

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

O.A.No.23/92.

Shri Tilak Raj

Applicant

versus

Union of India through
General Manager, Northern Railway
Headquarters Office, Baroda House,
New Delhi and 3 others.

Respondents.

Hon.Mr. S.N. Prasad, Member(Judicial)

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer for quashing the impugned order dated 8.8.89 passed by the respondent No.3 and 4, and for further directing the respondents to refund the amount so recovered from the pension of the applicant ^{along} with the interest at the rate of ^{18%} 18% from the date it has been recovered to the date it is actually paid finally.

2. Briefly stated, the facts of the above case, inter alia, are that the applicant is an ex-Senior Loco Inspector, N. Railway, Lucknow and while in service, ^{2 Under} was working ~~in~~ the control of Divisional Railway Manager, N. Railway, Lucknow and he retired on 31.12.86 on reaching the age of his superannuation and after his retirement he was drawing his pension from the Central Bank of India, Alambagh, Branch, Lucknow under P.P.O. No.

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PPO/8/078/2210/Sr. DAO/NR/LKO dated December, 1986, A/C No. 15250, but a sum of Rs 4,849.40 has wrongly and illegally been recovered from his pension A/c No. 15250 maintained at the Central Bank of India, Alambagh, Lucknow ; ^{and} after a lapse of about 4 years in instalments ^{from} ~~direction~~ from the said account; and the above recoveries have been made from the pension of the applicant without giving him any opportunity of being heard or show cause and the above recovery ^{is} to the tune of Rs 4,849.40 without prior show cause notice to the applicant, are not only punitive in nature but are also against the principles of natural justice and as such the applicant has been deprived of his valuable right to represent against such illegal and punitive action of the respondents and as such the impugned order be quashed and the relief sought for be granted.

3. This is worthwhile making mention of this fact that despite ^{inve} of notice dated 27.1.92 to the respondents, neither the respondents filed any Counter Affidavit, nor any one turned up on behalf of the respondents.

4. I have heard the learned counsel for the applicant and have thoroughly gone through the records of the case.

5. The learned counsel for the applicant, while drawing my attention to the contents of the application and the papers annexed thereto, has argued that the O.A.No. 388/90(L) 'S.K.Nigam (Applicant) vs. Union of India & others (Respondents.)' has already been decided by this Tribunal on 5.4.91 and the aforesaid applicant

Shri S.K.Nigam of the said O.A. No. 388/90(L) is the same person against whom such recovery of Rs 3,897.40 was made by the respondents and whose name finds place at serial No. 2 of the impugned order dated 8.8.89 (Annexure -1 to the application) and the application of the aforesaid S.K. Nigam, applicant in O.A. No.388/90(L) was allowed, as per order dated 5.4.91 by this Tribunal; and has further argued that the relief on pension is a part of basic pension, hence recoveries from relief to pension cannot be effected; and has further argued that the above recoveries by the respondents ~~from~~ from the relief on pension cannot be made without any show cause notice to the applicant; and has further argued that this being so, the impugned order is violative of principles of natural justice and in support of his arguments, has placed reliance on the following rulings:

(1) A.T.C. 1989, Volume 7 'Smt. Yashvanti Sood v. Union of India and others at page 717 wherein it has been enunciated:

"Pension-Relief in pension-Recovery of government dues from-Dues relating to government accommodation-Held, procedure for this recovery is specifically provided in CCS (Pension) Rules, 1972, Rule 80-C(1) according to which dues can be recovered from gratuity only-Hence, recovery cannot be made from Relief in Pension-Besides, no distinction can be made between basic pension and relief thereon-Hence relief is also protected under Pension Act, 1871, Section 11 from attachment-GI, MF, U.O. No.718-EV(A) dated

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7.2.1978 which authorised recovery from the relief, being administrative instructions cannot have overriding effect on statutory provisions - Recovery therefore held illegal-Government residential accommodation-Licence fee-CCS (Pension) Rules, 1972, Rule 80-C(1) Pension Act, 1871 Section 11"

(2) (1988) 8 A.T.C., C.A.T. (Principal Bench New Delhi)

R.D. Sharma (Applicant) vs. Union of India and others (Respondents) ^{at} Page 26, wherein it has been enunciated at page 34 (para 26):

"The U.O. note of the Ministry of Finance dated 7.2.1978 to the effect that the pensioner's relief is not covered by the Pensions Act and there may be no objection to the recovery of the government dues from the pensioner's relief without the consent of the pensioner, is in the nature of an administrative instruction. As the question of pension has been comprehensively regulated by the Pension Rules and the rules do not leave any discretion in the matter to the executive to make recovery from the pensioner's relief, to our mind, these instructions cannot be treated as ~~pensioner's~~ supplementing the Pension Rules. It is well settled that an administrative instruction can be issued to supplement statutory rules but not to supplant them. Administrative Instructions could ^{also} ~~not~~ be issued in the matters on which the statutory rules are silent. In the instant case, the Pension Rules which are statutory in nature comprehensively deal with all matters regulating payment of pension. The Pension Rules specifically provide for withholding or recovery of pension in specified situations and circumstances, leaving

no gap to be filled by administrative instructions. In view of this, we are of the view that the ~~ad~~ administrative instruction contained in the U.O note of the Ministry of Finance dated 7.2.1978 will have no legal binding force. The administrative instructions issued in 1978 by the Ministry of Finance do not also go into the question as to whether relief in person is to be considered as part of pension."

This is noteworthy that on perusal of record it becomes obvious that the above recovery was made from the relief to the pension of the applicant without affording any opportunity to the applicant for making such recovery.


This is also noteworthy that a perusal of Annexure-2 to the application which is a copy of the judgment dated 5.4.91, passed by this Tribunal (by Hon. Mr. Justice K. Nath, V.C.) in O.A. No. 380 of 1990 shows that the application of the aforesaid applicant S.K. Nigam was allowed and the impugned order Annexure -1 dated 8.8.89, as far as it related to the recovery of Rs 3,897.40 from the relief payable on pension to the aforesaid S.K. Nigam, was struck down. In this connection it is significant to point out that the facts of the aforesaid S.K. Nigam's case are quite identical with the facts of the instant case.

Having considered all the view points and all aspects of the matter and in view of principles of law as laid down in the aforesaid ruling, I find that the impugned order being against the principles

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principles of natural justice and relevant law is invalid and requires to be set aside and as such it should be set aside.

Consequently, the application of the applicant is allowed and the impugned order dated 8.8.89 (Annexure-1 to the application), as far as it relates to the recovery of Rs 4,849.40 from the relief payable on pension to the applicant, is set aside, and the amount of Rs 4,849.40 which has been recovered from the pension-relief of the applicant, be refunded to the applicant together with interest at the rate of Rs 9% ^(rupees nine percent) per annum from the date of recovery to the date of refund to the applicant by the respondents. The application of the applicant is disposed of as above. No order as to costs.


Member Judicial 24.2.92

Lucknow Dated: 24.2.92.

Shakeel/