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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2355/1991

17.02.1992

SHRI D. RAJ

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENTS

CORAM :

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI
B.B. SRIVASTAVA

FOR THE RESPONDENTS

...SHRI BRIJENDER
CHAHAR

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)
(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant retired as Senior Artist from Indian Counsel of Agricultural Research (ICAR) on 30.6.1989. It appears that the respondents by an order dt. 16.8.1991 ordered that a sum of Rs.8340/- be recovered from the applicant which was due to him and a note was issued to the banker of the applicant collecting pension on his behalf for reimbursement to the applicant. The learned counsel pressed that under Pension Rules, the pension already granted cannot be withheld nor in any case be recalled unless only in special circumstances.

The learned counsel for the applicant also pointed out that the present case is fully covered by the decision in the case of Shri R.D. Sharma Vs. Union of India, reported in 1989(1) CAT p-61 SLJ wherein in para-26, the Principal Bench held as follows :-

" The U.O. note of the Ministry of Finance dt.7th February, 1978 to the effect that the pensioner's relief is not covered by the Pensions Act and there may be no objection to the recovery of the Government dues from the pensioner's relief without the consent of the pensioner, is in the nature of an administrative instruction. As the question of pension has been comprehensively regulated by the Pension Rules and the rules do not leave any discretion in the matter to the executive to make recovery from the pensioner's relief, to our mind, these instructions cannot be treated as supplementing the Pension Rules. It is well settled that an administrative instruction can be issued to supplement statutory rules but not to supplant them. Administrative Instructions could also be issued in matters on which the statutory rules are silent. In the instant case, the Pension Rules which are statutory, in nature comprehensively deal with all matters regulating payment of pension. The Pension Rules specifically provide for withholding or recovery of pension in specified situations and circumstances, leaving no gap to be filled by administrative instructions. In view of this, we are of the view that the administrative instructions contained in the U.O. note of the Ministry of Finance dated 7th February, 1978 will have no legal binding force. The Administrative instructions issued in 1978 by the Ministry of Finance do not also go into the question as to whether relief in pension is to be considered as part of pension."

The learned counsel for the applicant also pointed out that the recovery is going to be effected by

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the respondents on the basis of the Government of India instructions below Rule 73 of CCS (Pension) Rules, based on the note of Ministry of Finance of 1978. That note is fully discussed in the aforesaid judgement and the relevant para has already been quoted above.

The learned counsel for the respondents in view of the aforesaid judgement of the Principal Bench, referred to above, pointed out that since the applicant has admitted that the aforesaid amount is due against him though that could not be recovered from the pensionary benefits of the applicant in view of the aforesaid judgement, but still the applicant is bound to pay that amount not on legal basis, but on moral basis.

Taking all these facts into account, the application is disposed of in the following manner:-

The impugned order dated 16.8.1991 is quashed and set aside and the respondents are directed to withdraw this aforesaid order issued to the banker of the applicant and also make good the amount already deducted by the bank, if any.

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The respondents shall comply with the aforesaid order within a period of 8 weeks from the date of receipt of this order. However, the respondents shall be free to take the legal action, if so advised, for the recovery of the aforesaid amount from the applicant. In the circumstances, the parties to bear their own costs.

J. P. Sharma

(J.P. SHARMA)

MEMBER (J)

17.02.1992