

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH NEW DELHI

Original Application No.1580 of 1987

Versus

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. S.R. Adige .Member(A)

(By Hon'ble Mr. Justice U.C.Srivastava, V.C.)

The applicant who is a Section Officer (Combined grade II III of I.F.S.'B' Service) in the Ministry of External Affairs. Between 1983 to 1986, he was posted in Holland. His wife Smt. Anita Sachdev was also employed by the Embassy of India. Under the instructions governing the remunerative employment of wives/husbands and other dependents of the officers serving India Missions abroad dated 24.1.1978. The salary was to be paid on par with other local employees in the Embassy. The applicant was recruited as accounts clerk by the Indian Embassy after due selection. In view of the instructions referred to above, 25% deduction of the Foreign Allowance of the applicant was made in terms of para 11(i) of the said instructions, which reads as follows:-

(1)" In the case of remunerative employment of the wife/husband a reduction will be made in the foreign allowance of the husband/wife to the extent of one-third of the emoluments of the wife/husband received from the remunerative employment subject to the condition that such reduction should not exceed 25 per cent of the Foreign allowance of the officer"

In view of the fact, that the applicant's wife was employed there, she was only entitled to basic pay in view of the para 11(iv) of the said instructions which was subsequently amended under S.P.A.'s letter dated 5.12.80

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which reads as follows :

11(iv) " When the employment is in the Mission or post itself, the wife/husband or other dependent so employed shall receive the basis pay and the cost of living allowance(COLA) wherever admissible. Reduction in the foreign allowance of the officer will, however, be made as at (i) and (ii) above."

In view of the instructions applicant's wife was paid an amount of Rs. 23,877.00 as cost of living Index(COLA) on par with local employees. The applicant's wife also received bonus. Subsequently it appears certain objections were raised and amount of Rs. 12,350/- on account of bonus paid to the applicant's wife and the same was held to be recoverable from the applicant. The applicant protested the said recovery and filed the representations in this behalf, but his representation was rejected and that's why the applicant ultimately has approached the tribunal praying that no recovery in respect of the amount which was paid to the wife of the applicant shall be made from his salary and further the amount which was paid to the wife was part of the pay and no deduction could have been made. Even if the government was under a mistake of fact or there was laches and negligence on the part of the government in making the payment without verifying the composition no one can be made to suffer and no recovery can be made.

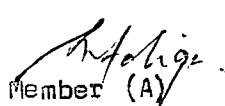
2. According to the respondents Cola was not admissible during the period 24.5.83 to 31.8.86 in terms of order dated 24.8.1983 i.e. the order which was passed subsequent to the grant of Cola to the applicant's wife.

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The Government servant is paid foreign allowance which takes care of the local cost of living. As such there is no case for payment of COLA to the dependents of such Government Servants. COLA is not part of basic pay and that is why it is indicated separately. though it is merged with basic pay wherever necessary but it does not form part of pay. Thus, wherever it was not merged with the basic pay it was not admissible, hence the recovery was illegal. The Memorandum dated 24.5.83 reads as follows :

"11(iv) when the employment is in the mission ~~area~~ or post itself, the wife/husband or other dependent so employed shall receive only the basic pay. Reduction in the Foreign Allowance of the officer will, however, be made as at (i) and (ii)."

It has been stated that no ~~amount~~ payment was to be made to the applicant's wife. Even if it is accepted that it is a case of wrong payment, but the recovery could not have been made. Amount was paid and was drawn by the wife and not by the husband. No provision of law statutory otherwise should be decided from which a recovery in respect of the wife could be made from the ~~applicant~~ husband as the recovery itself is bad. It is not necessary to enter into the other~~xx~~ cases apart from making this observation that no one is to suffer because of the mistake and negligence on the part of the government. If the government was under a mistake of a fact, even ~~the~~ under the contracted, it is the party which is under a mistake of fact is to suffer. In this connection reference may be made to the case of State of Maharashtra Vs. Jagannath Achyut Karandkar A.I.R. 1989 Supreme Court page 1133. In this view, the application deserves to be allowed. No recovery shall be made from the husband. In case, the recovery has been made, the amount shall be refunded back to him. In these observations, the application is disposed of. No order as to the costs.


Member (A)


Vice-Chairman

Dated: 17.3.1993

(RKA)