

Central Administrative Tribunal
Principal Bench
New Delhi

O.A. No. 1983/97

Decided on 26.11.98

(X)

Mrs. Rita Singhal Applicant
(By Advocate: Shri A.K. Bhardwaj)

Versus

Union of India Respondents
(By Advocate: Shri Rajeev Bansal)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not ? No.

Mr /
(S.R. Adige)
Vice Chairman (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 1983 of 1997

New Delhi, dated this the 26 th November, 1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Smt. Rita Singhal,
R/o JG-II/129, Vikaspuri,
New Delhi-110018. Applicant

(By Advocate: Shri A.K. Bhardwaj)

Versus

Union of India through

1. The Secretary,
Ministry of Agriculture,
Dept. of Animal Husbandry & Dairying,
Krishi Bhawan, New Delhi.
2. The Dy. Secretary,
Ministry of Agriculture,
Dept. of Animal Husbandry & Dairying,
Krishi Bhawan, New Delhi.
3. The Under Secretary,
Ministry of Agriculture,
Dept. of Animal Husbandry & Dairying,
Krishi Bhawan, New Delhi.
4. Section Officer,
Ministry of Agriculture,
Dept. of Animal Husbandry & Dairying,
Krishi Bhawan, Respondents
New Delhi.

(By Advocate: Shri Rajeev Bansal)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' orders dated 17.4.96 (Ann. A-8); dated 12.6.96 (Ann. A-9) and dated 4.3.97 (Ann. A-1) treating her leave period as unauthorised absence and seeks payment of Rs.5582/- withheld from her gratuity with interest thereon.

2. Her case is that while working as Assistant in respondents' department she sought voluntary retirement in 1995 which was allowed w.e.f. 15.1.96 under Rules 48 and 48B CCS (Pension) Rules. She states that by order dated 17.4.96 (Ann. A-8) respondents decided to treat a period 37 days of applicant's service as absence from duty under Rule 27 CCS (Pension) Rules read with some Government of India decisions, although in Para 2 of that order it was stated that those 37 days would be treated as leave and would not count as interruption in service for purposes of pension. Subsequently by order dated 12.6.96 (Ann. A-9) the earlier order dated 17.4.96 was modified to read as 33 days instead of 37 days. She contends that the treatment of this period as unauthorised absence from duty by respondents, after her retirement is illegal, arbitrary and ab initio null and void, upon her representations receiving no satisfactory response, she has been compelled to approach the Tribunal.

3. Respondents contest the O.A. They state that applicant absented herself unauthorisedly for a total period 33 days in four different spells between 31.3.95 and 23.6.95. Of these four spells, she sought commuted leave in two spells, earned leave in one spell and half pay leave in one spell. They state that applicant should have availed the same only after getting it sanctioned in advance from the competent authority and in the case of commuted leave, a certificate by the authorised

medical attendant should have been issued on the commencement of the leave. Respondents state that applicant submitted leave applications in all the four spells of leave mentioned above after availing the leave which is contrary to rules, and the medical certificate in the case of commuted leave was also submitted after the expiry of the leave. It is stated that before treating the period of absence as unauthorised she was given due opportunity to explain, but the reasons not being found satisfactory, recoveries from her pay were ordered. It is stated that the matter was under examination in the last quarter of 1995 and could be settled by April, 1996 by which time she had proceeded on voluntary retirement. It is stated that both matters viz unauthorised absence and voluntary retirement were settled almost at the same time, and hence it was decided to order recoveries from her retiral benefits.

4. Admittedly the first spell was from 31.3.95 to 7.4.95 (8 days). In her representation dated 7.8.96 (Ann. A-IV) applicant contends that she fell ill and was not physically fit for duty. She applied for leave on 10.4.95 after resuming duty, 8th and 9th April, 1995 being holdays. She states that her illness is supported by a Medical Certificate issued by one Doctor Shukla and invites attention to Rule 19(1)(ii) - CCS (Leave) Rules according to which leave on medical certificate may be filed by a non-gazetted Government servant accommpanied by medical certificate in Form 4

issued by an authorised medical attendant or an R.M.P. Applicant also contends that she had sent necessary intimation in this regard to the concerned officer on 31.3.95 itself.

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5. The second spell was from 2.5.95 to 5.5.95 (4 days) which she states that she availed of on account of her ailing mother-in-law. She states that she was neither advised nor informed about refusal/non-acceptance of leave.

6. The third spell was from 22.5.95 to 31.5.95 (10 days). She states that she applied for the same duly supported by medical certificate.

7. The fourth spell was from 13.6.95 to 27.6.95 (15 days). She states that this was necessitated because of sudden illness of her monther-in-law, in the absence of her husband who was away on tour, but upon receipt of respondents' O.M. dated 20.6.95 (Ann. A-4) rejecting the prayer, she joined duty on 23.6.95 and was thus away from duty for only 11 days.

8. It is noticed that even the last of the aforesaid four spells of absences occurred at least six months before applicant's voluntary retirement on 15.1.96 and no satisfactory reason is forthcoming as to why respondents could not take a final decision regarding the manner in which these absences were to be treated while she was still in service. The impugned order dated 17.4.96 said to

have been issued under Rule 27 CCS (Pension) Rules was issued four months after applicant had voluntarily retired from service and over 9 months after the last of the above mentioned four spells.

It is clear that applicant in the first instance was paid her salary for each of the aforesaid spells or absence, and thereafter respondents post facto have sought to recover the same, treating the aforesaid four spells as unauthorised absence from duty, by withholding an equivalent amount from applicant's gratuity.

9. The right of respondents to withhold or withdraw from a retired Government servants his/her pension and/or gratuity is contained in Rule 9 CCS (Pension) Rules. Applying that rule to the facts of the present case it is noticed that while effecting recoveries from applicant's gratuity as respondents contend it was incumbent upon them to do (Para 4.14 of their reply to the O.A.) they have not abided by the provisions of that Rule. No departmental proceedings were instituted against applicant in accordance with Rule 9(1) and no findings of grave misconduct or negligence were recorded pursuant to any such departmental proceedings. It needs to be mentioned that under Rule 9(6) (a) departmental proceedings are deemed to be instituted on the date the statement of charges is issued to the Govt. servant or pensioner, or on the date he has been suspended. In the present case no charge sheet was ever issued to applicant.

10. Under the circumstances, the manner in which respondents have effected recoveries of applicant's pay and allowances from her gratuity cannot be sustained in law. The O.A. succeeds and is allowed to this extent that the impugned orders are quashed and set aside. Respondents are directed to release the withheld sum within three months from the date of receipt of a copy of this order with interest thereon @ 12% p.a. w.e.f. 15.1.96 till the actual date of payment. No costs.

(2)

M. Chq.
(S.R. ADIGE)
VICE CHAIRMAN (A)

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