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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 205 1987
T.A. No.

DATE OF DECISION 19.11.87

Shri A. P. Saksena

Petitioner

Shri V. Prasad, **Advocate for the Petitioner(s)**

Versus

State of Madhya Pradesh &
Accountant General, Madhya Pradesh **Respondents**

S/Shri P.P.Khurana & G.C.Lalwani, **Advocate for the Respondent(s)**

CORAM :

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

The Hon'ble Mr. Kaushal Kumar, Member

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

M. Kumar

(Kaushal Kumar)
Member

K. Madhava Reddy

(K. Madhava Reddy)
Chairman

Central Administrative Tribunal
Principal Bench: Delhi

Regn.No.OA 205/87

Date of decision: 19.11.1987

Shri A.P.Saksena Applicant
Vs.

State of Madhya Pradesh & Respondents
Accountant General Madhya Pradesh

Coram: Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the Applicant Shri V. Prasad, Counsel
For the Respondents Shri P.P.Khurana, counsel
and Shri G.C.Lalwani, Counsel

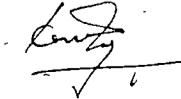
(Judgement of the Bench delivered by the Hon'ble
Mr.Justice K. Madhava Reddy, Chairman)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant a retired Indian Administrative Service Officer of the Madhya Pradesh cadre prays:-

" he be paid Rs.17,120/-only being the amount of the balance of gratuity along with the interest accruing thereon and with further interest on the balance so reached @ 15% ^{annum for} over the period from 14.3.1983 till 31.3.1987" .

2. He also prays for compound interest at the rate of 20% on the aforesaid amount.

3. As the applicant's claim mainly rests on a settlement of accounts, we directed the Respondents to produce the relevant record. After the inspection of the said record, Shri V.Prasad, learned counsel/for the applicant, stated that there has been an improper deduction of Profession Tax from the amount of gratuity due to him. He contended that no Profession Tax was due from him and even if it was due that was payable to the Municipal Corporation and not to the Government as such it was not Government due which could be deducted from his gratuity.



4. Article 276 of the Constitution of India empowers the levy of Profession Tax by any State Government. Sub-clause (2) of Article 276 of the Constitution permits levy of Profession Tax not exceeding Rs.250/-either by the State or any municipality, district board, local board or other local authority in the State.

5. The Madhya Pradesh Vritti, Vyapar, Ajivika aur Sevayojan Kar Adhiniyam (No.26 of 1966) (hereinafter referred to as the Act) ~~XXXXX~~ empowers the levy of Profession Tax as envisaged by Article 276 of the Constitution. The State of Madhya Pradesh is empowered to levy Profession Tax under Section 3 of the Act on all persons carrying any profession, trade, calling or employment. If a person is employed he is liable to pay the tax to the employer and under Section 11 of the Act the employer is placed under an obligation to deduct the tax at source and pay the same on behalf of the employee into the Government Treasury. The word 'employee' is defined under Section 2 of the Act as a person employed on salary or wages and includes a Government servant receiving pay from the revenues of the Central Government or any State Government or the Railway Fund. The applicant is admittedly a person employed by the State of Madhya Pradesh. The State Government of Madhya Pradesh which is his employer is statutorily duty-bound under Section 11 of the Act to deduct the tax at source and remit the same in the Government Treasury. The Profession Tax was thus due from the applicant and the Respondent-State was, therefore, under an obligation to deduct the same at source. If the same was not deducted for one reason or the other before the retirement of the applicant, the State Government was entitled to deduct the same from the amount of gratuity due and payable to the applicant. It was not shown that the Profession Tax was paid by the applicant. Unless it is shown that it was already paid or deducted at the source, withholding of any amount under this head cannot be said to be illegal. No relief can, therefore,

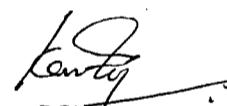
be granted to the applicant in regard to the deduction of this amount.

6. Learned counsel for the applicant also contended that a sum of Rs.413-66 was wrongly deducted towards 'retrench amount of Medical Bill'. This claim is opposed. The Demand Note dated 16.10.85 containing six items sent to the applicant shows the amount deductible as Rs.9297.11 whereas the total of these items comes to Rs.8883-45/- only. This is obviously a typographical error which has been explained in the counter affidavit filed by the Respondents. The amount of Rs.413.66 towards "retrenchment from medical reimbursement" was due from the applicant while he was the Drawing and Disbursing Officer. No material is placed before us to hold that this amount was not deductible. This claim of the applicant is also rejected.

7. After going through the accounts, no other issue was raised before us. This application, therefore, fails and is accordingly dismissed.



(Kaushal Kumar)
Member
19.11.87



(K. Machava Reddy)
Chairman
19.11.87