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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL TRIBUNAL
NEW DELHI

O.A. No. 2265/92

Date of decision

16-3-94

Hon'ble SHRI N.V. KRISHNAN, VICE CHAIRMAN (A)

Hon'ble SHRI B.S. HEGDE, MEMBER(J)

MS Vimla Arni,

A-10/9, Vasant Vihar,
New Delhi-110057

... Applicant

(By Advocate Shri S.D. Kinra)

Versus

1. Union of India,
through Secretary(Tourism)
Ministry of Tourism,
Transport Bhawan, Parliament Street,
New Delhi
2. The Director General(Tourism),
Department of Tourism,
Transport Bhawan,
Parliament Street, New Delhi
3. The Under Secretary (Finance-II),
Ministry of External Affairs,
C/o Foreign Secretary,
Ministry of External Affairs,
Akbar Bhawan, New Delhi
4. The Secretary(Finance)
Department of Expenditure,
Ministry of Finance,
North Block, New Delhi-1

... Respondents

(By Advocate MS Pratima Mittal, Proxy counsel
for Sh. K.C. Mittal)

ORDER

L Hon'ble Shri B.S. Hegde, Member(Judicial) J

The applicant has retired from service
on 31.12.1991 as Director(Tourism). She has filed this

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O.A. to quash the Ann.A-1 letter dated 24.7/12.8.92 effecting recovery. She is also seeking a direction to respondents No.1 and 2 (i) to release the pension and the balance amount of gratuity after deducting the balance amount of Motor Car Advance with interest thereon. (ii) to release and pay the commuted value of pension, leave encashment, G.P. fund etc. (iii) to reimburse £ 340 to the applicant being the rent for August, 1984 as the residential accommodation for occupation was available from September, 1984 and this amount was paid by the applicant himself to hold the accommodation for occupation from September, 1984 ; and (iv) to reimburse £ 25 per week (£ 100 per month paid by the applicant from 1.9.1984 being the difference of rent(£ 75 per week were paid by the Govt. and £ 25 were paid by the applicant) as the residential accommodation was @ £ 100 per week.

2. The applicant, while in service, was transferred to the post of Director in the Government of India Tourism Office, London, in public interest vide respondents letter dated 6th August, 1983. She took over charge of the Tourist Office, London on 22.9.1983. On arrival in London on 21.9.1983 she was accommodated in " Service Apartment " arranged by the Tourist Office in London. She was further informed that

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she is notionally equated to a Second Secretary in the Mission and as such her entitlement with family was 52.50 pounds per day if she stayed in a hotel, whereas the charges of the "Service Apartment" was 43/44 pounds per day. During her stay in the 'Service Apartment' from 21.9.83 to 14.11.1983 she did not draw double foreign allowance which was admissible to her under the Indian Foreign Service Rules. The applicant's entitlement for hotel accommodation for the period from 21.9.1983 to 14.11.1983 comes to 3200 pounds at the rate of 52.50 pounds plus service charges, whereas the Government of India Tourist Office paid to her 2420 pounds. Therefore, the Government saved 780 pounds plus the double foreign exchange. Yet it is alleged that she has been overpaid £ 1971.50 because her entitlement was only Rs £ 51.75 per week which works out to £ 448.50 for the period of 7 weeks and 6 days from 21.9.83 to 14.11.1983. From 15.11.1983 to 31.7.1984, she fixed up an accommodation at a rental of 160 pounds per week whereas the applicant has been told that she was entitled to 75 pounds per week. Therefore, she has drawn £ 3228.75 more than her entitlement of £ 3331.25 regarding payment of regular accommodation.

3. The Respondents, in their reply, stated that the double foreign allowance was admissible only if she had stayed in a hotel. Since she was given 'Service Apartment' and merely because the Government servant

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did not stay in a hotel and drawn foreign allowance, she does not become entitled for the same. Though her case was taken up with the Ministry of External Affairs for seeking exemption of the higher rent paid by her, the Ministry of External Affairs did not agree to the same and the Respondents were left with no other alternative but to recover the excess rent paid to her while she was in London. Since she had not paid as per the demand made ^{vide} in Annexure A-1 dated 12.8.92, her retirement benefits could not be released in time.

4. In the light of the pleadings, the short question for consideration is whether (a) the Respondents are justified in ordering recovery as in Ann. A-1 letter and (b) whether they are justified in withholding the pension and other benefits due to her after her retirement in the year, 1991 on this account.

5. The main dispute is about the alleged over-payment of rent to the applicant. We notice that a reply dated 1.1.1993 was filed enclosing a statement Ann.-I. According to that statement the total over payment on account of rent is (£ 1971.50 for the period 24.9.93 to 14.11.93 (Rs 31149.70) and £ 3228.75 (Rs 48592.70) for the period 15.11.83 to 31.7.84 i.e. total of Rs 79742.40. There is also a note that for the period from 1.10.84 to 31.5.86 for which rent at £ 100 per week was paid instead of the entitlement of £ 75 / week, the excess of £ 25/ week has been recovered from her pay from

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1.10.84 to 31.5.86. The impugned Ann.A1 letter to her states that "excess payment of rent for the residential accommodation as explained above" is Rs 1,01,300. Neither this letter nor Ann. I to the aforesaid reply or the subsequent reply dated 12.1.1994 explains how the figure of Rs 79,742.40 has increased to 1,01,300. We further notice from/Ann.A.1 that including the motor car advance and interest thereon (Rs 50200) the total recoverable amount is worked out at Rs 1,51,500. This has been recovered partly by setting it off against the D.C.R.G. of Rs 69,063/- and the leave encashment of Rs 28,365. Thus a total of Rs 97,428 has been adjusted. The balance for recovery is stated to be Rs 54072/-. She is directed to remit this amount so that her pension could be released.

6. In so far as the first period is concerned, the applicant's accommodation in the 'Service Apartment' at £44 / day was arranged by the Tourist Office in London. She had no role to play in choosing the accommodation. This is clear from Ann.A.4 notes and order of the Director of Tourist Office, London. The reasons are also given in the note as follows:-

"As per High Commission's rules she is entitled to stay at Strand Palace Hotel. The rate of double room at Strand Palace Hotel is £ 40.50 per day and for her servant, accommodation is to be booked at India club and the rate for single room is £ 12.00 per day. Therefore, the total expenditure of her stay will £ 40.00 + £ 12.00 = £ 52.50 per day and the weekly expenditure will be £ 367.50. But if she stays in the service apartment where the cooking facility will also be available the expenditure will be less than £ 367.50 per week. The Service Apartment will

be more comfortable in comparison to hotel. It is, therefore, suggested that we may arrange her transit accommodation in a 2 bed room Service Apartment in the range of £ 300 to £ 350 per week so that she may be transferred directly from the Airport to the Service Apartment. DIO may therefore, kindly approve renting a Service Apartment in the range of £ 300 to £ 350 in the Central Area."

This was approved by the Director. The Regional Director approved it with the observation that the service apartment accommodation be acquired in the range £ 300 -350 preferably at £ 300 / week. What was acquired was at £ 308/week. It is further admitted that as per rules, she was entitled to stay for a period of three months in transit accommodation till she secures regular accommodation. In the instant case, she stayed in the Service Apartment for a period of 55 days, which according to her, she is entitled for reimbursement of 44 pounds per day which were paid accordingly.

7. The nature of the audit objection is stated in para 11 of the second reply dated 12.1.1994. It is stated that Audit has treated the occupation of service apartment as occupation of regular accommodation for which the entitlement was fixed at £ 75/ a week. It

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is/known whether the Respondents tried to meet this objection on the basis of the above factual position. In any case, we do not find any merit in the decision of the respondents to recover the difference between the amount already paid i.e. £ 2420 at the rate of £ 44/day and the alleged entitlement of £ 448.50 at the rate of £ 51.75/week.

It is surprising that in the computation the respondents do not take into account £ 75/week as the entitlement. On the facts mentioned above, it is ridiculous to treat the service apartment procured in the circumstances mentioned above as regular accommodation. Therefore, there is no overpayment and recovery of £ 1971.50 (Ann. i to reply) is baseless and has to be quashed.

8. In so far as the recovery for the second period is concerned i.e. for the period from 15.11.83 to 31.7.84, it is true, that she fixed up an accommodation at a higher rental of £ 160 per week on her own whereas the applicant was informed that she is entitled for £ 75 per week. The applicant states that she felt that for carrying on her duties efficiently she required a bigger residential

accommodation she therefore, wrote to the Director General, Tourism a D.O. letter dated 29.9.83, in this behalf(Ann.A-5) stating inter-alia, as follows:-

" You will appreciate that in view of my being the Head of the Representational Office, it will be necessary for me to entertain at home. The nature of my duties is to promote India in all its varied aspects. I, therefore, propose that besides undertaking my promotional duties in the office, I should invite tour operators, travel writers etc to my home to enable them to get a taste of Indian hospitality and India's rich heritage and friendship. I have therefore been looking out for accommodation which will provide a reception area big enough to enable me to accommodate and entertain 20 people for dinner and other Indian Festivals. The cost of finding this accommodation in the city is extremely high and runs into almost £ 400 per week. I have, therefore, looked around and seen places at about half an hour distance from the main city and the accommodation available in these areas is £ 150 p.w. or more. I am writing this to request that in view of the nature of my duties and in order to keep up the prestige of the Representational office, it may be exempted from the prescribed rent ceiling."

9. Instead of rejecting outright this proposal, the Ministry asked her to obtain approval of the High Commission. She, therefore, wrote to the High Commissioner(Ann.A-7) (Ann.A-6) who wrote back on 21.10.83 a short letter (Ann.A.8) appreciating the point made by her and recommending it to her Department. He wrote a / detailed letter on 23.11.1983 (Ann.A.9) stating , inter alia , as follows:-

"To achieve your objective it is necessary for you to extend your promotional activities outside the office into your home to enable the travel trade and media representatives to sample the Indian hospitality and the Indian ambience which can only take place at home thereby making your home an essential promotional tool. This would therefore, necessitate your having accommodation with adequate space and proper location. I am confident that such accommodation will certainly not be available in

in London at either the prescribed ceiling limit of our mission or even at the revised ceiling indicated by your Department. I would, therefore, strongly recommend that your department approves your proposal on outlined in your note referred to above."

10. The applicant then approached on 2.11.1983 (Ann.A-10) the Regional Director Air India, London, stating the facts and proposal to move into a flat costing £ 160/- week from 15.11.1983. This functionary wrote "As no reply yet received and in view of what you mentioned to me, you may conclude final negotiations so as to move in subject to D.G. Tourism post facto approval and also in view of the fact that the Dy. High Commissioner has also reconsidered exception from the ceiling."

11. It is in this background that the applicant moved into the regular accommodation hired at £ 160/week the from 15.11.1983, though relaxed entitlement was only £ 75/week. She occupied this accommodation till 31.7.1984 entailing an overpayment of £ 3228 (Ann-1). She informed the D.G. Tourism about this on 19.11.1983 (Ann.A-12)

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12. She also draws attention to the fact that the Minister, Tourism and Civil Aviation took up her case on 17.1.1984 (Ann.II to reply) with the Minister for External Affairs and requested that the proposal to hire accommodation at £ 160/ week be approved. The latter in his reply dated 28.5.84 (Ann.III) expressed his inability for the reasons mentioned by him.

13. The respondents have stated in para 14 of their latest reply dated 12.1.1994 that the "applicant was repeatedly requested by the Department to move into an accommodation within her entitlement." No such communication has been exhibited. Instead, they rely on Ann. XV which is a note dated 13.8.84 of the applicant to the Regional Director, Air India wherein she states that the Department has desired her to move into a flat with a rental of £ 75. In fact, the Director General of Tourism and the Department were not prompt in rejecting the applicants requests for exemption from ceiling. In fact, the Department could not have sent any direction to the applicant until it got the final reply dated 28.5.1984 (Ann.III) from the External Affairs Minister. In fact, in the office of the Director General of Tourism

subsequently
a note was recorded by Mrs Mira Mehrishi on 9.3.89 as
follows:-

" From the facts on record, it would appear two amounts are to be recovered (i) Recovery pertaining to accommodation for period 21.9.83 to 14.11.1983 and 15.11.1983 to 31.7.1984) In both the cases the fault apparently does not lie with Mrs Arni. She was repeatedly requesting DOT for clear instructions/guidance. However, there was no response from DOT. Whatever rental she was paying was with the concurrence of Regional Director, Air India. The IF Division of Ministry of External Affairs had turned down the request of this Department. DG(T) is requested to please see their note at para 4, page 2/N.

DOT had requested for ex-post facto sanction to IF. MEA, IF have stated, " Since Mrs Arni and her Deptt. had taken all the decisions at their end without consulting the Ministry there appears to be no justification for regularizing the case." For slackness on the part of DOT it was felt again that Mrs Arni was not to blame as such file moved yet again to MEA IF Shri Dogra, Director (Finance) Once again MEA turned down the proposal, It would appear that IF MEA is taking a very harsh view in this and if DG approves we may request intervention by Secretary(CA&T) ."

14. We have considered the liability of the applicant in this background. The applicant was a senior officer and she should have known that Govt. had thought it fit to permit her an accommodation of £ 75/week only. She should not have therefore, taken accommodation at £ 160/ week notwithstanding what the Deputy High Commissioner felt

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about her request for a larger accommodation. The Regional Director, Air India permitted- if it can be so called - to move into the house subject to sanction of the competent authority. She need not have been more concerned about her official duties and how to discharge than, if the Department felt that she could discharge it hiring in a house at a rental of £ 75/week. Therefore, she is liable for recovery of the excess unauthorised expenditure incurred by her.

15. At the same time, we are of the view that this could have been avoided if the D.G .of Tourism had rejected her proposal outright. Instead, it would appear that she was given an impression that she had made an useful proposal for the better discharge of her duties. She could not have been given a final reply before 28.5.84 when the External Affairs Minister turned down the proposal... We consider this to be an extenuating circumstance which cannot be lost sight of. We are of the view that in this circumstances the applicant should take the major share of the blame, but not entirely. We are, therefore, of the view that she should be responsible for only 75% of the

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excess payment i.e. 75% of £ 3228 = £ 2421/-

16. That takes us to the last objection viz. that this cannot be recovered from her pensionary benefits. Now that the applicant has retired from service, she is seeking pension and other retirement benefits as she is entitled to do so under the Rules. However the department asked the Pay and Accounts Officer on 10.10.91 (Ann.R.R.1 with additional rejoinder) to withhold Rs 87237/- from the balance of gratuity after adjusting the motor car advance and the commuted value of pension. The Pay and Accounts officer vide his letter dated 8.11.1991 addressed to the Department (Ann.P-1 with OA) has drawn the attention of the Department to Rule 9 of the CCS (Pension) Rules, 1972. Under that Rule the power to withhold pension has been vested with the President of India on certain grounds enumerated therein.

17. The learned counsel for the applicant relied upon the decision of this Tribunal in AIR 1987 (2) CAT (PB) 205 in the case of Beni Prasad

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v. UOI and Ors in support of his contention. It was held therein that this recovery cannot be made from the pension and that the applicant's right to receive pension is governed by the Central Civil Service (Pension) Rules, 1972-Pension Rule for short. Payment of pension is subject to future good conduct as laid down in Rule 8. In Rule, 9, the President has reserved to himself the right to withhold or to withdraw the pension or part thereof, whether permanently or for a specified period and to order recovery from pension, any pecuniary loss caused by the Govt. servant, if in a departmental or judicial proceeding, the petitioner is found guilty of grave misconduct or negligence during the period of his service. The principle laid down in the above case, would squarely apply to the facts of this case. But in the present case, none of the conditions mentioned therein have been fulfilled. Therefore, the decision to withhold the pension, gratuity and the commuted value of pension, is arbitrary and violative of ^PPension Rules. Further, in the absence of any proceedings as indicated in Rule 9, no part of the pension can be withheld nor any amount therefrom can be recovered from the gratuity or from the commuted value of pension to be paid to the applicant etc.

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18. We have considered the legal position. The amounts given to the applicant for her transitional accommodation and regular accommodation are allowances due to her in terms of the I.F.S.(PLCA) Rules which have been made applicable to her by the Ann. A-3 order dated 6.8.83, transferring/ and posting her to London. The overpayment of this allowance is a " government due " and can be recovered from the retirement gratuity under Rule 71, of the Pension Rule. No part of this can be recovered from pension, including commuted pension, except after complying with the provision of Rule 9 of the Pension Rules. There is no such bar for recovery from the leave encashment dues.

19. The applicant retired on 31.12.1991. The recovery had been ordered, in the first instance on 3.12.1987 by the Ann. A.19 memo. In the circumstances, the respondents are entitled to recover the motor car advance with interest and the overpayment of rent for accommodation from the gratuity and the amount of leave encashment payable

to the applicant.

20. Accordingly, we dispose of the OA with the following directions:-

i) The Ann.A.I order dated 24.7.92 /12.8.92 is quashed to the extent it orders recovery of Rs 1,04,300 as the excess payment for rent for the residential accommodation in London and it is declared that the excess payment on this account shall be limited to only 75% of the excess payment of £ 3228.75(Ann.I) for the period from 15.11.83 to 31.7.84 converted into rupees at the rate of Rs 15.05 per pound sterling.

ii) The amount referred to in (i) above and the motor car advance with interest of Rs 50,200 may be recovered by the respondents from the ICRG of Rs 69,063/- and the amount of leave encashment of Rs 28365/- (Total Rs 97428/-) and the balance due to the applicant, shall be paid to her within two months from the date of receipt of this order, alongwith simple interest at 12% per annum payable from 1.4.92 until the amount is paid.

iii) The respondents cannot make any recovery of the dues referred to in the impugned Ann.A.I order from the pension and hence, the respondents are directed to pay/within 2 months from the date

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of receipt of this order, the commuted value of her pension in accordance with law, alongwith simple 12% interest from 1.4.1992 till payment is made and refix the monthly pension payable to her on account of such commutation . The excess payment of provisional monthly pension, if any, shall be liable to be adjusted from the commuted value of pension alongwith simple interest at 12% from the date of payment of provisional pension upto the date the commuted pension is paid.

iv) The Provident fund dues, if not already paid, shall be paid within 2 months from the date of receipt of this order with simple interest at 12% till payment is made.

There will be no order as to costs.

B.S. Hegde
(B.S. Hegde) 16/3/94

Member (J)

N.V.Krishnan
(N.V.Krishnan) 16/3/94

Vice Chairman (A)