

RESERVED

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD

DATED : ALLD. ON THIS

3rd DAY OF JULY, 1998

CORAM : HON'BLE MR. S. L. JAIN, MEMBER (J)

ORIGINAL APLICATION NO. 1335 OF 1995

U.P.Banerjee S/o Late Shri P.K.Banerjee
aged about 60 years R/o 833/
381/14, Meerapur, Allahabad.

C / A : Shri O.P. Gupta, Advocate. Applicant

Versus

- 1) Director, Small Industries Service
Institute, Allahabad.
E/17/18, Industrial Estate, Naini, Allahabad.
2. Union of India through Secretary, Ministry
of Industry, Govt. of India, New Delhi.

.... Respondents

C / R : Km. S. Srivastava, Advocate.

O R D E R (RESERVED)
(By Hon'ble Mr. S.L.Jain, Member (J))

This is an application U/S 19 of the
Administrative Tribunals Act, 1985 for a declaration that
order dated 22.5.95 is illegal and be quashed, respondents
be directed to release the payment of Rs.12,850/- alongwith
interest.

2. There is no dispute between the parties in
respect of the following facts:-

AM -

- i) The applicant worked as U.D.C. and retired from service w.e.f. 30.4.94 on attaining the age of supernnuation
- ii) On 24.12.93 the applicant was served with a show cause notice with regard to recovery of Rs.5,830/-plus penal interest from the salary of the applicant and also from the D.C.R.G.
- iii) The applicant submitted his reply against the said show cause notice on 4.1.94 marked as Annexure-2.
- iv) No dues certificate was issued to the applicant on 31.8.94.
- v) Amount of Rs.13,850/-was withheld from D.C.R.G. for which the applicant made several reminders to pay the same. Ultimately vide order dated 12.1.95 Rs.1,000/- were released.
- vi) The applicant represented the matter on 23.3.95 and prayed for the rest of the amount of Rs.12,850/- but the applicant was informed that the same amount is withheld because he has received the wrong L T C bills for which a show cause notice dtd.24.12.93 was served on the applicant in respect of which Rs.12,850/- has been deducted from the Gratuity.

3. The applicant, in brief, stated that for granting L T C advances , there is a prescribed procedure that after verification of the service record of the concerned employee the advances ought to have been sanctioned in C S R (Civil Service Regulations), there is a settled procedure for recovery of any dues from the retiring employee. Vide rules 922 and 923 C S R if a Govt. servant does not clear the dues, the dues are ascertainable, an equivalent cash deposit may be taken from him or out of the Gratuity payable to him, an amount equal to that recoverable as Govt. dues shall be deducted therefrom. If the Government dues remains unrealised and unassessed for any reason, the retiring Govt. servant may be asked to furnish a surety of a suitable permanent Government servant in form

J.M.J.

26-A. If the retiring Government servant is unable or unwilling to furnish a surety the cash deposit shall not exceed the estimated amount of outstanding dues plus 25% thereafter and it could be limited to 10% of the amount of Gratuity or Rs.10,000/- whichever is less. Efforts should be made to assess and adjust the recoverable government dues within a period of not exceeding six months from the date of retirement of the government servant concerned. The respondents failed to follow the same procedure. Regarding charging of interest or penal interest circular dtd.27.11.82 marked as annexure A-7 clearly mentions the facts that the respondents failed to follow the C S R and the said circular. Hence, this application.

4. The respondents alleged that no dues certificate was issued but it does not debar from realising the government dues. An employee can take two L T C in one block of four years (1982 - 1985) - one for home town and other for anywhere in the country ; while the applicant submitted for third advance during the same block year 1982 - 1985. The applicant was doing the work of checking of bills after preparing them but he did not point out to the controlling authority that he has already availed two L T C in one block year and anyhow got sanction of third L T C after concealing all the facts. The rules of withholding the gratuity have been followed. The penal interest has been calculated as per rules @ 12% which was 2% over and above the rates prescribed for purchase of conveyance from the date of drawal till the date of superannuation.

5. On perusal of the reply of the applicant in respect of the show cause notice i.e. 24.12.93(Marked as annexure A-2), it is clear that the applicant has nowhere denied the receipt of L T C advance (Rs.4,664/-) plus Rs.1,166/-, total amount of Rs.5,830/-. During the course of argument it has not been claimed that the applicant was entitled to L T C for the block year of 1985 - 1985 for the said amount of Rs.5,830/-.

SJM

6. For the first time on 24.12.93 the respondent became aware of the fact that the applicant was paid the third L T C advance for which he was not entitled amounting to Rs.5,830/-. Due to this reason, show cause notice marked as annexure A-1 was issued. After submission of the reply annexure A-2 I do not find that the same matter was decided and the decision was communicated to the applicant earlier to 22.5.95.

7. C S R Rules 922(1) casts a duty on every retiring government servant to clear all the government dues before the date of retirement. It is true that a show cause notice marked as annexure A-1 dtd.24.12.93 was served on the applicant. Virtually the said show cause notice was not a show cause notice but an order determining the government dues. It was the duty of the respondents to follow Rule 922(2) when government dues are ascertainable to ask the applicant to deposit the equivalent cash deposit or deduct amount from gratuity, payable to him equal to that dues. It is true that in Rule 922 the L T C advances are not mentioned but the rule is not exhaustive one but illustrative one of any government dues and only examples of house building , the conveyance advance, arrears of rent, charges pertaining to government accommodation, over payment of allowances, the arrears of income tax deduction are mentioned.

8. Rule 923(1) applies in a case where government dues remained unrealised and unassessed. In the present case the government dues are duly assessed, hence question of furnishing surety of a permanent government employee does not arise. The applicant was never asked to comply Rule 923(2)either to furnish surety/cash deposit. In fact, it is not necessary for the respondents to comply rule 923(2)for the reason that the government dues were not unassessed.

JYH/-

9. The applicant had been charged with interest since the date of apyment of L TC advance. Both the parties were not aware till 24.12.93 that a third L T C advance was irregularly sanctioned. Although the applicant was responsible for checking the bills after preparing them but if the applicant has failed in his duties, disciplinary action may be taken against him but it cannot be presumed that he has intentionally received the third L T C having knowledge that he is not entitled for the same. Hence charging of interest from the date of payment of LTC advance till 24.12.93 is not warranted.

10. As the amount was certain one, withholding of amount of Rs.13,850/-was not justified, which is excessive than the amount of the dues to be realised. No justification can be made for Rs.13,850/-.

11. The applicant retired on 30.4.94 , the pension case is to be decided within six months , the amount ought to have been paid by 31.10.94 but till 22.5.95 the amount to the extent of Rs.13,850/-was withheld.

12. Rs.5,830/-plus interest @ 12% p.a. commencing from 24.12.93 to 30.4.94 was liable to be paid by the applicant and the respondent was having no right to withhold the amount in excess of it.

13. As the amount of gratuity becomes due on the date of retirement, hence withholding the amount of 'Gratuity' to the extent of Rs.13,850/- , the respondents are not entitled to any further interest since 1.5.94.

14. As there is duty on the retiring government servant to clear the dues as per rule 922(1) C S R., a corresponding duty is on the respondent to collect the dues. The respondent was aware of the dues in the present case since 24.12.93 but failed to follow Rule 922(2) of C S R.

15. -

15. The respondents have unnecessarily withheld the excess amount - hence respondents are not entitled to any interest from 1-5-94 and onwards.

16. In the result, O.A. is partly allowed and the respondents are ordered to recover Rs.5,830/-plus penal interest @ 12% commencing from 23.12.93 to 30.4.94 after calculation of the amount arrived accordingly, the rest of the amount be refunded to the applicant together with interest @ 12% p.a. together with costs of application amounting to Rs.650/- (Legal practitioner's fee Rs.500/- plus other expenses Rs.150/-).

sdl
jm.