

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO. 743 OF 2004

ALLAHABAD THIS THE 10th DAY OF MAY, 2007

HON'BLE DR. K.B.S. RAJAN, J.M.

Smt. Bane Khanam, W/o Late Sri Mohd. Saleem, R/o L-12/18, KDA Colony, Jajmau, District Kanpur.

..... .Applicant

By Advocate: Shri S.K. Bahadur

Versus

1. Union of India
through the Secretary,
Ministry of Communication, Department of Posts,
New Delhi.
2. The Chief Post Master,
Head Post Office,
Kanpur.
3. The Post Master,
Kanpur Cantt., H.P.
Kanpur.
4. The Sub-Post Master,
Shivan Tannery, Jajmau,
Kanpur.

..... .Respondents

By Advocate : Shri S. Singh

O R D E R

The grievance of the applicant in this case is that he having retired in 1995 and having surrendered his government accommodation in 2000, has been saddled with electricity charges for the said government accommodation and the same is recovered from the dearness relief paid to the

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applicant as late as in 2003. The question is the legal validity of the action on the part respondents. As during the pendency of the original applicant Shri Mohammad Saleem had even his wife had been brought as the legal However, for the purpose of this order, the original applicant is named as the Applicant and to point the present applicant, the same is addressed as 'wife of the applicant'.

2. Brief facts, to the extent not controver as under:-

(a) The applicant while in service in the respondents' organization, was allotted government quarter 2A/14/P & T Colon Shantinagar, Cantt, Kanpur 4 and the same quarter was vacated on 28-03-2000, when the applicant retired in 1995. For the first time, a demand of Rs 9,768/- was stated to be the outstanding electricity bill payable by the applicant and according to the respondents, since this amount, despite repeated demand, was not paid by the applicant, recourse for recovery from pension was taken, vide order dated 17-11-2003 at Annexure A-1.

(b) The applicant filed a representation stating that he having already retired from service as early as in 1995, there is no provision for recovery of the so called dues of electricity bill, as the same does not form part of any 'government dues'. His representation dated 05-04-2004 at Annexure A2 refers. He had relied upon the provisions as contained in Annexure A-4 order, where it has been stated that

Municipal taxes etc., do not constitute government dues.

© As the respondents have proceeded to recover the amount, this OA has been filed.

3. Respondents contested the OA. According to them, the dues are payable as the applicant had retained the accommodation upto 2000 and hence, the dues are payable.

4. Applicant having filed the rejoinder, additional counter has also been filed.

5. Counsel for the applicant argued that the applicant having retired in 1995 and having vacated the quarters in 2000, there is no question of any dues on electricity bill being recovered from the pension in 2003 onwards. According to him, the government orders are specific that municipal taxes and cooperative society dues do not form part of Government dues which alone could be recovered from pension. Annexure A-4 is the communication in this regard. Counsel for the applicant also relied upon the decision of this Tribunal in his own case in respect of recovery from pension of the arrears of rent. This order was passed on the strength of the Apex Court's decision in the case of Gorakhpur University (1998) 3 AAC 2367.

6. Counsel for the respondents maintained that the recovery is possible.

7. Arguments were heard and documents perused.

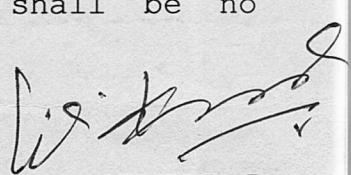
There is no denial from the respondents' side about the existence of the orders as at Annexure A-4 that Municipal Taxes and Cooperative Society dues are incapable of being recovered from the Pension. Of course, it has been contended by the respondents that the electricity bill has to be paid by the applicant.

8. Liability to pay the electricity dues is one thing; mode of recovery is another. A right is available to the applicant in respect of immunity from recovery of dues from certain payments. For example, PF amount is immune from any attachment. Similarly, if government dues alone could be recovered from the pension or gratuity and Municipal tax etc., are not government dues, the Government or the authority to recover the amount should take proper recourse by way of taking due legal proceedings. Adjustment of the amount due on electricity bill from Pension is not contemplated, as the same amounts to encroaching upon the right of the applicant in receiving in tact (save as provided for in the Rules) of his pension, which is admittedly, is not a bounty, as has been held by the Apex Court in various cases, including a recent case of ONGC vs V.U. Warriar, 2005 (5) SCC 245, wherein the Apex Court has stated that recovery could be possible if there be a specific regulation in this regard (and in the case of the said Commission in that case, there being one particular regulation

(Regulation No. 5), recovery from gratuity of amount due on account of overstyal is permissible.) In the instant case, the dues do not pertain to rent but of electricity charges and there is no regulation to permit such recovery, rather, the rule (Annexure A-4) is specific that such dues are not government dues. Hence, recovery from the pension or dearness relief is not permissible in view of the above discussion. It would be curious to note in this case that the dues from the applicant as communicated by the Kanpur Electricity Authority is of 2001 vintage, while respondents could take action in this regard only in 2003. This also goes against the government.

9. In view of the above, the **OA is allowed.** Impugned order at Annexure A-1 (dated 17-11-2003 is quashed and set aside. It is declared that the wife of the applicant shall be paid the family pension intact, without any truncation. It is, however, open to the respondents or the concerned authority to realize the amount due on the score of arrears of electricity bill by taking recourse to due legal proceedings (civil suit, or arrears of land revenue etc.)

10. Under the circumstances, there shall be no order as to cost.



MEMBER-J

GIRISH/-