

(18) (7)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.421 of 1988.

Date of decision : January 23,1989.

Shri A.T.Roy, Assistant Audit Officer,
Office of the Accountant General (Audit)-1,
Orissa, Bhubaneswar (now under suspension)

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Applicant.

Versus

1. Union of India through its
Accountant General (Audit)-1,
Orissa, Bhubaneswar.

2. Audit Officer (Cash),
Office of the A.G. (Audit)-1,
Orissa, Bhubaneswar.

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Respondents.

For the applicant ...

In person.

For the respondents ...

Mr.A.B.Mishra,
Sr.Standing Counsel (Central)
Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *kd*
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the competent authority attaching the entire subsistence allowance granted in favour of the applicant towards the dues payable by the applicant on account of the money availed by him towards Leave Travel Concession advance.

2. Shortly stated, the case of the applicant is that he is an Assistant Audit Officer attached to the Accountant General (Audit)-1, Orissa, Bhubaneswar. On a contemplated proceeding, the applicant has been placed under suspension with effect from 19.7.1988 and the applicant was being paid his subsistence allowance at the rate of 50 per cent of the monthly salary with effect from the date of suspension and he received the same amount till October, 1988 and from the month of November, 1988 the entire subsistence allowance payable to the applicant has been withheld or in other words attached by the competent authority for realisation towards L.T.C. advance due over the applicant. Being aggrieved by the aforesaid action, the applicant has invoked the jurisdiction of this Bench for declaring the action taken by the competent authority on this account as illegal, unjust and improper.

3. In their counter, the respondents maintained that the applicant had no right to retain the money of the Government since he did not undertake the journey and therefore, it was incumbent on the applicant to refund the

entire amount at a time and not having done so, the competent authority was well within his rights to get the Government money realised from the applicant. In other words, the stand taken by the respondents is that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. A. T. Roy (the applicant) in person and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) at some length. Mr. Roy invited our attention to the provisions contained in Government of India's orders No. 4 (4) & (5) under F.R. 53 at page 208-209 of Swamy's compilation of F.R.S.R. Eighth Edition (corrected upto 1st August, 1985). Under Order No. 4 deductions have been divided into two parts namely (a) Compulsory deductions and (b) Optional deductions. Admittedly, the case of the applicant does not come within the purview of compulsory deduction. Optional deductions are dealt with in Order No. 4 (4) and (5) under F.R. 53 which run thus :

- " (4) It has further been decided that the deductions of the following nature should not be made from the subsistence allowance :-
- (i) Subscription to a General Provident Fund.
 - (ii) Amounts due on Court attachments.
 - (iii) Recovery of loss to Government for which a Government servant is responsible.
- (5) As regards the recovery of over-payments, the competent administrative authority will exercise discretion to decide whether the recovery should be held wholly in abeyance or it should be effected at a rate not exceeding one-third of the subsistence allowance only, i.e. excluding dearness allowance and other compensatory allowances. "

On a careful reading of the provisions quoted above we are of opinion, the case of the applicant may come within the



provisions contained in Government of India's order No.4(5) under F.R.53. From the records we find that the applicant had made representation to the Accountant General (Audit)-1, Orissa, Bhubaneswar stating therein that Rs.500/- together with penal interest as per the orders of the C. & A.G. contained in his letter No. NGE/31/1982 read with No.3422-NGE 1/6-81 dated 27.11.1982 be deducted from the subsistence allowance. Before us the applicant still stands by the offer made by him in his representation contained in Annexure-3. After hearing the applicant in person and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) we are of opinion that full deductions from the subsistence allowance may be a great hardship to the applicant especially when he is under suspension and for his sustenance he is to entirely depend upon the subsistence allowance. We think, the offer made by the applicant for payment of Rs.500/- with penal interest is quite reasonable and therefore, we direct that from the subsistence allowance ^{each month} ~~due~~ a sum of Rs.500/- be deducted ^{by} and the balance amount be paid to the applicant each month ^{by} ~~the~~ ^{full realisation of the entire amount.} The stay order granted by this Bench on 20.12.1988 stands ^{by} automatically vacated.

5. Thus, this application stands allowed leaving the parties to bear their own costs.

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Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

Central Admn. Tribunal
Cuttack Bench, Cuttack.
January 23, 1989/Saranghi.

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Vice-Chairman