be the responsibility of the Directorate of Estates. Any amount becoming due on account of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid licence fee may be recovered by the Directorate of Estates through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief should be disbursed until full recovery of such dues have been made."

4. Shri Dhawan also referred to Railway Board's instructions under Northern Railway Printed serial no.8844 stating that relief payable on pension is not covered by the Pension Act and, therefore, there should be no objection for the recovery of Government dues made from the pensioners' relief. Admittedly, these instructions were not placed before the Bench in the course of hearing.

5. The counsel candidly admitted that arrears cannot be recovered from pension. Such an immunity is given by the Pension Act. In the case of Meena Subramanian (Mrs) and others Vs. Union of India, (1992) 20 ATC 584 a Division Bench of this Tribunal held that dearness relief is granted to the pensioner to compensate for the eroded value of a rupee and

hence such a dearness relief is to be treated as part of pension. In the same order the statutory rule denying the same relief has been declared invalid. The Hon'ble Supreme Court in Union of India Vs. G. Vasudevan Pillay, 1995 SCC (L&S) 396 = (1995) 29 ATC 180 = (1995) 2 SCC 32 set aside the orders of Ernakulam and Madras Benches of this Tribunal and upheld Rule 55-A(ii) of CCS (Pension) Rules, 1972. Even so, that part of the order which lays down that dearness relief is part and parcel of pension has been left untouched by the Hon'ble Supreme Court. It can be said that whether dearness relief is part of pension or not is left open by the Hon'ble Supreme Court. Therefore, these Division Bench decisions are a binding precedent on the question, that dearness relief is part of pension.

6. The second important point is that the Fourth Pay Commission recommended dearness relief to be merged in pay and to a large extent has done so. The Fifth Pay Commission has merged dearness relief with pay and pension. These recommendations of both the Pay Commissions have been accepted by the Government. Such payments of dearness relief are part of pension is now the law of the land at least till 1.1.1996. Not a pie of that dearness relief can now be touched inspite of Rule 16(6) ibid. Dearness relief no longer retained its identity as a separate entity till 1.1.1996.

*Handwritten:*  
16/11/98

7. For the above reasons, there is no error apparent on the face of record in the order impugned in the RA and does not call for any review or modification. The R.A. is dismissed.

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*N. Sahasrabudhe*  
(N. Sahasrabudhe)  
Member (Admin) 16/11/98

rkv.