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.. .. Applicant

Versus

.. .. Respondent

Hon'ble Mr. D.K. Agrawal, Member (J)

(By Hon'ble Mr. D.K. Agrawal, Member (J))

This application u/s 19 of Administrative Tribunal Act 1985 is directed against an order dated 10.11.87 for recovery of Rs.75,130.50 made payable at the rate of Rs.1000/- per month by subsequent orders of the Government at the behest of the applicant.

The facts lie in a very narrow compass. The applicant namely Shri M.P. Upadhyay, Manager Government of India Tourist Office Varanasi was transferred to Government of India Tourist Office Stock Holm (Sweden) vide order dated 6.8.1982. The said posting order stipulated that the applicant on posting abroad was entitled to be notionally treated as third Secretary and consequently made entitled to draw foreign allowances as third secretary. However Government of India vide order dated 16.2.1984 took a decision that Manager Tourist posted in the Government of India Tourist Offices abroad under the department of Tourism shall be entitled at par with a attachee posted in the Indian Mission abroad for the purposes of foreign allowances etc. The said order dated 16.2.1984 was made effective w.e.f. 1.6.83. The applicant, in defiance of the orders, continued to draw foreign allowance at the

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old rate. The impugned order of the recovery relates to the excess foreign allowance drawn by the applicant.

The learned counsel of the parties have been heard. The pleadings on record have been perused. The applicant is harbouring under a belief that the perquisites attached to a post amount to the terms and conditions of appointment. It is on this ground that it has been urged that the same cannot be varied during the course of employment. What has been done in the instant case is altogether a different thing. The Government of India, in the first instance was of the view that the manager posted in foreign office in the department of Tourism should be equated with the status of the third secretary but later on revised its own decision and decided that they should only be conferred the status of an attachee posted in the Indian Mission. This was squarely within the jurisdiction and competence of Government of India. The applicant for that matter has no right to question the jurisdiction and competence of the Government of India in that regard. The status which an employee may be given on a foreign posting is a matter of policy decision by the Government of India. No vested right accrues to an employee to claim a particular status in a particular posting. In this view of the matter I am of the opinion that the order of the Government of India dated 16.2.1984 cannot be assailed on any ground what so ever. The only question is as to whether the order of Government of India dated 16.2.1984 can be made to operate retrospectively. The order dated 16.2.1984

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mentions that it will take effect from 1.6.1983 i.e. it was made retrospective in operation. It would amount to the recovery of the allowances which were paid to the applicant as a result of the decision of the Government of India taken earlier. The payments which were made to the applicant upto 16.2.1984 were made not on account of the fault of the applicant nor there was any mistake on the part of Government of India. The payments upto 16.2.1984 were made to the applicant as a result of the earlier orders of the government dated 6.8.82. Thus the payments made to the applicant upto the date of communication of the order dated 16.2.1984 were made in a lawful manner. If so the recovery of the same becomes bad in law. Consequently I am of the opinion that this claim petition is liable to be rejected except that the claim for recovery for the period 1.6.1983 to the date of communication of the order dated 16.2.1984 is bad in law.

The second controversy in this case is about the recovery of Rs.9200.50p on account of the fare paid by the applicant for journey from Stockholm-London and back. The facts in this regard are that the mother of the applicant died at Varanasi on 20.12.1983. The applicant had to travel as a measure of emergency. Air India Flight did not operate between Stock Holm and London. Therefore the applicant travelled by Scandinavian air-ways from Stock Holm to London and back. He was duly provided a ticket by Air India from London to Varanasi via Delhi and back to London. The question is as to whether the applicant has to bear his own expenses for

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the journey between Stock Holm to London and back. There appears to be no justification for the same. The reason is that the government ^{has} ~~is~~ already borne the expenditure from London to Varanasi and back. The applicant was posted at Stock Holm. Therefore ~~there was~~ ^{if} no Air India flight operating between Stock Holm and London, the applicant has to be paid fare between Stock Holm and London and back. Consequently I am of the opinion that respondents are not entitled to recover Rs.9200.50p. from the applicant.

In the result the petition is allowed in part. The respondents shall not recover Rs.9200.50p. The respondents shall also not make recovery for foreign allowances drawn by the applicant before the receipt of the communication of the order dated 16.2.1984 in Stock Holm office. The party ^{ies} ~~ies~~ shall bear their own cost.

Dr. G. S. S. S.
Member(J) 17.12.91

Dated: 17th Dec: 1991.

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