

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 2427/91

Date of Decision: 03-04-1992

(P)

Shri C.P.Mathur

.. Applicant(s)

Shri H.N.Verma

.. Counsel for the applicants

Union of India through Secretary
Department of Culture,
Shastri Bhavan, New Delhi
and others
X.C.Mital for R.1&2
Shri T. N. Verma for R.3&4
Shri S.K.Gupta for R.5.
None for R.5.

.. Respondents

.. Counsel for respondent(s)

CORAM

Hon'ble Mr. S.P.Mukerji - Vice Chairman

Hon'ble Mr. J.P.Sharma - Judicial Member

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

JUDGMENT

(Delivered by Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 11.10.1991 filed under Section 19 of the Administrative Tribunals Act, the applicant a retired Archivist of the National Archives of India has challenged the action of the Haryana Government regarding recovery of Rs. 23,294.35 and has prayed that the Director, National Archives of India be directed not to deduct that amount from the Death-cum-Retirement Gratuity (DCRG), the payment of which has been illegally withheld by him. He has also prayed that interest for delayed payment of DCRG be also directed to be paid.

2. The brief facts of the case are as follows. The applicant had been a permanent employee of the National Archives of India having joined the organisation on 24.7.62 and retired on 31.8.90. While he was working as Assistant Archivist Grade I he was selected by the Haryana

Government and went over as Deputy Director, Archives in the scale of Rs.700-1250 on deputation from 4.9.75 to 28.2.83. During his period of deputation, in his parent department he was promoted as Archivist in the scale of Rs.650-1200 with effect from 24.8.78. He retired on 31.8.90 after reverting to his parent department on 1.3.82. More than 7 years after his reversion from deputation with Haryana Government, the Director of Archives in Haryana wrote a letter on 5.6.90 to the Director of National Archives of India to recover from the applicant an amount of Rs. 23,294.35 alleging that the excess amount/drawn as the applicant himself, ^{was} the Drawing and Disbursing Officer. The applicant in a detailed calculation showed that he had drawn the right amount of his pay while with the Haryana Government, which was duly forwarded to them by the National Archives authorities. On his retirement the amount of Rs.23,295/- was withheld from the DCRG till the case of excess payment is decided. The applicant argues that in accordance with the terms of his deputation with the Haryana Government (Annexure-P.11) he was to get pay in the scale of the Haryana Government attached to the post which he held. The deputation period in excess of four years from 1979 to 25.2.83 was also sanctioned by the National Archives vide their letter dated 20.5.87 at Annexure.P.14. Though the applicant was the Drawing-cum-Disbursing Officer he drew salary in accordance with the pay/leave salary slip at Exbt.P.15. The Director General National Archives as Respondent No.2 has simply stated in the Counter affidavit that the amount of Rs.23,294.35 was withheld in accordance with the CCS(Pension) Rules, 1971 as the applicant had an outstanding amount of Rs.23,295/- to be paid to the Haryana State Archives on account of the over payment of salary drawn by him during the period of his deputation. They have also indicated that the Haryana Government has since informed that the applicant's representation was considered and rejected.

3. The main respondent is., the Government of Haryana have conceded that the applicant was on deputation from 4.9.75 to 28.2.83 as Deputy Director in the scale of Rs.700-1250 and his period of deputation was extended upto 28.2.83 from time to time. They have referred to the instructions contained in para 9.2 (iii) of Appendix-V as contained in Swamy's Compilation of F.R. & S.R. Part I General Rules that the Government servant is not permitted to draw Deputation (Duty) Allowance beyond 4 years of deputation. Since the applicant continued to draw pay and allowances of the post of Deputy Director of Haryana State Archives upto 28.2.83 an excess amount of Rs.22394.35 was drawn by him between 1.7.79 and 28.2.83. They have conceded that his terms of deputation was settled in accordance with the Annexure.P.11 and Government of Haryana's Order of 31.10.75 at Annexure.R.4 according to which he was to draw pay in the State pay scale in accordance with the Rules of the Central Government. They have stated that after 4 years of deputation the applicant was entitled to the scale admissible to him in his parent department. They have referred to FR-35 regarding restriction of Deputation (Duty) Allowance according to which this allowance is not admissible beyond the period of 4 years of deputation. They have also referred to the Government of India's instructions according to which no Deputation(Duty) Allowance is allowed beyond 4 years.

4. We have heard the learned counsel for both the parties and gone through the documents carefully. The objection of Respondent No.3 that this application against the Haryana Government is not maintainable before this Tribunal, cannot be accepted. Clause (b) of Sub-Section(1) of Section 14 ^{extends} ₆ ~~excludes~~ the jurisdiction of this Tribunal to all service matters concerning " a person (not being a member of the All India Service) or a person

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referred to in Clause (c) appointed to in Civil Service of the Government or any Civil post under the Union and pertaining to the service of such member/person or civilian in connection with the affairs of the Union or of any State or any local or other authority within the territory of India.....". Since the applicant was appointed to a civil service of the Union and was working in connection with the affairs of the Haryana State on deputation, this application will squarely fall within the jurisdiction of this Tribunal.

5. The rules and instructions regarding Deputation(Duty) Allowance are available in Appendix-V to Sway's Compilation of F.R. & S.R. Part I (General Rules). For the purpose of this ^{case} references have been made to the 10th Edition of this compilation. The terms of Deputation(Duty) Allowance when a Central Government employee like the applicant before us is sent on deputation to a State Govt. like the Haryana Government as in this case are given in Section 2 of Appendix V of the F.R. & S.R. In para 8.1 of Section 2 of that Appendix "an employee on deputation may elect to draw either the pay in the scale of pay of the new post as may be fixed under the normal rules or his basic pay in the parent department, plus personal pay if any plus Deputation (Duty) Allowance." It is admitted on all sides that the applicant opted to draw the State pay scale and not his pay in the parent department plus Deputation (Duty) Allowance. The orders of the Government of Haryana at Annexure, R.4 also states as follows:

"He will draw pay in the State's pay scale and his pay will be fixed in the State's pay scale in accordance with the rules of Central Government."

Thus it is clear that the applicant never drew Deputation (Duty) Allowance during his entire period of deputation with the Haryana Government. The learned counsel for the respondents could not show us any document to establish that the applicant was given Deputation (Duty) Allowance during any period of his deputation with the Haryana Government. The respondents have referred to the period of

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admissibility of Deputation (Duty) Allowance as 3 years beyond which it is not admissible by advertizing to paras 9.1, 9.2 and 9.3 of Section 2 ibid. But since the applicant before us never drew any Deputation (Duty) Allowance, the question of his ^{out-duty-drawal} ~~withdrawal~~ beyond 3 years does not arise. We gave an adjournment to the learned counsel for the respondents to search out any order or instruction according to which even where a deputationist ^{has} ~~is~~ opted for the pay scale of the deputation post without any Deputation (Duty) Allowance, he will be obliged to revert to his parent scale after 3 years. But the learned counsel after the adjournment conceded that there is no such orders or instructions available under either Haryana Government or the Central Government. The learned counsel for the respondents however, referred to 4.4 of Section 2 ibid to justify the recovery of the impugned amount from the applicant. The operative portion of this para reads as follows:-

"4.4. In order that no employee received an abnormal pay increase by virtue of being posted on deputation, the authority ordering the deputation will ensure that the minimum pay in the scale of pay of the post to which such deputation is made is not substantially in excess of his basic pay plus deputation (duty) allowance at prescribed rates. Where such minimum substantially exceeds the emoluments admissible under the alternative of drawing deputation (duty) allowance at prescribed rates, the appointing authorities are expected to apply the provisions of Fundamental Rule 35 and specially restrict the pay of deputationists to a suitable figure below the minimum pay of the post."

(emphasis added)

On facts, the learned counsel conceded that the basic pay of the applicant in his parent department in 1979 was Rs.775/- whereas his basic pay as Archivist under the Haryana Government in the scale of Rs.700-1250 was Rs.860/-. When it was pointed out that in accordance with the aforesaid para 4.4, it is the minimum of the pay scale of the deputation post which has to be compared with his basic pay in the parent department plus Deputation (Duty) Allowance he agreed that the minimum of the Haryana Government post being Rs.700/- it cannot be said to be in excess of the basic pay in the applicant's parent department plus Deputation (Duty) Allowance. As a matter of

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fact the applicant's basic pay in the National Archives of Rs.775/- without deputation allowance is more than the minimum of the Haryana Government pay scale of Rs.700/-. Accordingly the aforesaid para 4.4 is totally inapplicable to this case.

6. In the conspectus of facts and circumstances as discussed above, we allow this application, set aside all action on the communication of the Haryana Government regarding recovery of Rs.23,294.35 from the applicant in connection with the deputation to the Haryana Government and direct Respondent No.2 to release and pay the DCRG of the applicant as admissible to him without any deduction of Rs.23294.35 along with 12 per cent interest reckoned from three months after the applicant's retirement till the date of payment. Action on the above lines should be completed within a period of three months from the date of communication of this judgment. There is no order as to costs.

J. P. Sharma

(J.P.SHARMA)
MEMBER(JUDICIAL)

S.P. Mukerji
3.4.92
(S.P.MUKERJI)
VICE CHAIRMAN

03-04-92

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