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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 588 OF 1995

Cuttack, this the 16th day of March, 2000

Sri Chandra Sekhar Das Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

16.3.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....
Sri Chandra Sekhar Das, son of late Harihar Das, aged
about 60 years, At-Canal Road, Samanta Sahi, Cuttack-1.
.....
Applicant

Advocates for applicant - M/s S.K.Padhi
S.Parida
Miss.D.Moha-
patra.

Vrs.

1. Union of India, represented through the Secretary, Ministry of Labour, Srama Sakti Bhavan, Raffi Marg, New Delhi-1.
2. Director, Central Board for Workers Education, 1400 West High Court Lane, Gokulpet, Nagpur-10.
3. Regional Director, Workers Education Centre, Dasha Sahi, Cuttack-12.

...Respondents

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order of recovery dated 31.3.1995 at Annexure-5 and the order dated 19.5.1995 at Annexure-7 indicating the details of recovery to the applicant. He has also prayed that the entire amount of gratuity of Rs.52,800/- may be paid to him after deducting house rent amount of Rs.1050/-, along with interest within a stipulated period.

2. The case of the applicant is that he was working as Selection Grade Education Officer under

Central Board for Workers Education under Ministry of Labour. In order dated 28.8.1990 (Annexure-1) he was compulsorily retired from service under Rule 56 of Fundamental Rules. On an appeal filed by him to the Ministry, he was reinstated in service with effect from the date he was relieved from the Workers Education Centre. In this reinstatement order dated 29.8.1991 (Annexure-2) it was ordered that the intervening period between the date of premature retirement and the date of reinstatement would be regularised by granting of leave due and admissible to him. Being aggrieved with this part of the order the applicant approached the Tribunal in OA No. 447 of 1992 which was allowed in order dated 6.4.1993 (Annexure-3). The Tribunal directed that the applicant is entitled to his pay and allowances and other emoluments for the period from 28.8.1990 to 29.8.1991 minus the advance of three months pay which was given to him in lieu of notice. The applicant accordingly rejoined his service and retired on superannuation on 30.6.1993. He was granted all pensionary benefits but gratuity was withheld for which he made representations, one of which is at Annexure-4. On 31.3.1995 in the letter at Annexure-5 he was intimated that his gratuity amount is Rs. 52,800/-. But from this an amount of Rs.18,111/- is due to be recovered and therefore the applicant is entitled to get payment of the net amount of Rs. 34,689/-. In the representation filed on the same day (annexure-6) the applicant contested the decision of deduction of the above amount and in letter dated 19.5.1995 (Annexure-7) details of recovery were intimated to him. The applicant has stated that these amounts sought to be recovered from him

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are not deductible except to the extent of Rs.1015/- towards house rent on the grounds mentioned in his petition and therefore he has come up with the prayer referred to earlier. The applicant has also stated that according to Rule 68 of the Pension Rules interest is liable to be paid on delayed payment of gratuity if the same is not paid within three months and therefore he has claimed interest on the delayed payment. By way of interim relief the applicant had prayed for a direction that the net amount of Rs.34,689/- should be paid to him. The Tribunal in their order dated 17.10.1995 directed disbursement of the above amount within a period of three weeks and this has accordingly been paid to the applicant. From the above recital it is clear that the controversy is only with regard to recovery of Rs.17,096/- from the gratuity of the applicant.

3. The respondents in their counter have opposed the prayer of the applicant and have stated that for reasons indicated in the counter the deductions have been lawfully made. As the averments of the applicant in his petition opposing the recovery and the averments made by the respondents in their counter justifying the recovery will be discussed by me further in the order, it is not necessary to refer to these averments made by the respondents in their counter. It is only necessary to state that the respondents have stated that the recovery has been correctly made. On the question of payment of interest the respondents have stated that from 1991 they were corresponding with the applicant regarding recovery but the applicant did not respond and make good the recoveries and therefore there was no delay on the part of the respondents in the matter of payment of gratuity

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and no interest is payable. On the above grounds the respondents have opposed the prayer of the applicant.

4. I have heard Shri S.K.Padhi, the learned counsel appearing for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have also perused the records. Along with the OA, as an enclosure to Annexure-7 the applicant has enclosed a statement given to him by the respondents indicating the amounts due to be recovered from him and the amounts which have already been recovered. The total amount shown by the respondents due to be recovered from the applicant is Rs.26,079/- and the amount which, according to the respondents, has already been recovered is Rs.7958.70. Accordingly, an amount of Rs.18,120.30 was due to be recovered from the applicant according to the statement of the respondents. But as the respondents have in their letter dated 31.3.1995 claimed recovery of Rs.18,111/- it is not necessary to go beyond this amount for the present purpose. The applicant in his petition has mentioned that as against this amount of Rs.18,111/- an amount of Rs.1015/- is due to be recovered from him and therefore he has contested the recovery of Rs.17,096/-. This amounts consists of the following three items:

(i) Total Telephone Recovery - Rs.12,405.00

(ii) T.A.Bills Recovery

from March '90 to Sept.'90-Rs. 2,521.80

(iii) Excess Taxi &

Excess Distance Claims- Rs. 2,179.00

Total Rs.17,105.80

It is to be noted here that total amount comes to Rs.17,105.80. But for the present purpose we have to take the amount as Rs.17,096.00 after deducting Rs.1015/- from the amount of Rs.18,111/- mentioned by the respondents as recoverable from the applicant. I have heard the learned counsel for both sides at length on the question of recovery of these items and these are discussed separately.

5. The first item amounting to Rs.12,405/- relates to recovery in relation to use of telephone. Along with Annexure-7 a note has been enclosed by the applicant which has obviously been given to the applicant by the respondents in which decision for recovery of the above amount for misuse of the telephone has been mentioned. I have carefully gone through this note and I find that it has been stated therein that even though STD facility was not permissible, the applicant unauthorisedly got STD connection. It is also stated that he did not inform the concerned authorities that STD facility is not allowable for the particular telephone. It is also stated that the applicant and some of his friends were using the STD facility without entering these in the Telephone Register. It is also mentioned that it is known that the applicant used to talk with his daughter at Usmania University. It is also stated that the applicant had many times contacted the management over telephone in the absence of the author of this note. In view of this it has been suggested herein that the telephone bills during the period from June and July 1990 and other telephone bills paid by the applicant in total come to Rs.12,405/- and it has been suggested that this amount should be recovered from the applicant for wilful

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misuse of telephone. It is also mentioned in this note that for verification of the private bills to the outstation numbers the Telephone Department was contacted but the Telephone Department expressed their inability to give STD connection nos. as the same had not been computerised in Cuttack at that time. It has been submitted by the learned Additional Standing Counsel that from this note it is clear that the applicant misused the telephone facility and therefore the amount of Rs.12,405/- has been rightly ordered to be recovered from the petitioner. It has been submitted on the other hand by the learned counsel for the petitioner that the STD facilities have been utilised by other officers in the office and it is not proper to recover the entire amount of the bill from the applicant. It has also been submitted by the learned counsel for the petitioner that before this recovery no showcause notice has been issued to him and therefore the order of recovery of this amount is bad. I have considered the above submissions of the learned counsel for both sides. From the documents provided by the applicant himself it appears that possibly STD facility was not allowed to that office. But the fact of the matter is that STD facility was taken by the applicant. From this it does not necessarily follow that all the calls made from the telephone were for private purpose of the applicant alone. Obviously from that telephone official calls were also booked. There is no finding in the note that the applicant used the telephone for his private purpose. On the contrary it has been mentioned that the telephone authorities were contacted to indicate the numbers of the outstation

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telephones to which the calls were booked, but these could not be provided by the telephone authorities.

It has been mentioned that the applicant had talked to his daughter at Usmania University. But from the wording it is clear that this is merely a conjecture and there is no proof that the applicant used this telephone for his private purpose. In view of this, it is clear that this amount of Rs.12,405/- is not recoverable from the applicant. I therefore direct the respondents to pay this amount of Rs.12,405/- to the applicant within a period of 90 days from the date of receipt of copy of this order.

6. The next item which comes up for Rs.2521.80 recovered recovered from the TA Bills from March to September 1990. It has been submitted by the learned counsel for the petitioner that this amount was not recovered during the service period of the applicant and therefore this amount should not be ordered to be recovered now. It is also submitted that the applicant as earlier noted was compulsorily retired on 28.8.1990 and therefore the reference to Septemer 1990 clearly shows that unrecoverable amount is sought to be recovered from the applicant. This amount has been covered under item no. C of the note referred to by me earlier. From this it appears that from time to time the applicant had taken TA Advance and after adjusting the TA Bills certain amounts remain outstanding against him. The respondents have mentioned in their counter that the applicant had taken TA Advance amounting to Rs.6230/- and TA of Rs.820.20 during the period from March 1990 to September 1990 out of which Rs.3648.40 has been claimed as per TA Bills submitted for the period. Thus, an amount of Rs.2521.80 has not been adjusted through TA Bill and has

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to be refunded. It is clear that when an advance has been taken, after adjustment of the TA Bill, the balance amount is to be refunded. In this case as this amount of Rs.2521.80 represents the amount of advance which has not been adjusted in the TA Bill, it is clear that the amount is recoverable from the applicant and this can be recovered from the gratuity. In view of this, the prayer of the applicant not to recover this amount is held to be without any merit and is rejected.

7. The third amount which has to be considered is recovery for taxi claim and excess distance claim. This amount comes to Rs.2179.00. The respondents have stated that the applicant has claimed taxi fare for conducting certain tours during July 1989 to February 1990. He had received the TA claims. Later on it came to notice that he was not entitled to payment of taxi fare for conducting the tours. The applicant also claimed excess TA showing excess distance from one place to another than the actual distance and such claim with regard to excess distance was also worked out and on these two grounds an amount of rs.2179/- was found to be recoverable. It is also seen that from the note referred to by me earlier it has been mentioned that the applicant was passing his own TA Bills and was claiming TA. In the note the amounts of excess claim drawn by the applicant in respect of different TA Bills have been worked out billwise and the total amount comes to Rs.2179/-. As the applicant himself has passed and claimed his own Bills and as he is not entitled to taxi fare and he has claimed excess distance, this amount has been rightly held recoverable from him. I therefore reject the prayer of the applicant not to recover this amount of Rs.2179/-.

8. The last prayer made by the applicant is with regard to payment of interest on gratuity. The learned counsel for the petitioner has referred to Rule 68 of CCS (Pension) Rules, 1972. So far as the undisputed amount of gratuity is concerned, this works out to Rs.34,689/-. The applicant retired on 30.6.1993 and he was informed on 31.3.1995 in the order at Annexure-5 to receive the net amount of gratuity. But he did not receive the same and came up before the Tribunal in this O.A. But the fact of the matter is that he retired on 30.6.1993 and gratuity was not paid within a period of three months and intimation to him for receiving the gratuity was sent to him only on 31.3.1995. The question therefore is whether for the period from 1.7.1993 till 31.3.1995 the applicant is entitled to payment of interest on the net amount of gratuity. I have considered the submissions of the learned counsel for the petitioner and I find that in this case payment of gratuity has been delayed because of non-recovery of certain amounts. The respondents have stated that they have corresponded with the applicant and asked him to refund the amount but the applicant did not respond. In this process payment of gratuity has been delayed and therefore in this case interest on the net amount of gratuity is held to be not payable. This prayer is accordingly rejected. The other aspect of the matter is payment of interest on the amount of Rs.12,405/- which has been directed by me to be paid to the applicant in this order. I have directed that this amount should be paid within a period of 90 days. As the applicant has retired about seven years ago, it is directed that in case this amount is not paid to the

applicant within the period of 90 days indicated by me above, then interest on this amount should be paid by the respondents to the applicant at 12% per annum from the date of expiry of 90 days till the date of actual payment. This prayer is accordingly disposed of.

9. In the result, therefore, the Original Application is partly allowed as above but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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