

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2096/97

New Delhi this the 12th day of August, 1998.

HON'BLE MR. N. SAHU, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Mrs. Manju Pathak,
S/o Shri H.G. Pathak,
R/o H-23/532, Kali Bari Mandir,
New Delhi.

...Applicant

(By Advocate Shri A.K. Bhardwaj)

-VERSUS-

1. Union of India through
the Secretary,
Government of India,
Ministry of Non-Conventional Energy Sources,
Block No.14, CGO Complex,
Lodhi Road, New Delhi.
2. Under Secretary,
Ministry of Non-Conventional Energy Sources,
Government of India,
Block No.14, CGO Complex, Lodhi Road,
New Delhi.
3. The Secretary,
Government of India,
Department of Personnel & Training,
North Block, New Delhi.
4. The Director General,
Border Road,
Kashmir House,
New Delhi.

...Respondents

(By Advocate Shri Mohar Singh)

O R D E R (ORAL)

HON'BLE MR. N. SAHU, MEMBER (A):

Heard Shri A.K. Bhardwaj, learned counsel for the applicant and Shri Mohar Singh, learned counsel for the respondents.

2. The prayer in this O.A. is directed against the memorandum dated 30.12.98 (Annexure A-1) by which the applicant was informed that the ration allowance admissible

13

under judicial decisions referred to by her could not be extended to the individual cases like her. The applicant further requests that the respondents' order directing withdrawal of the ration money from the pay and allowances be declared as illegal and the respondents be mandated to restore the payment of ration money to the applicant from 1.11.95. The applicant is finally aggrieved against the act of the respondents in recovering the amount of ration money already paid to her. The applicant was selected for deputation with the Ministry of non-Conventional Energy Sources for the post of Junior Accountant. The respondents relieved the applicant w.e.f. 30.9.93. By an order dated 11.10.93 she was appointed as a Junior Accountant. In the movement order issued for the applicant dated 30.9.93 full details of her pay and allowances including ration money was given. On 20.1.94 a request was made by applicant to respondent No.2 to grant her ration money w.e.f. 1.10.93. She also enclosed an order dated 19.1.88 issued by respondent No.2 by which they had allowed the ration money to one Shri D.L. Sharma, who was on deputation in that department. They had also allowed the ration money to Shri G.R. Sharma, who came on deputation from the Director General of Border Roads. The respondents issued order dated 1.3.94 by which they conveyed the sanction for grant of ration money to the applicant at the rate of Rs.11.65 per day w.e.f. 1.10.93. On 3.5.95 respondent No.2 sought clarification from the DOPT. As a consequence of the clarification issued by DOPT, that by an order dated 15.9.95 respondent No.2 had withdrawn the ration money granted w.e.f. 1.10.93.

3. In the above facts and circumstances, learned counsel for the applicant has drawn our attention to the order of the Bombay Bench of the Tribunal (Annexure A-13 to the

paperbook) in the case of Shri Raveendra Kumar P.S. Vs. Customs, Excise & Gold (Control) Appellate Tribunal. They relied on the coordinate Bench of the Madras Tribunal referred to in para 9 of the order for coming to this conclusion that withdrawal of the ration allowance to the civilian ^{defence} officer on deputation to the Central Government is not justified. The order of the Madras Bench of the Tribunal is in OA-498/90. We understand that orders of both the Benches were not taken up on special leave to Supreme Court and they have become final. The Bombay Bench as well as Madras Bench directed the respondents to make payment of ration allowance to the applicant.

4. The learned counsel for the respondents stated that the applicant was getting the ration allowance in her parent office, namely, Director General of Border Roads. Accordingly, this ration allowance was continued to be paid to the applicant even after she joined the civilian Ministry on deputation. By Annexure R-1, it was stated that the defence civilian serving in BRO/GREF will not be allowed ration money if they are appointed in civilian Ministries. Accordingly the payments in regard to ration money were ordered to be recovered. Learned counsel for the respondents referred to the decision of the Supreme Court in Union of India vs. S.D. Gupta (AIR 1996 SC 3325) to the effect that where the rules are silent administrative instructions issued by the administration would supplement the rules. He also cited another judgement of the Supreme Court in R.Vishwan & Others Vs. Union of India (AIR 1983 SC 658) that the GREF is an integral part of the Armed Forces and the members of that organisation are treated as members of the Force for the purpose of Article 33 of the Constitution of India. He states

(15)

that the applicant is a member of the Armed Force and has no right to approach the Tribunal for a cause arising in service matter. The learned counsel ^{next} has filed a letter dated December, 1995 issued by DOPT which states as under:

"The undersigned is refer to Ministry of Non-Conventional Energy Sources, O.M. No.7/410/93-Admn. I dated 24th November, 1995 on the above subject and say that this Department has not issued any orders regarding disallowing ration money to the Defence Civilians serving in BRO/GREF etc. when they are appointed on deputation basis in civil posts. However, a decision has been taken by this Department in 1993, 1994, in consultation with Ministry of Finance in this regard."

He has also cited another letter issued by Shri Harinder Singh, Joint Secretary dated 6.5.97. The relevant portion of this letter is extracted hereunder:

"According to the existing orders on deputation, such allowances as are not admissible to regular employees of corresponding status in the borrowing organisation, shall not be admissible to the officer on deputation/foreign service, even if the same are admissible in the parent organisation. We understand that ration money is given to the GREF Officers/personnel in the office of DGBR. However, since the same is not admissible to other regular employees of corresponding status in other Departments of Govt. of India where such officials from DGBR are drawn on deputation, the same is not admissible to them while holding the deputation post. We have come across certain cases where on the authority of a letter issued by DGBR on 3.3.1991 (copy enclosed) certain Ministries have allowed the benefit of ration money to the deputationists. This has created a difficult situation for this Department.

2. I would like to clarify that the clarification contained in the above OM that ration money can be allowed to GREF officers/personnel while on deputation by the borrowing Department, and D.G.B.R. is now authorised to allow this benefit. In certain cases even the Court have allowed this benefit on the authority of the DGBR letter of March, 1991. It would, therefore, be advisable that the above letter is withdrawn forthwith and a clarification issued by the DGBR that the officials from the DGBR/GREF in the matters of pay and allowances etc. on deputation will be governed by the general orders issued by this Department. In case you would like to discuss this issue you are welcome to do so."

5. We have heard the rival counsel. We are of the view that the recovery of the ration money already allowed without issuing a show cause notice is violative of the principles of natural justice and in this connection we rely on the following decisions of the Supreme Court to hold that such order of recovery is illegal.

Two decisions of the Hon'ble Supreme Court are in the cases of Shyam Babu Verma and others Vs. Union of India and others, (1994) 27 ATC 121 and Sahib Ram vs. State of Haryana, (1994) 28 ATC 747. In the case of Shyam Babu Verma (supra) their Lordships have held that recovery of excess amount paid on account of higher pay scale erroneously given to the petitioners since 1973 would not be just and proper as the petitioners received the higher scale without any fault or without any misrepresentation on their part. In Sahib Ram's case (supra) their Lordships have again held that recovery of excess payment of pay is not permissible when an upgraded pay scale was given due to a wrong construction of the relevant order by the authority concerned without any misrepresentation by the employee. The ratio decidendi of the decisions in the cases of T.R. Sundararaja Iyengar vs. The PMG, Karnataka Circle [(1989) 1 SLJ (CAT) 238]; Pushpa Bhide (smt.) vs. Union of India & Ors. [ATR 1989 (1) CAT 397]; C.S. Bedi vs. Union of India & Ors. [ATR 1988 (2) CAT 510]; Gobinda Sinha & Ors. Garrison Engineer and Ors. [1990 (1) SLJ (CAT) 74]; Nilkanth Sinha vs. Union of India [1987 93) SLJ (CAT) 306]; and Satyanand Sinha vs. Union of India & Anr. [1989 (4) SLJ (CAT) 272]. is that even if a payment was made wrongly or in misinterpretation of any provisions or when the discovery of a wrong payment was made subsequently, the Government servant

cannot be compelled to refund the same suddenly and without giving him an opportunity to explain against the recovery action sought to be taken against him.

6. We accordingly quash the order of recovery (Annexure A-6) and the respondents are directed to refund the money that has already been recovered within a period of six weeks from the date of receipt of a copy of this order.

7. The question now remains to be decided is whether the applicant would be entitled to ration money from 1.11.95? We have no doubt in our mind that there were no instructions conveyed to respondent No.2 by the Ministry of Personnel by any OM, withdrawing the said money. We are not in a position to take cognizance of the manuscript letter at Annexure R-1 which is vague and which does not cite any authority to support its claim. We, however, note that the letter dated 6.5.97, which is a communication by the Joint Secretary of the Ministry of Personnel, authoritatively states withdrawal of the said allowance. We, therefore, direct the respondents to place on record the instructions finally issued by the Ministry of Personnel which can only take effect after 1.11.95. if any such OM is issued but if none is issued, we agree with the learned counsel for the applicant that the letter dated 6.5.97 is an authority to stop future payments relating to ration money. We make it very clear that before 1.11.95 no steps ^{should be} ~~have been~~ taken to recover any part of the ration money paid and upto that date full ^{ration money} ~~money~~ shall be paid to the applicant. If there is no authority available by way of an OM of Ministry of Personnel after 1.11.95. the respondents shall continue to pay the ration money to the applicant till May, 1997.

8. The O.A. is disposed of accordingly. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

N. Sahu

(N. SAHU)
MEMBER (A)