

Recover

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 304 OF 1990
~~x Tax Nox~~

DATE OF DECISION 07-04-1992.

Shri Lavji Bhagwan **Petitioner**

Shri B.B.Gogia **Advocate for the Petitioner(s)**

Versus

Union of India and ors. **Respondent**

Shri B.R.Kyada **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr.R.C.Bhatt : **Judicial Member**

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Lavji Bhagwan,
C/o.Chhotalal Jamnadas,
At.Joravarnagar,
Street No.3,
Joravarna Gar,
Surendranagar Dist.

...Applicant.

(Advocate : Mr.B.B.Gogia)

Versus

1. Union of India,
Owning & Representing
Western Railway,
Through :
General Manager,
Western Railway,
Churchgate,
Bombay.

2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Rajkot.

...Respondents.

(Advocate : Mr.B.R.Kyada)

O R A L J U D G M E N T

O.A. NO. 304 OF 1990.

Date : 07-04-1992.

Per : Hon'ble Mr.R.C.Bhatt : Judicial Member

This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by the applicant ~~is~~ ^{an} retired ~~is~~ Gateman/Points Jamadar, from Railway service on 31st July, 1988, on attaining the age of superannuation, challenging the order Annexure-A/4, dated 17th August, 1988, ~~by~~ ⁱⁿ the the respondents have ~~deducted~~ ^{by which they} ~~deducted~~ the amount of Rs.5,222.90, i.e., round ~~about~~ ^{figure} Rs.5,223/-, from his gratuity, etc., due to over payment from 25th December, 1976 to 9th July, 1986, on HAP, HAR, and LNP, which in fact according to the respondents were not due to him. The applicant has challenged ~~in~~ Annexure-

A/4, on the ground that the respondents have not legal right to deduct the said amount from his DCRG, calculated at Rs.41,160/-, It is the case of the applicant that the respondents have deducted the amount of Rs.5,223/-, shown in Annexure-A/4, from his DCRG, and paid the rest of the amount of Rs.35937/-, as shown in Annexure A/2, dated 29th July, 1983. The applicant has also alleged ^{that} ~~that~~ no opportunity was given to him before this amount was deducted by the respondents.

2. The learned advocate for the applicant submitted that the said recovery from the DCRG is not only ~~the~~ contrary to the principles of Natural Justice but is also contrary to the departmental rules. The learned advocate for the applicant has in support of his submission put reliance on the decision at Annexure-A/5, in the case of Shri Navalshanker Chatrabhuj Vyas Vs. Union of India, decided on 16th February, 1988, by this Bench. Reading the Judgment, I find that the point involved in that case was that, under the Provident Fund Rules, no authority is constituted for deciding any dispute that might arise between the subscriber and the Government as regards any alleged incurring of the liability nor as regards its quantum. It was held that the Government cannot be a judge in its own cause in the absence of any statutory provision empowering it to act as such.

3. ^{the} No reply is filed by ~~the~~ learned advocate for the respondents. Mr. B. R. Kyada, ~~learned advocate for~~ ^{the} ~~the~~ respondents submitted that under Rule-323 of the

Pension Rules-1950, the amount can be deducted as shown in the Annexure-A/4. Learned advocate Mr.B.B.Gogia, for the applicant submitted that the applicant is not heard before deducting this amount, ~~that~~ the amount which is sought to be deducted ~~is~~ covering a very large span of ten years and it would be impossible for the applicant to have a record of such a period.

4. It can not be disputed that any action taken by the respondents deducting the amount from DCRG without giving any opportunity to the applicant to be heard amounts to the violation of principles of natural justice, and hence the order Annexure-A/4, shall have to be quashed, with the direction to the respondents to decide the question about deduction of the amount of Rs.5222.90/- referred to in Annexure-A/4, after giving opportunity to the applicant to be heard.

Hence the following order :

ORDER

"The application is partly allowed. The order of the respondents ~~at~~ Annexure-A/4, dated 17th August, 1988, is quashed and the respondents are directed to decide the question of recovery of the over payment referred to in that order after giving an opportunity to the applicant of being heard. The respondents may also consider the length of period of about ten years which is referred to in the said order, and

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then take in to consideration all aspects about the recovery of the amount which is ~~prayed~~ over ~~after~~ such period. The applicant is at liberty to cite the Rule about ~~prayer~~ to the respondents. The respondents to decide the above point according to Rules. If the applicant is ~~dis-satisfied~~ with the ultimate order of the respondents, he is entitled to approach this Tribunal according to law. The respondents to decide this matter within a period of three months from the date of receipt of this Judgment. No order as to costs.

TRM

(R.C.Bhatt)
Member (J)

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