

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 591 of 2009

Monday, this the 3rd day of January, 2010

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

K. Shankar, Aged 41 years, S/o. Krishna Swamy, Inspector of Central
 Excise, Central Excise Headquarters Office (Computer Cell), Plot No. 81,
 Jawahar Nagar, Kadavanthra, Kochi-20. **Applicant**

(By Advocate – Mr. S. Ramesh Babu – Not present)

V e r s u s

1. Union of India, represented by the Secretary, Ministry of Finance,
 Department of Revenue, North Block, New Delhi.
2. The Commissioner of Central Excise and Customs,
 Central Revenue Building, I.S. Press Road, Kochi-18.
3. The Joint Commissioner (P&V), Office of the
 Commissioner of Central Excise & Customs, ICE Bhavan,
 Press Club Road, Thiruvananthapuram. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 03.01.2011, the Tribunal on the
 same day delivered the following:

O R D E R

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

When the case was called neither the applicant nor the counsel is
 present. In the circumstances, the OA is dismissed for default.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

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(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 591 OF 2009

Friday....., this the 8th day of April, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

K. Shankar
Inspector of Central Excise
Central Excise Headquarters Officer (Computer Cell)
Plot No. 81, Jawahar Nagar
Kadavanthra, Kochi – 682 020.

Applicant

(By Advocate Mr. S. Ramesh Babu)

Versus

1. Union of India represented by
The Secretary, Ministry of Finance
Department of Revenue
North Block, New Delhi.
2. The Commissioner of Central Excise & Customs
Central Revenue Building, I.S. Press Road
Kochi – 682 018.
3. The Joint Commissioner (P&V)
Office of the Commissioner of Central Excise
and Customs, ICE Bhavan
Press Club Road, Thiruvananthapuram.

Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 31.03.2011, the Tribunal
on 08.04.2011..delivered the following:

terms of F.R 54(2) that the applicant shall, subject to the provisions of Sub Rule 6, be paid full pay and allowances to which he would have been entitled had he not been removed or suspended from service, subject to the adjustment of the subsistence allowance paid during the period of suspension. It was also ordered that under F.R 54(3) the period of absence from duty including the period of suspension preceding removal shall be treated as period spent on duty for all purposes (A-4).

3. During the period, he was under suspension and out of service, his services were utilised as Honorary Director at the Regional Sports Centre, Ernakulam to implement Mahesh Bhupati Tennis Scheme. The applicant averred that he has not received any remuneration in the said capacity and produced A-6 from the Regional Sports Centre, Ernakulam in support of his claim. Vide Annexure A-8, the respondents called for the details of his employment in any organization during the period between the date of his removal from service and the date of reinstatement. The applicant vide Annexure A-9, informed that he was engaged as Freelance Tennis Professional Coach by M/s. Professional Tennis Consultants (Pvt.) Ltd., Pune. His earning during the period between 2006-2008 was Rs. 2,86,304/- and he has filed the necessary Income Tax returns for the two financial years.

4. The respondents vide Annexure A-10 and A-12 impugned orders informed him that the professional/coaching fees he received will be treated as income from employment and in accordance with Sub-Rule 8 of FR 54, he has to credit that amount to the Government.

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ORDER**HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicant is aggrieved by the order of the respondents to recover Rs. 2,86,304/-, which he received as professional and coaching fees from M/s. Professional Tennis Consultants (Pvt.) Ltd., Pune.

2. While the applicant was working as Inspector of Central Excise, Air Cargo Complex, Thiruvananthapuram he was arraigned as one of the accused in C.C. No. 1/2000 on the file of the Special Judge (SPE/CBI)-I Ernakulam. By judgement dated 30th March, 2002 the applicant was found guilty of offences under the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/-. In the appeal preferred by the applicant as Criminal Appeal No. 281/02, the Hon'ble High Court by judgement dated 20.11.2007 set aside the finding of guilt against the applicant. It allowed the appeal and the applicant was acquitted of the offences charged against him. Pending the criminal case, originally the applicant was placed under suspension. By order dated 08.03.2006 the applicant was removed from service with effect from the afternoon of 08.03.2006 (A-1) The applicant's appeal against Annexure A-1 which was during the pendency of the appeal before the High Court and before the final judgement of acquittal was rejected by the 2nd respondent by order dated 26.04.2007 (A-2). Consequent on the order of acquittal by the Hon'ble High Court, the third respondent set aside Annexure -1 order dated 06.10.2008 (A-3). Thereafter, by order dated 14.11.2008, it was ordered in



5. The applicant contended that the amount of Rs. 2,86,304/- obtained as professional Tennis Coach is not under any contract of employment and therefore would not come within the ambit of Rule 54(8). During the period of ouster from services, he spent his time gainfully as a Freelance Tennis Coach for budding tennis players at Pune for which he was being paid Rs. 1500/- per hour for one session. He did not receive any monthly or regular emoluments. There was no employer employee relationship between the applicant and M/s. Professional Tennis Consultants (Pvt.) Ltd., Pune. Hence, there was no question of any employment as contemplated under Rule 54(8). Therefore, he filed this Original Application seeking the following reliefs:-

- "a. To call for the records leading upto Annexure -10 and Annexure -12 and set aside the same.
- b. To declare that the amount of Rs. 2,86,304/- that the applicant received from M/s. Professional Tennis Consultants (Pvt.) Ltd. as a tennis coach for the conducting coaching sessions should not be treated as income from employment under Sub-Rule 8 of FR 54.
- c. To declare that the applicant is not required to credit to Government account the amount of Rs. 2,86,304/- that he received from M/s. Professional Tennis Consultants (Pvt.) Ltd. as a tennis coach for the conducting sessions."

6. The respondents contested his claim by filing a reply statement. They submitted that as per Sub Rule 8 of Fundamental Rules 54 "any payment made under this rule to government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of removal, dismissal or

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compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment elsewhere, nothing shall be paid to the Government servant". Therefore, the respondents submitted that the professional/coaching fees he received during his period of absence will count as income from employment and hence, he is liable to credit Rs. 2,86,304/- in adjustment of subsistence allowance already paid and full pay and allowances for which he is entitled on his reinstatement in service.

7. Heard the counsels on both sides and perused the documents. The applicant has challenged the impugned A-10 and A-12 order primarily on the ground that :

"It is settled law that the concept of employment involves three ingredients, which are : (i) employer – one who employs i.e. engages the services of another person; (ii) employee – one who works for another for hire; and (iii) contract of employment – the contract of service between the employer and the employee where under the employee agrees to serve the employer subject to his control and supervision. None of these ingredients are present in the services he provided to M/s. Professional Tennis Consultants Private Limited, Pune."

8. So, the legal issue raised by him relates to the definition of employment for the purpose of income he received, during the period of his suspension and when he was out of service. As a result of his reinstatement, the respondents ordered vide Annexure A-4 that the period of absence from duty including the period of suspension shall be treated as duty and he will be entitled for full pay and allowances. We shall first refer to FR-53, which enjoins payment of subsistence allowance to a government servant, who is placed under suspension. Relevant paragraph is extracted below:-

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"F.R 53. (1)(ii) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn, if he had been on leave on half average pay or on half-pay and in addition, dearness allowance, if admissible on the basis of such leave salary.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government servant dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub-rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this provision shall apply to him."

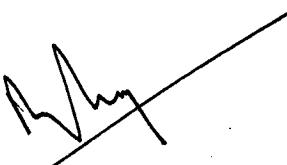
9. We observe that terms like employment, business profession or vocation are used to include earning generated through any of the above mentioned source. This clearly illustrates that the objective of the government is to exclude income which accrued to a government servant by his engagement in any vocation during his absence from duty, from his subsistence allowance. Therefore, FR 54(8) is to be read with FR 53(2) to define the term employment. When one runs his own business, he is called as a self employed person. So employment is meant to show any activity which the applicant has taken up and which has yielded him an income.

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Hence, the ground taken up by the applicant that ingredients of employment are not involved in the services he provided to M/s. Professional Tennis Consultants is not tenable. The applicant has gainfully utilised the time at his disposal because of his absence from duty, to find out an alternate profession and thus a source of income, to supplement his subsistence allowance, quite possibly to support his family. In accordance with FR 53(2), during his suspension only subsistence allowance to the extent, it falls short of his earnings can be granted. Therefore, we find that the respondents have acted rightly in asking him to credit Rs. 2,86,304/- as per the provisions of FR 54(8). The applicant has failed to establish his case. The O.A. being devoid of merit is dismissed.

(Dated, the 8th April, 2011.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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