

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A No.486/1994

Monday this the 1st day of August, 1994.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

V.K.Mohan Surendranath,
Junior Telecom Officer(retired),
Ram Nivas,
Parappanangadi,
Malappuram District.

.. Applicant

(By Advocate Mr.M.C.Nambiar)

vs.

1. The Chief General Manager,
Southern Telecom Region, Madras.1.
2. The Director of Maintenance, Southern
Telecom Sub Region,Ernakulam.
3. The Accounts Officer, Office of the
Director of maintenance, Southern Telecom,
Sub Region, Ernakulam.

.. Respondents

(By Advocate Mr.V.Ajithnarayanan, ACGSC)
Mrs. Preethy Ramakrishnan, Amicus Curiae

ORDER

CHETTUR SANKARAN NAIR(J),VICE CHAIRMAN:

Applicant, who has retired from the service of Government, seeks to quash Annexures.A4 and A6 orders seeking to recover a sum of Rs.25,747/- from the gratuity due to him. This amount is said to represent a bill outstanding against a telephone, working "in the family house of applicant at Parappanangadi". By Annexure A5 applicant objected to the recovery proposed. Ignoring this, action was taken to recover the same and upon that he approached this Tribunal.

2. Proviso to Section 60 of the Code of Civil Procedure excludes certain categories of property from attachment, including:

" (g) Stipends and gratuities allowed to pensioners of the Government...."

In Union of India vs. Jyoti Chit Funds, AIR 1976 SC 1163, the Court observed that the Government is in the position of a trustee in respect of Provident Fund, Gratuity and such amounts due to the Government servant.

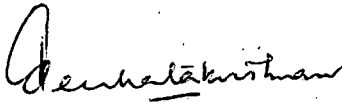
3. However, Standing Counsel for respondents would submit that the Code of Civil Procedure is general law and that the special law namely Central Civil Services (Pension) Rules makes provisions, contrary to the provisions in the Code of Civil Procedure. He relied on Rule 71 of the Pension Rules. That rule refers to dues from "Government servants". Service rules, can comprehend only matters or relationships that arise between the Government and its servant, in his capacity as a Government servant. It cannot regulate or govern other facets of his existence or activities relating to him. The relationship in the instant case between the Government and applicant, is only that of the Government and a subscriber of a telephone. The service rules do not govern and cannot govern such relationships.


4. Quite apart from that, the law declared by the Supreme Court of India is law binding on all persons and authorities within the territory of this country by reason of Article 141 of the Constitution. The pronouncement of the Supreme Court that a Government department is in the position of a trustee vis-a-vis its employees in the matter of gratuity and pension is thus binding law. Annexures A4 and A6 cannot be sustained.

5. We allow the application with costs which we fix at Rs.500/- (Rupees five hundred). We would have awarded exemplary costs, but we do not do so, as Standing Counsel states that the department was under a bonafide doubt.

6. We record appreciation of the help rendered by Ms. Preethy as Amicus Curiae.

Dated the 1st August, 1994.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure IV - Photostat copy of the order No33/S-2861/VKM/Pen/13 dated 27.1.1994 of the third respondent.
2. Annexure VI - Photostat copy of the order No.33/S-2861/VKM/Pen/17 dated 3.2.1994 of the third respondent.

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