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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1076/90

NEW DELHI THIS THE 13th DAY OF JANUARY, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

1. Shri I.V.S. Rao,
8/10, Roop Nagar,
Delhi-110007.
 2. Legal Heirs(of deceased Applicant)
 1. Smt Kalyani Sarthy daughter
 2. Shri I.V.Ranga Rao Son
 3. Shri I.V. Ramanuja Rao Son
 4. Smt C. Shridevi daughter
 5. Smt I. Saroja Rao Widow...Applicant
- (By Advocate : Shri PTS Murthy)

VERSUS

UNION OF INDIA, THROUGH

1. Secretary,
Ministry of External Affairs,
New Delhi.
 2. A.G.C.R.
I.T.O Building,
I.P. Estate,
NEW DELHI-2. ...Respondents
- (By Advocate : Shri N.S. Metha)

JUDGEMENT (ORAL)

Shri J.P. Sharma, Member (J)

The applicant has filed this application on 21st November, 1990, and before this Application could be decided the applicant expired on 6th March, 1994. And by M.A.1370/94, the undisputed legal representatives of the said employee were arrayed as the applicants, who, ^{adopted} perused the application which has been contested

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by the respondents by filing a reply.

2. The deceased employee who started his career as Assistant in the Ministry of External Affairs, in 1950 was ultimately posted as First Secretary in the Embassy of India, Sofia. And finally he retired from that assignment on 31.12.1980. The applicant was a contributory to G.P.F. account maintained by the Respondents. On settlement of dues of the applicant it was found that certain amount which was not contributed by the applicant towards his GPF account, has been wrongly given an entry in his GPF Account which was detected as Rs.28,576.31 paise in March, 1970.

3. The case of the applicant is that from the amount of gratuity payable to him on his retirement a sum of Rs.18,000/- was recovered/deducted from the withheld gratuity of the applicant on account of the said wrong entry of Rs.28,576.31 in the GPF account, and on the basis of the wrong entry the amount was paid to the applicant as its contribution to GPF on his retirement. Even after adjusting this amount of Rs.18000/- from the withheld

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gratuity under the provisions of Rule 73(3) of the CCS (Pension) Rules, 1972 there remained an outstanding balance against the deceased employee of Rs.10,832/-. The deceased employee in spite of the demand from the respondents did not reimburse this amount. Therefore, the Ministry of External Affairs by the Order dated 18th August, 1986 have taken a decision with respect of the representation of the applicant in March, 1986; that order is reproduced below:-

"The amount of Rs.20,576.31 as a single month contribution by you to GPF, made in March, 1970, is an erroneous entry and, therefore, a palpably a mistake which cannot be admitted as your contribution. Hence, by withdrawing a total amount of Rs.48,000/- from your GPF (Rs.10,000 in November, 1974; Rs.6000 in May 1977; and Rs.32,000 in May 1979) you had overdrawn an amount of Rs.28,832. The withheld balance of gratuity, amounting to Rs.18,000, will be adjusted against the above overdrawal of Rs.28,832, this leaving a balance of Rs.10,832 due from you. This balance may kindly be refunded to government account by way of sending a crossed cheque in favour of "attach (Cash), Ministry of External Affairs, New Delhi", latest by 31st October, 1986, failing which the same would have to be recovered from your "Relief in Pension".

The applicant thereafter also made certain representations but the respondents did not accede to his request so the Bank ^{of} the applicant was approached for making recoveries from the

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relief ^{on} pension of ~~widow~~ ^{deceased employee} vide letter dated 30th June, 1988 (Annexure 5). It appears that the respondents through the bank effected the recovery from the interim relief allowable to the pensioners deceased employee until it was stopped by the impugned interim direction issued by the interim order dated 31st May, 1990 directing the respondents restraining from effecting recovery from the relief pension payable to the applicant (deceased employee).

Relief Sought :

4. (i) The applicant (deceased employee) prayed for the grant of the relief to direct the respondents to refund the balance of gratuity of Rs.18,000/- which they have adjusted against the alleged erroneous crediting in the GPF account of the applicant in March, 1970;

(ii) and with a further direction to stop the recovery which the respondents are making every month at the rate of Rs.288/- p.m. from the relief on pension towards the balance of Rs.20,832/- remaining out of the total Rs.28,832/ and to refund the amount already recovered;

5. The respondents contested this application by filing a reply. In the reply it is stated that the Rule 8 and 9 of Pension Rules are not relevant in the instant case. The erroneous

payment of government money (Public Fund) was illegally retained by the Officer and that such government dues are recovered as per Government of India's decision No.7 below Rule 37 of Pension Rules. Further the reliance has been placed on Rule 71(2) of Pension Rules, an outstanding government dues shall be adjusted against the amount of retirement gratuity. The Rule 71(3) lays down that "the dues which shall be government dues, does not exclude the government dues arising out of overpayment made to government employees." Thus the respondents have taken the stand, action in recovering the dues to the credit of the govt. recoverable from the interim relief paid to the applicant (deceased employee) on his retirement as pension.

6. The applicant (deceased employee) has also filed rejoinder rebutting the contention raised by the respondents in their reply.

7. We heard Shri PTS Murthy, counsel for the applicant and Shri NS Metha, for the respondents. The learned counsel for the applicant Shri Murthy did not press regarding the adjustments made out of the gratuity of

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the deceased employee to the tune of Rs.18000/-

The learned counsel only pressed during the course of his arguments that the recovery from the interim relief of pension is totally unjustified and cannot be recovered as interim relief is part and parcel of the pension. According to the learned counsel, an interim relief merges with the pension which is settled at an earlier point of time and by the rising trend of prices the amount of initial ^{pension} ~~payment~~ is compensated by the amount of interim relief to the pensioners. In view of this, an interim relief ^{is} ~~as~~ much part of the pension as the earlier sanctioned pension under the PPO. The learned counsel has reinforced his contention by certain decided cases and the first case pointed out is that of **Beni Prasad Vs Union of India**, in **O.A. No.48/86 decided on 24.12.86 reported in ATC Vol (3) 1987 P-545**; this was a case of Postal department employee who was at that relevant point of time while in service was dealing with his own GPF account. Immediately, before his retirement certain manipulations were made in the GPF account, increasing the balance outstanding against him, which could not be detected at the time of his retirement but found out the same after few years. The

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Postal department issued order for attaching his interim relief of pension, and he assailed that action of the respondents of Postal Authorities, by filing the Original Application which came for decision before the Principal Bench. The Principal Bench while deciding the case after contest observed that 'no part of the pension can be withheld unless conditions laid down by Rule 9 are fulfilled. Rule-9 lays down that with only Presidential sanction for an enquiry, the only pension or part of a pension can be withheld and that too not beyond a minimum limit i.e. Rs.350 or Rs.356/-p.m. Another authority cited by the learned counsel is that of **Shri R.D. Sharma Vs Union of India** decided by the Principal Bench by the judgement dated July, 1988 **reported in ATC Vol.8 1988 P-26** and the Bench has considered the same aspects, relief of pension can be subject to attachment or the recovery of outstanding dues against the government and it was held that relief of pension is part of basic pension and recovery of government damages for over-staying in govt. accommodation cannot be effected. In this case, was also considered the Government of India's decision No.7 under CCS(Pension) Rules 71 and which was not accepted in the ^{judgement} said/

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i.e. the
/proposition laid down in the aforesaid Government of India decision. The Bench also considered the definition of pension under Rule 3(0) of the Pension Rules for overall consideration and also taking into account the decision in the Beni Prasad case (**Supra**) interim relief of pension cannot be subject ^{to} attachment or recovery, for settlement of the outstanding government dues of a retired government employee. The learned counsel has also referred to another decision in case of **K.P. Phillip Vs Union of India; reported in ATC 1988 Vol 7 Page-909**; Here also the Madras Bench considered a case whether the relief of pension is part of basic pension or not, and held in the affirmative stating that "no recovery can be effected from the relief". The Bench also considered that under Article 300 'A' "it is the property of the pensioner."

8. We are in full agreement with the ratio of the decision in the decided cases and also on the careful scrutiny of the CCS (Pension) Rules, 1972; where pension is fixed of one retiree, cannot be altered to his disadvantage.

9. The Rule 70 of the CCS(Pension) Rule 1972 is clear in this respect. However, the

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revision can only be effected when there is clerical error detected subsequently and that too after affording ^{an} opportunity to the retiree and such a clerical error should be detected within a period of 2 years from the date of authorisation of pension. Thus the law laid down in the rules framed by the government ^{the point.} are clear on / The pension is also not to be bounty but hard-earned benefits of retiree he having put in longstanding service and qualifying for the grant of a sum of money for his rehabilitation and settlement after his retirement when he has quitted the active service. It shall also be an ^{the} infringement of / right of the retiree of living almost an unluxurious life in the little amount of pension which he gets after retirement. Thus, we hold that the interim relief allowable to a retiree on the basic pension is part of the Original pension sanctioned by the PPO and merges in the amount is not subject to attachment or any recovery against any outstanding government dues.

9. The applicant (deceased employee) is no more but his legal representatives inherited his assets. The recovery has been effected during the life time of the deceased employee which are equally to be inherited by the legal

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representatives by the personal law, they are governed. The widow of the deceased employee is applicant in this case and the learned counsel has got instructions from her and the other heirs may authorise the widow who shall be competent to receive the amount deducted from the interim relief of the deceased employee.

10. The application is, therefore, partly allowed. The claim of Rs.18000/-, however, is not preseed by the learned counsel for the applicant, and the same is disallowed.

11. The recovery of the balance amount of Rs.10,832/- outstanding dues cannot be subject to recovery from the pension or interim relief on pension. It shall be open to the Government to seek remedy ^{common} under law, if so advised, In view of this amount deducted during the life time of the deceased employee at the rate of Rs.288/- per month till the impugned order was passed shall be calculated by the respondents and be reimbursed to the widow of the deceased employee, if she files, authorisation certificate from the surviving legal representatives of the deceased employee.

12. This Order should be complied within a a period of six months from the date of

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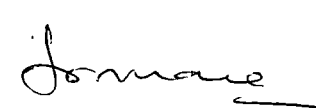
receipt of this Order.

13. The respondents, themselves will inform the widow of the deceased employee that the aforesaid amount is calculated and shall be paid to her according to law.

14. There is no order as to the costs.



((B.K. SINGH)
MEMBER (A)



(J.P. SHARMA)
MEMBER (J)

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