CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.843/2004

Thursday, this the 4th day of November 2004

Hon'ble Shri S. K. Naik, Member (A)

Dr. M.S. Prasad
Senior Paediatrician & HOD (Paedictrics)
Safdarjung Hospital, New Delhi

...Applicant

(By Advocate: Shri B.K. Das)

Versus

1. CGHS
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi
Through its Accounts Officer, (Cash & Account Section)

2. The Medical Superintendent
GTB Hospital, Shahdara
Govt. of Delhi, Dilshad Garden
Delhi-95

...Respondents

(By Advocates: S/Shri Surender Kumar for respondent 1 and Vijay Pandita for respondent 2)

O R D E R (ORAL)

The applicant in this OA, Dr. M.S. Prasad, availed motor car advance of Rs.55000/- during the year 1991 to be recovered in 100 installments of Rs.550/- per month with effect from December 1991. During the year 1993, while on foreign deputation in Libya, he intended to refund the entire balance amount of the said advance and, therefore, requested the respondent No.2, vide his letter dated 20.10.1993, to let him know the total amount that he would be required to pay. Vide letter dated 25.2.1994, respondents No.2 replied to him that he would be required to pay the balance amount of Rs.48400/- towards the principal and another Rs.15015/- on account of interest upto February 1994. He was also advised to deposit these amounts in the form of separate bank drafts for the principal and the interest amount in favour of Accounts Officer, GTBH, Shahdara. The applicant claims that, he thereafter vide his letter dated 12.7.1994, sent a cheque for Rs.48400/- drawn in favour of respondent No.2. Since the said letter was not acknowledged, he sent a reminder on 23.11.1994 but of no avail. Subsequently, the applicant was taken by surprise that vide the impugned order dated 11.2.2003, respondent No.1 has ordered the recovery of

Rs.44792/- from the applicant towards the full and final settlement of the advance/loan. He claims that thereafter he had, vide his letter dated 22.9.2003, represented before respondent No.2 in the matter but nothing was done by the respondents. Aggrieved thereupon, he has filed this OA seeking quashing and setting aside of the order dated 11.2.2003 and to direct the respondents to refund the excess recovered amount of Rs.42185/-

When the matter first came up before this Tribunal on 6.4.2004, recovery of further installments from the salary of the applicant had been stayed on the pleadings of the learned counsel for applicant that lump sum amount in discharge of the motor car advance had already been paid and the respondents were bent upon continuing the recovery. The said order continues.

Learned counsel for applicant has contended that since the applicant had sent a cheque for the principal amount of Rs.48400/- as far back as in July 1994, which was duly received by respondent No.2, the respondents are not entitled to contend at this point of time that they were not in receipt of the said cheque. In support of his contention that the said cheque was duly received by them, learned counsel has referred to the postal receipts, which have been enclosed with this OA. He further contends that not only that respondent No.2 has received his letter dated 12.9.1994, which is evident from the receipt of the acknowledgement slip dated 22.7.1994, but the same has to be treated to be confirmed as respondent No.2 had received the reminder dated 23.11.1994, which he had sent and which too had been acknowledged by respondent No.2 vide the acknowledgement slip No.5495. Thus, after having received the said cheque, the learned counsel contends that the principal amount of advance should have been shown in the last pay certificate issued by respondent No.2 on 1.8.1996. This, however, was not done resulting in the continued deduction of the monthly installment from his salary, which has resulted in an excess recovery of Rs.42185/-. Learned counsel contends that for the mistake of the respondents, the applicant cannot be penalized.

The respondents have contested the OA. Learned counsel for respondents, at the outset, has submitted that the OA is not maintainable inasmuch as the applicant seeks the quashment of the order dated 11.2.2003 (Annexure A-1), which in fact is not an order but merely a

communication addressed to the Pay & Accounts Officer, CGHS, in which only factual details with regard to the car advance in respect of the applicant has been indicated and the Pay & Accounts Officer has been requested to confirm the correctness of the said statement. The learned counsel contends that this communication is not an order passed against the applicant but only a statement of the factual position. Thus, the applicant has no locus standi to challenge such an internal communication. Arguing further, the learned counsel has submitted that a challenge to the LPC, which was issued on 1.8.1996, in which no recovery had been reflected, is now being challenged, which is hopelessly time barred.

Further when the cheque is claimed to have been sent on 12.7.1994, the dispute has been raised vide the representation dated 22.9.2003. which again is hopelessly barred by limitation.

On the merits of the case, learned counsel has contended that the receipt of the cheque claimed to have been sent by the applicant is not borne out from the records inasmuch as there is no entry in this regard in the relevant register/record. The respondents have thoroughly checked the folio of the PBR of Accounts Branch in which such adjustments are made and the receipt of deposit in the Government account is accounted for. When no such evidence was available, the respondents have requested the applicant to furnish the details vide their letters dated 16.4.2004 and 25.5.2004 and it is now established that the payment of Rs.48400/- against cheque No.041527 dated 12.7.1994 had never been debited from the account of the applicant. The claim of the applicant that letter had been sent to the respondents way back in 1994 and that it contained the cheque, cannot be accepted on its face value. The learned counsel on the contrary blames the applicant stating that as per the advice rendered to him by the respondents vide letter dated 25.2.1994, he was required to have deposited the amounts, principal and interest separately, in the form of bank drafts but the applicant claims to have sent only a cheque for the principal amount alone. Further if he had sent a cheque, it was equally his responsibility to have cross-checked from his pass book/statement of account that the cheque so issued had in fact been adjusted/debited from his account. The fact that the applicant kept mum for years together is only indicative of his half-hearted approach, if not a clever move to derive undue benefit and he cannot shift the blame to the respondents on this count. If he had raised this issue at the time when the

LPC was issued, i.e., during 1996, his grievance would have been redressed in 1996 itself. No such cheque/payment had been received by the respondents. Mere receipt of a letter cannot be deemed to be a receipt for the cheque, which has to be proved by the record of the bank account and the official records. This is not borne out.

The learned counsel further contends that since the motor car advance had not been repaid by the applicant, the respondents are fully justified in effecting the recovery through monthly installments until the entire amount with interest is recovered.

I have considered the contentions raised by the learned counsel for the parties. The main controversy in this OA hinges on whether the mere claim of the applicant to have sent a cheque for Rs.48400/- towards the refund of principal amount has to be taken into account for the purpose of refund of advance or whether it has to be seen as to whether the same amount had in fact been received by the respondents-department and credited into the Government account and further the said amount had been debited from the account of the payee, i.e., the applicant in this case. It is now admitted even by the applicant himself in his rejoinder that the amount of Rs.48400/- for which he claims to have sent a cheque, has in fact not been debited from his account. While in the averments in his OA, he had initially alleged that it was an act of negligence on part of the respondents for which he could not be made to suffer, in the rejoinder filed subsequently, he has tried to allege mischief on part of the respondents contending that he has come to know that the respondents played mischief with the said cheque and did not present the same before the bank. This argument will hold no water, as I find from the conduct of the applicant himself that as against the advice of the respondents to remit the entire amount of principal and interest vide separate drafts, he had sent only a cheque and that too only for the principal amount. Having sent the cheque, he has failed to ascertain as to whether the said remittance had in fact been debited from his account. That apart, when the last pay certificate issued during 1996 did not reflect the adjustment of Rs.48400/-, he ought to have woken up and agitated the matter. Even if he was under the impression that the principal amount had been adjusted, he ought to have found out as to what action was required to be taken by him with regard to the payment of interest. On this also, I find that the applicant has taken absolutely no action over the years. The whole conduct of the

applicant, therefore, has to be taken into account when he claims that he had sent a cheque through a letter and that thereafter his responsibility ceases and the respondents have to be held responsible for not encashing the cheque. I am afraid this is a fallacious argument. Since the cheque had not been encashed and no adjustment had been made, the respondents are fully entitled to effect the recovery of the advance along with interest.

OA thus has got no merit and is accordingly dismissed with no order as to costs.

(S. K. NAIK)
MEMBER (A)

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