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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

Original Application No.130 of 1998

Cuttack this the 24th day of April, 1998

Miss. C.T.M.Suguna

Applicant


-VERSUS-


Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be referred to all the Benches of the Central Administrative Tribunals or not ?


(S.K.AGARWAL) 24/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 24.4.98

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.130 of 1998
Cuttack this the 24th day of April, 1998

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THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI S.K. AGARWAL, MEMBER (JUDICIAL)
...

Miss.C.T.M.Suguna, I.A.S.,
aged about 38 years, D/o.Late
C.T.Marudhachalam working as
Director, Export Promotion and
Marketing, Ashok Market Complex,
IInd Floor,
BHUBANESWAR-9, DIST:KHURDA

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Applicant

By the Advocate:

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M/s.Ganeswar
Rath,
S.N.Mishra,
A.K.Panda
S.Mohanty
T.K.Praharaj

-VERSUS-

1. Union of India represented
by its Secretary, Department of
Personnel and Training,
New Delhi
- 2 State of Orissa represented by
its Principal Secretary,
General Administration Department
Secretariat Building,
Bhubaneswar, Dist:Khurda
3. Principal Secretary,
Industries Department,
Secretariat Building
Bhubaneswar
4. Accountant General, Orissa
BHUBANESWAR, DIST:KHURDA

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Respondents

By the Advocate:

...

Mr.K.C.Mohanty,
Govt.Advocate
(Res. 2 and 3)

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Mr. Ashok
Mohanty,
Sr. Standing
Counsel (Central)
(Res. 1 and 4)

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 21.2.1998 passed by the General Administration Department, Government of Orissa, refusing to sanction non-refundable withdrawal from Provident Fund Account of the petitioner vide Annexure-4. There is also a prayer for a direction to respondents to allow the applicant to withdraw non-refundable advance of Rs.25,000/- as per her application addressed to Special Secretary, General Administration Department, Government of Orissa at Annexure-3.

2. The facts of this case, according to petitioner is that she is a Member of Orissa Cadre of Indian Administrative Service. She joined the service on 21.8.1989. The Central Government had accepted the recommendations of the 5th Pay Commission with certain modifications and alterations and had issued Central Civil Services (Revised Pay) Rules 1997 on 30th September, 1997. This rule is at Annexure-1. These revised pay scales recommended by the 5th Pay Commission and accepted by the Central Government with modifications are to be given effect to from 1.1.1996 unless a Government servant opts to continue in his pre-revised scale beyond 31.12.1995. Rule 11 of this rule

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deals with mode of payment of arrears of pay. According to Rule-11, the arrears would be paid in cash with the stipulation that where the amount of arrear is less than Rs.5000, it should be paid in cash in one instalment and where it is in excess of Rs.5000, it should be paid in two instalments; in the first instalment payment should be restricted to Rs.5000 plus 50 per cent of the balance amount of arrears. In this rule arrears of pay has been defined as aggregate of pay and allowances to which a Government servant is entitled on account of revision of pay scale for the relevant period minus the amount to which he would have been entitled had his pay and allowance been not so revised. It is further provided that the relevant period means the period from 1st day of January, 1996 till 31st September, 1997. The petitioner states that in accordance with this revised rule at Annexure-1, Government of India in consultation with the State Governments amended the Indian Administrative Service (Pay Rules) 1954 providing for fixing of pay in the revised scale, according to I.A.S.

Indian Administrative Service (Pay Rules) as amended and drawal and payment of arrears as per the revised pay rules. The applicant further states that State of Orissa represented by Member Secretary, General Administration Department (Res.2) have issued guidelines and procedure in order dated 17.11.1997 (Annexure-2) regarding drawal of pay in the revised scale by the Indian Administrative Service Officers exercising options and other connected matters. In this guidelines in para-7 it has been laid down that

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those officers who are in service at present, the arrear pay and allowances for the period from 1.11.1996 to 31.10.1997 will be paid in the following manner:

Arrears of pay and allowance from 1.1.1996 to 31.12.1996 would be impounded in the G.P.F. account of the concerned officer; and arrears from 1.1.1997 to 31.10.1997 may be paid in cash in one instalment and revised pay from 1.11.1997 will continue to be paid in cash.

The applicant further states that in terms of the Rule at Annexure-1 and the guidelines at Annexure-2, the scale of pay of the applicant was fixed at Rs.12,6000 as on 1.2.1998. But the respondents without taking any consent from her and in contravention of Rule-6(3) of All India Service (Provident Fund) Rules 1955 deducted and deposited the entire amount in the G.P.F.Account of the applicant. It is further stated that the applicant's mother is dependant on her. She is suffering from her eye trouble and as the applicant did not have any money for eye operation of her mother, she was forced to apply for withdrawal of Rs.25,000 from her G.P.F.account as non-refundable advance vide her letter at Annexure-3 along with the application in the prescribed form. This application was sent on 12.2.1998. But ^{the} the impugned order dated 21.2.1998., the Deputy Secretary, G.A.Department has intimated the applicant that she has not completed 15 years of Government service. Therefore, sanction of non-refundable withdrawal from Provident Fund is not

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admissible under Rule 12(1-A) of All India Service (Profident Fund) Rule, 1955. As the applicant had no alternative or additional income apart from the salary, she, on being refused non-refundable withdrawal has approached the Tribunal with the prayers referred to earlier.

3. During the pendency of this Original Application, a prayer was made by the learned counsel for the petitioner that pending consideration of the Original Application, a direction be issued to Respondents, particularly Res.2 to sanction Rs.25,000 non-refundable advance to her for undertaking the expenses of her mother's eye operation. In that connection on 23.3.1998, learned counsel for the petitioner had shown us the G.P.F. account slip issued by the Accountant General and this showed the petitioner has got more than Rs.1 lakh in her G.P.F. account.

4. Respondents 1 and 4, Union of India and Accountant General, respectively have filed counter in which they have pointed out that sanction/payment of advance/withdrawals from G.P.F. during the service period of a subscriber has to be sanctioned by the concerned Government, under whom the subscriber is working. It is further stated that according to Rule-12(1-A) non-refundable advance is allowable on completion of 15 years of service. Res. 1 and 4 have further stated that under Rule-35 of All India Service (G.P.F.) Rules 1955, when the Government is satisfied that the operation of

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any of these rules causes or is likely to cause undue hardship to a member of the Service, it may after recording the reasons for so doing and notwithstanding anything contained in these rules, deal with the case of such member in such manner as may appear to it to be just and equitable : provided that the case shall not be dealt with in any manner less favourable to such member than that prescribed in these rules.

5. The State of Orissa (Res.2) in its counter have stated that the impugned order of the State Government at Annexure-4 has varied to the disadvantage of the applicant her condition of service as regulated by All India Services (Provident Fund) Rules, 1955. Therefore, it attracts the provisions under Rule 16 of All India Services (Discipline and Appeal) Rules and the applicant has a remedy to file appeal against the order at Annexure-4 to the Government of India. It is stated that as the applicant has not availed of this remedy, the present application is premature and prima facie, not maintainable. The respondents have stated that under the All India Service (Provident Fund) Rules expenses of medical treatment of a member of the family is a legitimate ground on which withdrawal from Provident Fund is permissible, but as the applicant has not completed 15 years of service, no non-refundable withdrawal can be allowed to her. It is further stated that the applicant has not made out a case of undue hardship or a case in her application filed before the Tribunal. It is further

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stated that an order of refusal to sanction non-refundable advance under Annexure-4 on the ground of applicant not having completed 15 years of service could not be considered a case of undue hardship to attract provisions of Rule 35 of Indian Administrative Service(Provident Fund) Rules,1955. The respondents have further stated that the tenor of the application gives an unmistakable and clear impression that the demand for non-refundable advance from G.P.F. has been made as her arrear salary payable to her subsequent to implementation of the 5th Pay Commission have been impounded from 1.1.1996 to refusal of 31.12.1996 and the application for grant of non-refundable advance on such ground can not taken to be a case of undue hardship. On the question of State Governments issuing the order at Annexure-2, impounding the arrears the State Government have taken the stand that while amending I.A.S. (Pay Rules) Government of India sought for consent of the State Governments about allowing the revised pay scales as recommended by the 5th Pay Commission to Indian Administrative Service officers serving in Orissa and the State Government agreed to same. At that time the Government of India did not ask for the opinion of the State Government about the payment of arrears in cash. Therefore, the State Government had no occasion to make any comment on this aspect. It is further stated that considering the financial condition of the State Government they have taken the decision to impound

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part of the arrears as mentioned earlier and it is within their powers to do so. It has been further stated that the applicant has not completed 15 years of services. Therefore, she is not entitled to a non-refundable advance from G.P.F. even for a purpose which is a legitimate one, she could be granted only a refundable advance. But she has not applied for the same and this would be considered if she makes an application. On the above grounds the respondents have opposed the prayer of the petitioner.

9. We have heard Shri Ganeswar Rath, learned counsel for the petitioner, learned Government Advocate Shri K.C. Mohanty, appearing on behalf of Res.2 and 3 and Shri Ashok Mohanty, learned Senior Standing Counsel appearing on behalf of Res.1 and 4 and perused the whole record.

10. Learned counsel for the petitioner has submitted that the Central Civil Services (Revised Pay Rules) 1997 is a rule promulgated under Article 309 and Clause-5 of Article 148 of the Constitution. This rule provides for mode of payment of arrears as mentioned by us earlier. This being a statutory rule, the State Government have no authority to vary these rules by virtue of an executive instruction issued in order dated 17.11.1997 at Annexure-2. The order itself makes it clear that this is an executive order and it is termed as guideline and procedure. It is further submitted by the learned counsel for the petitioner that according to Rule 6(3) of All

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India Services (Provident Fund) Rules, of subscription the amount/ of a subscriber shall be fixed by the subscriber himself subject to the following condition, viz. it shall be expressed in whole rupees and it may be any sum so expressed not less than 6 per cent of his emoluments and not more than his emoluments. It has been submitted that the rules do not provide that subscription to the Provident Fund can be ordered by the Government without option of the petitioner and on these grounds also the order of impounding of arrears from 1.1.1996 to 31.11.1996 in the G.P.F. has been challenged by the applicant.

11. Coming to the counter and the submissions of Res.2, the first point which have exercised us and we use the word adviseably is the assertion that the application for withdrawal of Rs.25,00 from the G.P.F. account as non-refundable advance has been made by the petitioner primarily because impounding of arrears as mentioned earlier in the Provident Fund account. Such an assertion is wholly unworthy of the State Government and the officer who has sworn the affidavit on behalf of the State Government for the following reasons:

The applicant has applied for a non-refundable advance of Rs.25,000 from her Provident Fund. As earlier noted on 23.3.1998, learned counsel for the petitioner had shown us the Provident Fund Accounts slip of the applicant issued by the Accountant General which showed that she has got more than Rs.1 lakh in her G.P.F. account. As this slip was shown to us on 23.3.1998, obviously this account slip

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would not relate to the position as it stood as on 31.3.1998. At the latest this accrual would represent the position as it stood on 31.3.1997. In other words, this amount of rupees more than one lakh was in her account by 31.3.1977 by which time the 5th Pay Commission recommendations have not been accepted and arrears have not been drawn and paid. As against this amount of rupees one lakh standing at the credit of the applicant besides of the amount impounded under the order at Annexure-2, she had asked for an advance of Rs.25,000. It cannot, therefore, be said that by applying for an advance of Rs.25,000 the applicant wanted to get a portion of the amount which has been impounded by the order at Annexure-2. This assertion also by implication means that the petitioner's claim regarding requirement of funds for her mother's eye operation is not genuine.

12. The State Government have shown no ground whatsoever as to why they feel by implication that requirement of funds for the eye operation of applicant's mother is not genuine. This contention of the State Government in their counter must therefore be rejected out of hand and we do so accordingly.

The next submission of the learned counsel for the applicant is that State Government have no authority to impound the arrears in the G.P.F. account as it is violative of Rule-11 of Central Civil Services (Revised Pay) Rules, 1997 and Rule 6(3) of All India Services (Provident Fund) Rules, 1955.

*Submitted by
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13. We have given our anxious consideration to the rival submissions of learned counsel for the petitioner, and the learned Government Advocate as also learned Senior Standing Counsel appearing on behalf of Res. 1 and 4, but we feel that in view of the fact that the petitioner has more than one lakh of rupees leaving aside the amount impounded under Annexure-2, it is not necessary for disposal of the present application to give a finding on these issues. The admitted position is that a non-refundable advance is allowable only after completion of 15 years of service. This is the general rule. But under Rule-35 of All India Services (Provident Fund) Rules, 1955 referred to in the counter on behalf of Union of India and Accountant General, the State Government can relax the provision of any Rule and pass such orders as it may deem proper, provided that such order cannot be less disadvantageous to the subscriber than what is allowable under the rules. The xerox copy of the rule filed along with counter by the Union of India & the Accountant General also refers to an executive instruction of Government of India where State Governments have been advised to apply Rule 35 only in case of undue hardship. These instructions were apparently issued by the Department of Personnel and Administrative Reforms vide letter dated 8.6.1978. It has been specifically mentioned in para-2 and para 4 that the letter is in no way intended to restrict the powers of the State Government available to them under the above rule. Certain examples have been given and in para - 4 it has been

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mentioned that the above enumeration which is illustrative and not exhaustive is not intended to impose any fetters on the exercise of the independent powers of the State Governments under Rule-35 but to impress upon them the desirability of invoking the special powers referred to above only in hard cases. Thus it is seen that in hard cases it is open for the State Government to relax any rule and pass appropriate orders. This means that the State Government, if they so desire can relax the requirement of minimum period of 15 years of service for granting a non-refundable advance in hard cases.

14. In the instant case the money is required for eye operation of applicant's mother. Applicant has also made an averment that besides the salary income, she does not have any other source of income and as such she has applied for a non-refundable advance. It is for the State Government to consider if such a case falls within four corners of Rule-35 of All India Services (Provident Fund) Rules, 1955.

15. One last point as to be mentioned with regard to maintainability of this application as mentioned in the counter by the respondents. Normally, an Original Application is not entertained by the Tribunal unless the alternative remedy, if available, has been exhausted. Therefore, it has been urged that the petition in the present form is not maintainable. In support of his contentions learned Government Advocate Shri K.C. Mohanty has relied on decision of Hon'ble Supreme Court ~~in the case~~

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in the case of S.S.Rathore vs. State of Maharashtra (AIR 1990 SC 10) and AIR 1983 SC 603 (Titagarh Paper Mill Co. Ltd vs. State of Orissa) and submitted that the order of refusal ~~with~~ denies and varies to her disadvantage of the applicant's pay, allowances and other conditions of service, the appeal against the said impugned order lies to the Central Government. Therefore, it has been urged that the petition in the present form is not maintainable. It is not necessary to go into the facts of the ^{above two} 2 cases in view of our discussions below:

16. In a normal case, we could have taken the view that the petitioner should have exhausted the alternative remedy before approaching the Tribunal. But in the instance case is one in which the petitioner wants money for undertaking eye operation of her mother and the Administrative Tribunals Act provides that after he/she files an appeal, if the appeal is not disposed of within a period of six months, then only he/she can approach the Tribunal. If such a long time in the instance case is allowed to pass before we consider the Original Application, the purpose for which the applicant has applied for non-refundable G.P.F. advance would be defeated. Therefore, we hold that this is not a case where the petitioner must be held to have exhausted the remedy available to her before approaching the Tribunal. We, therefore, hold that the petition in the present form is maintainable before the Tribunal.

17. In this case we have noted that the petitioner wants a non-refundable advance from the accrual in her

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G.P.F. account which is not connected with the amount impounded under the order at Annexure-2. The petitioner has not come to the Tribunal with the prayer that the amount which has been impounded in the G.P.F. amount be refunded to her. Because of this we have refrained from adjudicating the point whether such order of impounding is legal or otherwise. We feel that the present application can be disposed of by a direction to Res.2 that in the light of observations made above, Res.2 should once again consider the application ^{endorsed to} Annexure-3 which has not been filed before us and would decide whether this case falls under rule 35 of All India Services (Provident Fund) Rules, 1955. A view on this point should be taken by Res.2 within a period of 10 days from the date of receipt of order and result thereof communicated to the applicant within a period of five days thereafter. We make it clear that in case the applicant has any grievance with the order to be passed by the State Government in accordance with the directions above, she will be free to approach the Tribunal at the first instance.

With the above directions the application is disposed of. Parties to bear their own costs.

(S.K. AGARWAL)
MEMBER (JUDICIAL)

(SONATH SOM)
VICE-CHAIRMAN

B.K. Sahoo, C.M.