CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 03 OF 2007 CUTTACK, THIS THE 13tDAY OF February, 2008

Sri Yudhisthir Mohanty..... Applicant

Vs

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? <

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal of not?

(K.B.S.Rajan) MEMBER (J) 4

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 03 OF 2007 CUTTACK, THIS THE 13th DAY OF February, 2008

CORAM:

HON'BLE Dr.K.B.S.RAJAN, MEMBER (J)

Sri Yudhistir Mohanty, aged about 42 years, S/o. Sanatan Mohanty, working as Clerk in the office of Accountant General (A&E) Orissa, At/PO: Bhubaneswar, Dist. Khurda
.......Applicant

Advocate(s) for the Applicant- M/s. Ms. Chitra Padhi, Ms. Monalisa Devi

VERSUS

- 1. Union of India represented through the Accountant General (A&E), Orissa, At/PO: Bhubaneswar, Dist. Khurda.
- 2. The Senior Deputy Accountant General (Admn.), Office of the Accountant General, Orissa, Bhubaneswar, Dist. Khurda.

...... Respondents

Advocates for the Respondents - Mr.P.R.J.Dash

ORDER

Hon'ble Dr. K.B.S.Rajan, Member(J)

The applicant has been serving in the Respondent Organization since January, 1991 and without any details a sum of Rs. 5055/- was withheld from his salary for the month of January, 2005. By 1st of February, itself, applicant sent Annexure-A/1 letter to know the reasons for deduction. As late as on 20.09.2005, vide Annexure-2, the Sr. Accountant General, Administration informed the applicant that "as per Accountant General's order communicated vide No.Fd-EDP-GPF-DAG(Fds.)-Con-11, dated 07.01.2005, he was involved in fraud case in favour of Shri K.C.Behera, GPF Account No. 25336 PW(O). Accountant General ordered for the recovery of over-payment from his salary."

Applicant's further representation dated 23.09.2005 seeking refund of the amount has not been considered at all though in respect of adverse remarks, the authorities have rejected his request Annexure-A/3 and A/4 refer. The applicant has claimed the withheld amount of Rs. 5055/-.

Respondents have contested the O.A. The justification given by them as contained in para-7 of the counter is as under:-

"that the averments made in Paragraphs-5.1 and 5.2 of the Original Application, it is humbly submitted that withholding of any part of salary and keeping the same undisbursed ask per Rule-92(2) of Receipt and Payment Rules, 1983, cannot be construed as a penalty under Rule-11 of CCS(CCA) Rules, 1965. Further, it is clarified that this amount of Rs. 5055/- has not been recovered from the salary of the applicant. It was withheld due to applicant's involvement in a GPF fraud case pending finalisation of the departmental proceedings initiated against him. Therefore, it cannot be said that withholding of such amount during pendency of departmental proceedings is either in any

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way illegal or is in violation of the Rule-16 of the CCS(CCA)Rules, 1965."

Arguments were heard. The applicant has not admitted any misconduct. No chargesheet seems to have been issued. As such, withholding of the applicant's pay is without any authority. Counsel for the Respondents attempted to argue that there is no recovery but only withholding of a part of pay. It is made clear that even for withholding there must be some plausible reasons and necessary authority for such withholding. The pay of a Govt. servant is earned by him and as such the same is his property and cannot be withhold by the department without due notice and without any plausible reasons. While it is open to the department to take any action as deemed necessary in respect of alleged fraud, their withholding of pay is illegal as the same amounts to pre-determining the issue.

In view of the above, the O.A. is allowed. Respondents are directed to release the withhold amount of Rs. 5055/- to the applicant. The applicant has claimed 18% interest. As the withholding was not a deliberate attempt but on account of erroneous understanding of the rules, I am not inclined to grant any interest.

The O.A. is allowed to the extent and the Respondents are directed to comply with this order within six weeks from the date of communication of this order.

(K.B.S.Rajan) MEMBER (J)