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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 528 of 1987
~~TA No.~~

DATE OF DECISION 3.7.1987

Smt. Yashwanti Sood Petitioner

Shri K.L. Bhatia Advocate for the Petitioner(s)

Versus

Union of India rep. by Secretary, Ministry Respondents
of Human Resources Development & two others

Shri P.P. Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Birbal Nath, Administrative Member

The Hon'ble Mr. G. Sreedharan Nair, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

3.7.1987
(G. SREEDHARAN NAIR)
Judicial Member
3.7.1987

3/7/87
(BIRBAL NATH)
Administrative Member
3.7.1987

ORDER

(Pronounced by Shri G. Sreedharan Nair, Judicial Member)

Can Government dues pertaining to licence fee for
accrued
Government accommodation/before the death of a Government
servant be recovered out of the relief on pension allowed
to the widow of the Government servant on account of family
pension, years after the final sanction of family pension
and payment of the death-cum-retirement gratuity (DCRG) is
posed in
the question that is posing this application filed by the
widow of one Shri V.S. Sood, who, while employed as
Under Secretary in the Ministry of Education & Culture,
expired on 5.10.1981. The applicant was allowed family
pension with effect from 6.10.1981 and was asked to contact
the 3rd respondent, the Manager, Central Bank of India, for
receiving the payment. On the request of the applicant
the pension was being duly credited to her Savings Bank
Account till April 1986. But since credit was not being
made since May 1986 the applicant made enquiries when she
was made to understand that on intimation from the 2nd
respondent, the Pay & Accounts Officer of the concerned
Ministry by his letter dated 4.9.1986 ^{had informed that} an amount of
Rs. 13,956.65 was to be recovered from the pension
towards Government dues. It is alleged by the applicant
that even if there is any outstanding dues it cannot be
recovered from the pension or family pension or relief
thereon but had to be made only from the gratuity. The
applicant prays that the respondents be directed to
release the entire family pension along with relief

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she
thereon and be paid the arrears with effect from May 1986
along with interest.

A reply has been filed on behalf of the 2nd respondent wherein it is contended that an amount of Rs. 14,956.65 was due by way of licence fee from the deceased husband of the applicant, and after deducting the amount of Rs.1,000/- that was withheld the balance amount of Rs. 13,956.65 was decided to be recovered from the relief on pension by the letter dated 20.8.1986. According to the 2nd respondent Government dues can be recovered from the relief on pension even without the consent of the pensioner in view of the Government of India's decision under Rule 73 of the Central Civil Services (Pension) Rules, 1972, for short the rules.

Admittedly the husband of the applicant passed away on 5.10.1981 while he was in service, and final sanction for payment of family pension of Rs. 336/- per mensem up to 5.10.1988 and Rs. 168/- per mensem thereafter along with relief thereon (which expression means dearness relief) was sanctioned to the applicant to be paid with effect from 6.10.1981. The DCRG was also paid to her. It is also not disputed that till April 1986 the pension and relief thereon was being duly credited in the Savings Bank Account of the applicant. Thereafter on the premise that a sum of Rs. 13,956.65, ~~was~~ due on account of licence fee/ damages in respect of the Quarter occupied by the family of the deceased is to be recovered and that despite best

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efforts it could not be recovered, the 2nd respondent advised the 3rd respondent, the Bank through which the pension was being paid, to recover the said amount from the relief on pension payable to the applicant and to remit the same every month to the Directorate of Estates. The counsel of the applicant challenges the recovery and the non-payment of portion of the pension as illegal. Firstly it was submitted that no notice was ever served on the applicant informing her that there are any Government dues. It was further pointed out that in view of the Rules even if there has been dues by way of licence fee in respect of the Quarter it should have been recovered from the DCRG and that the pension or the relief thereon cannot be withheld on that account. By way of reply the counsel of the 2nd respondent invited our attention to a Government decision to the effect that the Ministry of Finance has clarified in their U.O dated 7.2.1978 that the pensioner's relief is not covered by the Pension Act and there may be no objection to the recovery of Government dues from the pensioner's relief without the consent of the pensioner.

We have no hesitation to state that the action of the 2nd respondent is ~~wholly~~ illegal and totally unjustified. Chapter IX of the Rules deals with determination and authorisation of family pension and DCRG in respect of Government servants dying while in

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service. Rule 80-B refers to the authorisation of final pension and gratuity. It is clear from that Rule that amounts, if any, outstanding against the deceased of Government servant have to be adjusted out of the gratuity, and authorisation shall be given only for the balance.

Dues pertaining to Government accommodation are specifically provided for in Rule 80-C. Clause (viii) of Sub-rule (1) of the Rule lays down that if the outstanding amount of licence fee was not recovered from the pay and allowances of the deceased Government servant, it shall be adjusted against the amount of gratuity. Sub-rule (2) of the Rule dealing with dues other than those pertaining to Government accommodation is also directed to be recovered only from the amount of DCRG becoming payable to the family of the deceased Government servant. It is clear from the Rule that before the authorisation of the family pension and DCRG a 'No Demand Certificate' is obtained from the Directorate of Estates so as to ascertain whether there are dues pertaining to Government accommodation. Clause (vi) of Sub-rule (1) of the Rule provides that in case no intimation is received by the Head of the Office within the prescribed period from the Directorate of Estates regarding recovery of licence fee, it shall be presumed that nothing was recoverable from the deceased Government servant and the amount of gratuity withheld shall be paid to the person

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to whom the amount of gratuity was paid.


In view of the specific provisions referred to above, it is incomprehensible as to how after 5 years of the final sanction of family pension and payment of DCRG a portion of the family pension has been ~~proposed and~~ ^{has actually been} withheld for alleged dues pertaining to Government accommodation. The reliance placed on the U.O of the Ministry of Finance ^{dated 7.2.1978} is totally misplaced, for what it says is only that as the pensioner's relief is not covered by the Pension Act "there may be no objection to the recovery of Government dues from the pensioner's relief". Chapter X of the Rules has been introduced by a notification issued by the Government of India, Ministry of Home Affairs (Department of Personnel & Administrative Reforms) on 19.5.1980. Even apart from that the opinion of the Ministry of Finance cannot prevail over the unambiguous provision in the Rules on the subject, which specifically lays down the source from which such recovery of dues pertaining to Government accommodation is to be made.

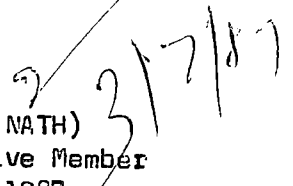
Pension is not a bounty but is the right of a Government servant. Equally so is family pension which is being paid to the family of the deceased Government servant for its sustenance. There is absolutely no basis for making a distinction between family pension and relief thereon. Indeed it is worthy of mentioning that by the

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Office Memorandum issued by the Government of India,
Ministry of Personnel, Public Grievances & Pension on
16.4.1987, by way of implementation of the recommendations
of the ^{Central} Fourth Pay Commission as regards rationalisation of
pension structure for pre-1.1.1986 pensioners that the
pension/family pension of existing pensioners/family
pensioners has been decided to be consolidated with effect
from 1.1.1986 by adding together the existing pension/
existing family pension, the existing dearness relief,
and the additional benefits allowed and that the amount
so arrived at will be regarded as pension/family pension
with effect from 1.1.1986. As such the amount that was
being withheld and which is continuing to be so withheld
does form part of the family pension due to the applicant,
and can no longer be said to be relief on pension.

In the result we allow the application and direct
the respondents to disburse the entire family pension
along with the relief thereon as sanctioned to the
applicant. The arrears that has been withheld shall be
disbursed to her forthwith, and in case it is not paid
within one month of the receipt of a copy of this Order
it shall bear interest at the rate of 12% per annum from
the date on which it was due and payable to the applicant.


(G. SREEDHARAN NAIR)
Judicial Member
3.7.1987


(BIRBAL NATH)
Administrative Member
3.7.1987

kcb./2.7.87.