

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. OA-832/90

Date of decision: 1.4.1992

(11)

Shri S.D. Kinra Applicant

Versus

Union of India through Respondents
Secy., Miny. of Tourism
and Others

For the applicant In person

For the Respondents Shri N.S. Mehta, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who has worked as Manager, Government of India Tourist Office, Chicago, U.S.A., from 8.10.1985 to 31.5.1988, retired from Government service on 30.6.89. His grievance is that though he is entitled to gratuity to the tune of Rs. 47,850/-, a sum of Rs. 12,000/- has been illegally deducted therefrom.

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2. We have carefully gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents. The non-payment of the full amount of gratuity to the applicant is due to a dispute between the parties as regards the alleged non-payment of the rent of the household furniture leased out to him while he was posted at Chicago and demurrage charges incurred for the delayed clearance of his personal belongings on his repatriation to India.

3. Admittedly, a sum of Rs. 34,487/- has been paid to him towards gratuity. The question arises whether deduction of any amount from his gratuity towards the alleged non-payment of the rental of household furniture or demurrage charges incurred, is legally justified.

4. The versions of the applicant and the respondents are divergent on both these matters. According to the applicant, the keys of the flat which was in his occupation while in Chicago, had been handed over to Mr. George, the then Information Assistant, by his wife, who had to stay over in Chicago in connection with her illness and the studies of his son. According to the respondents, the flat in question was not vacated till the end of June, 1988 and that the keys were not handed over to Mr. George, as alleged by the applicant. According to them, he was to pay the rental for the furniture every month to the

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rental agency.

5. The applicant has referred to some correspondence exchanged by him with the authorities concerned indicating that he had inherited the furniture from his predecessor (Shri A.C. Sharma), who in turn had inherited it from his predecessor (Shri A.C. Bagchi). In any event, the furniture was in a dilapidated condition.

6. The applicant feels that the charge of non-accounting for the furniture hired from the rental agency, has been cooked up by the respondents out of mala fides. This had been raised nearly after 9 months after he had left Chicago and he had all the while thought that everything had gone on well.

7. In our opinion, the version of the applicant is not very convincing. Normally, a Government servant who is on posting abroad, is expected to account for the furniture hired for his Flat and it is not the responsibility of the employer to settle the matter with the rental agency. The Regional Director of the Tourist Office at New York has stated in his letter dated 31.8.90 at page 64 of the Paperbook ~~xxxx~~, that the applicant was making full rental payment to the furniture supplier every month. Assuming that the version of the applicant that his relationship with the authorities concerned was somewhat strained is correct, he should have been doubly

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cautious to ensure before he left Chicago, ~~that~~ the items of furniture hired by him were returned to the rental agency or the matter relating to the same settled with the persons concerned. The respondents have even alleged that the furniture items in question were not lost but had been taken away by the wife of the applicant. There is nothing on record to substantiate this except for a record note of discussion held between the Manager, Rashmi International, Chicago and Shri K. Kumar, Director, Government of India Tourist Office, New York dated 31.1.91 at pages 66-67 of the paperbook.

8. Ultimately, a tall claim for 3,500 dollars towards furniture raised by the rental agency was reduced to 300 dollars after the discussions held between the rental agency and the Director, mentioned above. The applicant contends that such a compromise entered into by them behind his back, is not binding on him and that he is in no way responsible for the claim raised by the rental agency.

9. In our opinion, as it is the responsibility of the Government servant to account for the furniture leased out to him before he vacated the premises, the deduction from the gratuity amount of a sum of Rs.5,448.10 (representing 300 dollars at the then prevailing rate of exchange), cannot be faulted on legal or constitutional grounds.

10. The position is, however, different with regard to the liability of the applicant for the demurrage charges on account of delayed clearance of his personal belongings sent by land/sea.

11. On 31.5.1988, the applicant wrote to the Regional Director, Government of India Tourist Office, New York, requesting to give him an advance of 2,500USdollars in order to meet the following expenditure consequent upon his transfer back to India:-

(i) Surface transportation charges from Chicago to New York;

(ii) Ocean charges from New York to Bombay; and

(iii) Surface transportation from Bombay to New Delhi.

12. In the L.P.C. issued to the applicant, it has been clearly mentioned that transportation charges will be paid by the Government when the bill is received from the parties concerned. On that ground, no advance was given to him though the applicant had asked for the same.

13. There had been delay in the clearance of the goods, resulting in payment of demurrage charges. The protracted correspondence on the subject ^{on} record indicates that the applicant was not responsible for the delay in the clearance of the goods. The applicant had entrusted the matter to M/s Cox and Kings (India), who were his handling agents. There is no allegation that either the applicant or the handling agents were responsible for the delay. In the

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facts and circumstances of the case, we are of the opinion that any deduction from the gratuity amount of the demurrage charges incurred in clearance of the goods, is legally unjustified.

14. The respondents have also stated that the applicant is not entitled to T.A. bill of Rs.3,055/- in respect of his family members as the condonation of delay had not been ordered by the Government. Why the Government did not condone the delay, has not been spelt out in the counter-affidavit. The applicant had informed the authorities concerned that his wife and son had to stay back at Chicago due to compelling reasons. In the circumstances, in all fairness, the respondents should have condoned the delay and allowed the T.A. bill for Rs.3055/- in respect of the family members of the applicant, who had travelled to India after a period of six months provided for under the normal rules.

15. In the light of the above, the application is partly allowed and disposed of with a direction to the respondents to release the amounts deducted from the gratuity payable to the applicant towards the demurrage charges incurred in the clearance of his unaccompanied baggage. The balance amount of gratuity, over and above Rs.34,487/- already paid to the applicant, should be

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released to him as expeditiously as possible but preferably within three months from the date of communication of this order. They should also condone the delay in respect of the T.A. bill relating to his family members and release the amounts due, if this has not already been done, within the same period.

16. The application is disposed of accordingly. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. Dhoundiyal)
Administrative Member

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11/4/92
(P.K. Kartha)
Vice-Chairman(Judl.)