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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

Registration T.A.No.19 of 1987 (Original suit no.983 of 1983)

Mohd. Ayub Khan ... Plaintiff

Vs.

General Manager, Ordnance
Clothing Factory, Sahajahanpur
and another ... Defendants.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This original suit has been received by transfer from the Court of III Additional Munsif Sahjahanpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff was in the employment of Ordnance Clothing Factory Sahjahanpur and he retired while working as a Machinist 'C' on 31.12.1979 on reaching the age of superannuation. According to him, his basic salary was Rs.255 in 1978 and he was not granted an increment of Rs.5 in 1979. There were no dues of the factory on him but Rs.100 were wrongly deducted from his dues at the time of granting the pension and the defendants further paid Rs.108.23P less without giving any reason. His pension was also not correctly prepared. After serving the defendants with a notice under Section 80 of the Code of Civil Procedure he accordingly filed the suit for the recovery of the two sums of Rs.108.23P and Rs.100 wrongly deducted from his dues and for granting an increment of Rs.5 per month for the year 1979. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf, it has been stated that the pay of the plaintiff was raised to Rs.255 w. e.f.1.1.1979

after giving him the annual increment and it is wrong on his part to allege that he was drawing Rs.255 per month in 1978. The plaintiff was granted full pay for the month of Dec.1978 despite his remaining on leave for some days as his leave was granted with full pay and there was no deduction from his pay. Under the Piece Rate Rule, an employee earns 50 per cent profit over and above his time wages. Any amount earned in excess of 50 per cent is to be disallowed and is credited in the Government account. In Dec.1978, the plaintiff earned Rs.325. 61P. Taking his entitlement of earning for his 13 days actual working, his 50 per cent profit was worked out to be Rs.217.38P and the excessive amount of Rs.108.23P was correctly disallowed and as such, the plaintiff is not entitled to any dues.

3. The plaintiff sent an application seeking exemption from personal appearance and requesting us to decide the case on the basis of the material on record. We, therefore, could hear only the arguments advanced on behalf of the defendants in this case.

4. We will first take up the question of annual increment of Rs.5 claimed by the plaintiff for the year 1979. The plaintiff Ayub Khan had appeared as PW 1 before the trial Court and it was stated by him in his examination-in-chief that on 31.12.1979 he was on night duty and had worked till morning of 1.1.1980. In his cross-examination it was stated by him that he had worked upto 5 a.m. on 1.1.1980. The plaintiff though worked for few hours on 1.1.1980 had retired in the forenoon of that date. He, therefore, could not earn the increment due on 1.1.1980. The defendants have filed the periodical increment certificate dated 6.1.1979 (paper

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no.36-C) which shows the pay and annual increments of 11 employees of the factory including the plaintiff. This certificate shows that his pay on 1.1.1978 was Rs.250 per month. He was granted an increment of Rs.5 per month on 1.1.1979 and thereby his pay was increased to Rs.255 per month. His statement to the effect that in 1978 his pay was Rs.255 per month is not borne out from the documentary evidence on record. He is, therefore, not entitled to get any other increment for the year 1979.

5. The plaintiff has further claimed Rs.108.23P deducted by the defendants in respect of his dues of Dec.1978. According to the defendants the plaintiff remained on leave on 2.12.78, from 4.12.78 to 8.12.78 and from 20.12.78 to 30.12.78. This fact was admitted by the plaintiff also in his cross-examination. The case of the defendants as pleaded in the written statement is that the plaintiff was paid ~~along with~~ ^{full} pay for the month of Dec. 1978 but the deduction of Rs.108.23P was in respect of his profit. According to the allegations made in para 8 of the written statement, an employee has to get 50 per cent of the profit over and above his wages and the excess amount, if any, is disallowed. As the plaintiff got full pay for Dec.1978 but actually worked only for 13 days, his profit was accordingly reduced and on account of this, Rs.108.23P ~~was~~ disallowed. In his cross-examination, the plaintiff admitted the fact that the amount of Rs.108.23P was disallowed on account of his leave period. The case of the plaintiff regarding this deduction thus also does not appear to have any force and this amount was rightly deducted from his dues.

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6. The plaintiff has further alleged that a sum of Rs.100 was wrongly deducted from his dues though he had furnished no dues certificate. In reply to this allegation made by the plaintiff in paragraph 6 of the plaint, the defendants simply stated in their written statement that it is not admitted. Nothing was said about this deduction in the additional pleas or anywhere in the written statement. In his statement as PW 1 the plaintiff Ayub Khan corroborating his plaint case stated that despite his furnishing no dues certificate, a sum of Rs.100 was wrongly deducted from his pay. In the cross-examination, it was suggested to him that some loan of the cooperative society was due from him. In our opinion, the defendants have not been able to explain this deduction of Rs.100 from the dues of the plaintiff and as the burden to prove the payment lies on the defendants, we feel inclined to accept the case of the plaintiff to this extent. There is no other point for determination in this suit.

7. The suit of the plaintiff is accordingly decreed in part and the defendants are directed to pay Rs.100 to the plaintiff with interest at the rate of 6 per cent per annum from the date of his retirement till the date of payment. There will be no orders as to costs.

Sharma
26.8.87

MEMBER (A)

Sharma
26/8/87

MRMBRT (J)

Dated Aug., 26, 1987
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