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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 48/86 198
T.A. No.

DATE OF DECISION 24.12.1986

Shri Beni Prasad Petitioner

In person Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondents

Shri K.C. Mittal Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter ~~or not?~~ Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches ? Yes

(Judgment of the Bench delivered by Hon'ble
Mr. Justice K. Madhava Reddy).

JUDGMENT: In this Application under Section 19 of the

Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'),

Shri Beni Prasad, the applicant herein, who retired on 31.7.1981 from the
post of Welfare Officer in the office of the P.M.G., Lucknow, on attaining the

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age of superannuation, complains that his conveyance allowance and some portion of the G.P.F., pension and dearness allowance relief on pension is sought to be withheld, and seeks a direction against the Union of India, the Director-General, P&T, the Director, Postal Accounts, Lucknow and the Post Master, Agra Fort (the respondents herein) not to withhold the same.

2. After a 'no dues certificate' was issued, the Accountant-General, P & T, issued Pension Payment Order No. LKO (P) 4303 disbursable at Agra City Sub-Post Office under respondent No. 4. The final pension payment order No. LKO (P) 4303 was also issued by the Accountant-General, P & T. Under that P.P.O., the applicant was granted a pension of Rs. 527/- per month alongwith dearness allowance relief, which was subject to revision from time to time. The applicant commuted one third of his pension and is entitled to receive Rs. 352/- per month by way of pension and dearness allowance relief at Rs. 500/- per month. Till the filing of the instant Application and even on to this date, the full amount of pension and Relief in Pension (for short 'RIP') has not been released to him. According to him, a sum of Rs. 924/- is also due to him under his GPF Account No. PTD 19306. When he applied for the final withdrawal of his GPF amount, respondent No. 3 demanded a sum of Rs. 4,556/- and required the applicant to deposit the same on the ground that his GPF account had "fallen into minus". Upon the applicant refusing to pay the amount of GPF allegedly drawn in excess by him, the third respondent imposed a penalty of Rs. 981/- as interest on the excess amount of GPF allegedly paid to the applicant and

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ordered the recovery of the same from the 100 per cent "D.A.R. on pension". In pursuance of that order, his pension and D.A.R. is withheld since 1.1.1985. It is this action of the respondents that is called in question in this Application. The applicant also claims that the P.M.G., U.P. (Lucknow) had sanctioned a sum of Rs. 50/- per month from 2.1.1981 to 31.7.1981 as conveyance allowance. This amount has also been seized. He, therefore, seeks a direction to release the said amount also.

3. An extract from the GPF Account was produced before us from which it would appear that there was an error in carrying forward the balance for the year 1978-79. However, the applicant does not seem to be in any way responsible for this error. It appears to be a bona fide mistake committed in the Accounts Section in the rush of work for which the applicant cannot be blamed. The question, however, is whether any such amount can be recovered from the pension or from RIP.

In his memo. No. GPF/Cell/Misc./FP/83/Beni Prasad/1214 dated 10.12.1984, the Director Postal Accounts, Lucknow advised the Post Master, Agra Fort that an amount of Rs. 5537/- has been overpaid to Shri Beni Prasad in his GPF Account No. PTD 19306 and this amount has to be recovered from DAR on Pension payable every month to the applicant till the actual amount of Rs. 5537/- is recovered and accordingly directed him to recover and credit the same every month. The applicant contends that even assuming that this amount is due on account of excess payment of GPF, no amount whatsoever can be recovered from pension or RIP. It is the case of the respondents that since there was excess payment, that amount

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is recoverable from the pension as well as RIP. They also claimed that the balance of the GPF claimed by the applicant is not due to him if a correct account is taken. The applicant ought not to be granted any relief when there has been excess payment due to an error in accounting. The respondents did not dispute his claim regarding conveyance allowance. What all they stated is that the sanction for payment of conveyance allowance was renewed and the case for payment is under progress.

4. The applicant's right to receive pension is governed by the Central Civil Services (Pension) Rules, 1972. Rule 5 of the Rules declares that any claim to pension or family pension shall be regulated by the provisions of the Rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be. Payment of pension is subject to future good conduct as laid down in Rule 8. In Rule 9, the President has reserved to himself the right to withhold or to withdraw the pension or part thereof, whether permanently or for a specified period and to order recovery from pension, the whole or part of any pecuniary loss caused by the Government servant if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. Any departmental proceedings in this behalf, if not instituted while the

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Government servant was in service, cannot be instituted save with the sanction of the President. They cannot be instituted in respect of any event which took place more than four years before such institution. It is only pursuant to an order under Rule 9 and subject to the conditions mentioned therein that pension may be withheld or any part of the pension may be recovered. Admittedly, none of the situations envisaged by Rule 9 of the Pension Rules exists for withholding the pension sanctioned to the applicant. The applicant is not accused of any misconduct nor have any disciplinary proceedings been initiated. This recovery is not being effected pursuant to any departmental proceedings initiated before or after the applicant's retirement. One of the conditions precedent for making any order under Rule 9 Commission is that the Union Public Service/shall have to be consulted. No sanction of the President has been taken and no proceedings envisaged by Rule 9 have been initiated. In the absence of any such proceedings, no part of the pension can be withheld nor any amount therefrom recovered to be adjusted towards any excess payment made to the applicant.


5. It is, however, contended that the amount paid in excess is sought to be recovered from RIP and not from the pension itself and, therefore, Rule 9 has no application. The definition of 'pension' under Rule 3 (c) is an inclusive definition and reads as follows:-

"Pension includes gratuity, except when the term

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of pension is used in contra-distinction to gratuity."

This definition does not throw much light on whether R.I.P., as such, could be treated as pension. Dearness allowance relief granted to pensioners is primarily intended to offset high rise in prices and cost of living. What was considered to be reasonable pension payable to a pensioner on the date of his retirement is rendered illusory by the steep rise in prices of commodities. That is sought to be offset by sanctioning dearness allowance to serving employees and relief on pension to the pensioners. It is, in fact, the depreciated value of the rupee that is sought to be compensated by granting relief to a pensioner by way of R.I.P. It is, thus, in fact, part of the pension. It is an amount paid for services already rendered. If a person is entitled to receive pension, he will also be entitled to receive R.I.P. Without pension, there could not be any payment by way of R.I.P. Relief in pension in all respects, in our view, is part of pension. The prohibition contained in Rule 9 is, therefore, equally applicable to R.I.P. No doubt, as contended by the learned Counsel for the Respondents, the Ministry of Finance in their U.O. No. 716-EV(A) dated 7th February, 1978 (incorporated as Government's decision No. 7 under Rule 7 of the Pension Rules in Swamy's Pension Compilation, 10th Edition at page 120) has clarified that "Pensioner's Relief is not covered by the Pensions Act and there may be no objection to the recovery of Government dues from the Pensioner's Relief without the consent of the pensioner." But if R.I.P., as held by us, constitutes pension in the eyes of law, then the prohibition contained in Rule 9 of the

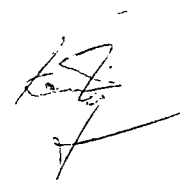


Pension Rules would be automatically attracted and any amount due to the Government can be recovered only on the conditions mentioned therein being satisfied. Admittedly, in this case they are not fulfilled. It may not be out of place to mention that periodically when the pension is revised, the relief in pension is sought to be absorbed in the pension itself and the pension fixed accordingly. RIP also cannot be withheld for adjustment towards any Govt. dues in contravention of Rule 9 of the Pension Rules.

6. Though Mr. Beni Prasad, who argued his case in person, contended that under Section 11 of the Pensions Act, 1871, pension is exempt from attachment and, as such, the Government dues, if any, cannot be recovered by deducting any part of the pension, in our view, this contention is mis-conceived. Section 11 of the Act, in so far as is relevant for our present purposes, reads as under:-


"11. Exemption of pension from attachment.- No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court at the instance of a creditor, for, any demand against the pensioner, or in satisfaction of a decree or order of any such court. This section applies..."

It would be seen that what is prohibited under Section 11 is seizure. The exemption covers seizure, attachment or sequestration by process of any court and at the instance of a creditor and limited to a demand against the pensioner, or satisfaction of a decree or order of the court. It does not deal with any amount due to the Government as such. Further, it does not relate to withholding of the payment of pension by the Government.



Withholding of payment by the Government of any amount which is due to the pensioner does not amount to seizure, attachment or sequestration, by process of any court. The Government is not seeking to attach any amount, nor is it seeking the process of any court for withholding the same. What the respondents seek to do is to withhold payment of pension for adjustment towards the amount due from the pensioner to the Government. Reliance upon Section 11 is, therefore, misplaced. However, the principle underlying Section 11 appears to have been incorporated in Rule 9 to the limited extent that it could be withheld only by way of disciplinary action initiated within the period specified therein and not otherwise. The claim of the applicant must succeed on the first ground, namely, no part of the pension or relief on pension can be withheld unless the conditions laid down by Rule 9 are fulfilled. That not having been satisfied, the impugned order cannot be sustained.

7. We must, however, hasten to clarify that what we have stated above would be applicable where the pensioner has not himself been guilty of fraud in getting his pension released. No person, including a pensioner, can be allowed to take advantage of his fraud and permitted to resist recovery of any amount due from him to the Government. Fraud vitiates all transactions and a pensioner too cannot be allowed to retain the advantage which he has secured by playing fraud. In this case, the applicant is not accused of playing any fraud or misrepresentation. If at all it was a mistake was committed/in the office maintaining the GPF Account for which

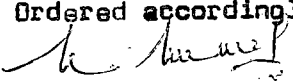



the applicant cannot be held responsible. The withholding of pension and RIP is, therefore, illegal; the same shall be paid to him.

8. So far as the applicant's claim for conveyance allowance is concerned, the Respondents themselves have conceded that it is under process and has to be paid. The same shall be processed and paid to him within a period of three months from the date of receipt of this order.

9. The further claim of the applicant that a sum of Rs. 924/- is still due to him under his GPF Account must, however, be rejected because from an extract of the GPF Account produced by the Respondents, it is clear that there has been an excess payment which together with interest over the excess payment, amounts to Rs. 5537/-. Hence, the question of the Respondents being directed to pay Rs. 924/- with interest or any amount whatsoever to the applicant does not arise. In the result, this Application is allowed to the extent indicated above, namely, that this amount of Rs. 5537/- or any other amount shall not be recovered from the applicant's pension or RIP. We make no orders as to costs.

Ordered accordingly.


(KAUSHAL KUMAR)
MEMBER
24.12.1986.


(K. MADHAVA REDDY)
CHAIRMAN
24.12.1986.