CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.186 of 2000

New Delhi, this the 13th day of March,2001

HON'BLE MR.KULDIP SINGH,MEMBER(JUDL)

(10)

O.P.Batra
S/o Shri C.R.Batra
Aged 59 years
R/o Flat No.121
New Surya Kiran Aptts.
Plot No.65 Patparganj
Delhi-110092

-APPLICANT

(By Advocate: Shri D.C.Vohra)

Versus

1. Union of India through
The Foreign Secretary to the
Govt. of India
Ministry of External Affairs
South Block
New Delhi-11

-RESPONDENTS

(By Advocate: Shri A.K.Bhardwaj)

O R D E R

By Hon'ble Mr.Kuldip Singh,Member(Judl)

The applicant in this case is aggrieved of the orders dated 3.3.1999 and 29.7.99 (Annexures A-1 and A-2) whereby he says that his claim for TA settlement had been mixed with recovery of other dues.

2. The applicant has further claimed that he had deposited with the respondent ID 135 and Rs.1388.05 after a judgment was delivered by this Tribunal in OA 1098/93. On 15.12.1998, however, the respondents has made a further recovery from his DCRG.

3. The facts in brief are that the applicant who was a member of Indian Foreign Service Branch 'B' had been posted at Baghdad in the year 1986-89. A dispute

has arisen between the applicant and the department regarding his wife's passage from Baghdad to Delhi during 1989-90 and the respondents (Union of India) eventually ordered a recovery of Rs.8273.05 (Iraqi Dinars 162.70) vide order dated 18.11.1991. The applicant has challenged the recovery order before this Tribunal in an earlier OA 1098/93, so it is stated that during the pendency of the said OA, the respondents - Union of India had postponed the settlement of applicant's TA claim and waited for the verdict of this Tribunal on the question of recovery of Rs.8273.05 and the OA was decided with a direction leaving it open to the respondents to adjust the 135 Iraqi Dinars left over with the applicant, against the recoveries ordered at the appropriate exchange rates, in accordance with the rules and instructions. Applicant accordingly claims to have deposited the said amount and he had also requested them to settle his claim for TA.

4. It is alleged that the respondents did not at all consider the claim of the applicant and thus ignored the deposit of ID 135 and Rs.1388.05 in settlement of the recovery of Rs.8273.05 nor they have settled the TA claim.

5. Thereafter the applicant made certain representation vide Annexure A-8 but the respondents gave a reply that no amount was received by them through post. The respondents also wrote to the applicant that the applicant should not have sent the currency notes in cash by post which was against the financial norms.

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6. As regards the Iraqi Dinars, it was stated by the respondents that you (applicant) would agree that your (applicant's) action of sending the currency notes in cash by post was against the financial norms. The Ministry could not have accepted Iraqi Dinars sent by you (applicant). In any case, Iraqi Dinars being a non-convertible currency, ID 135 could not have been accepted by the Ministry at any stage. Against the same the applicant has pleaded that he had deposited the same personally. Besides this the applicant says that the respondents have mala fidely made recovery from the DCRG after the applicant had deposited the same in cash with a sum of ID-135 and a cheque for Rs.1388.05 and thus claims that the amounts has since been deposited, so his TA should be adjusted.

7. The respondents are contesting the OA. Their main plea is that the OA is barred by the principle of res judicata. They further pleaded that when an amount of Rs.8273.05 was sought to be recovered from the applicant he had filed an earlier OA which was dismissed, so the present OA filed against the said recovery is barred by res judicata.

8. The respondents also pleaded that the photocopy of the Iraqi Dinars produced by the applicant bears a signature dated 24.1.2000 which goes to show that the Iraqi Dinars had been returned by the Ministry to the applicant.

9. It is also pleaded that there is a set procedure of depositing money into the Govt's account through the Government treasury/RBI. Such deposits in cash are not permitted to be accepted (whether foreign or Indian Currency) in the Ministry of External Affairs, so there was no question of issuing any receipt for such an amount. The matter was carefully considered and the decision was taken to return the ID and cheque received. Applicant was further advised vide memo dated 16.12.1991 to contact TA Cell and submit his transfer TA claim in the prescribed proforma to the TA cell. Till date TA claim in the prescribed proforma has not been received by the applicant in the TA Cell.

10. It is further stated that in view of the position explained in the judgment of the Hon'ble Tribunal in OA 1099/93 wherein it was decided that it is open to the respondents to adjust the Iraqi Dinars left over with the applicant in accordance with the rules and instructions.

11. Rejoinder to this was also filed. The applicant still insisted that the Iraqi Dinars sent by him have been used, but the department has deducted an additional equivalent amount of his gratuity in rupees. Thus it has caused double loss to the applicant and the applicant has submitted his TA claim which is pending settlement with the respondents.

12. I have heard the learned counsel for the applicant and gone through the record.

13. The main relief claimed by the applicant is with regard to his settlement of TA claim which has been pending since long with regard to his and family journey from Baghdad to Delhi. The respondents have taken the plea of res judicata in their counter-affidavit and have submitted that so far as the recovery of Rs.8273.05 is concerned, the same had already been decided by the Tribunal in the earlier OA 1098/93 so the same is against the principle of recovery and is barred by res judicata. However, from a perusal of the pleadings of the parties I find that the present OA has been filed for the settlement of TA claim.

14. As regards the dispute regarding recovery of Rs. 8273.05 is concerned though the same had been agitated earlier in OA 1098/93 and was decided in the said OA which was dismissed leaving it open to the respondents to adjust the 135 Iraqi Dinars left over with applicant, against the recoveries ordered, at the appropriate exchange rates in accordance with the rules and instructions. For that purpose I may mention that the recovery of Rs.8273.05, i.e., 162.70 Iraqi Dinars at the exchange rate prevailing are concerned, the same were not disputed when the earlier OA was decided.

15. As the earlier order on the OA clearly shows that the applicant himself had sought permission to adjust 162.70 Iraqi Dinars against recovery of Rs.8273.05 and the dispute regarding the ID 135 started only after the judgment was delivered on 15.12.1998. As regards the dispute with regard to the mode of deposit of 135 Iraqi Dinars, the applicant claims that he had sent Iraqi

Dinars by post and afterwards deposited a cash sum of ID 135 and a cheque for a sum of Rs.1388.05 whereas the respondents have taken the plea that the amount was not deposited in person and the same was sent back to the applicant. For that purpose I may mention that whatever the amount was left over with the applicant with regard to ID 135 is concerned, the applicant was supposed to deposit the same in accordance with settled rules, i.e., either he should have deposited in the Reserve Bank of India in accordance with the instructions on the subject and the payment by post was prone to fell in the hands of some undesirable elements so it is for that purpose it is the applicant who himself has to be blamed as it was he who have to see that the amount was properly deposited.

16. As regards the pendency of TA claim is concerned, the respondents in their reply in para 4.9 have admitted that Shri O.P. Batra was advised by the Ministry vide OM No.Q/PB/6618/100/85 dated 16.12.1991 to contact TA Cell and submit his transfer TA claim in the prescribed proforma as was required by TA Cell. In this para of the reply it is submitted that the TA claim is pending because it has not been claimed in the prescribed proforma by the applicant. Hence, this OA can be disposed of with a direction to the respondents to settle the TA claim within a period of 4 months from the date of receipt of a copy of this order and in that process if the applicant is required to submit the TA claim in the prescribed proforma, he may submit the same within 15 days from the date of receipt of this order and the respondents should also satisfy themselves with regard to deposit of ID 135 and in case he had not deposited as per

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the prescribed procedure then the department would at liberty to adjust the said amount as per rules. The TA claim shall be decided within a period of 4 months from the date of receipt of a copy of this order subject to furnishing the same in the prescribed proforma.

17. OA is disposed of with the above directions. No costs.

(KULDIP SINGH)
MEMBER(JUDL)

'Rakesh