

R.S. Saxena

: : : : : Applicant

Vs.

Union of India &  
Others.

: : : : : Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Bhargava, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transfer application under section 29 of the Administrative Tribunals Act, 1985. The applicant who retired from service, continued to work upto January 1976 as extension of one year was granted to him. Feeling aggrieved with certain deductions made from his salary and gratuity and non-payment of certain benefits by way of amendment in the pay scale in the higher grade, to which he is entitled to, the applicant approached this Tribunal, praying that a mandamus be issued quashing the order dated 10/10/78 and that of the Assistant Labour Commissioner, Controlling authority, under the payment of gratuity Act dated 7/12/79 and the Regional Commissioner dated 8/6/79, who rejected his claim, and the respondents be directed to issue clearance certificate regarding payment of deathcum-retirement gratuity of Rs.8060/- and interest on the same and return of Post Office Savings Bank account amount etc. Various documents were filed by the parties as well as number of affidavits. Ultimately after certain payments, the relief which still remains for consideration is Rs.1240/- towards family pension and Rs.540/- on account of recovery towards quarter rent u.o.f. 1/1/73 to 31/1/73, Rs.150/- recovered on account of electrical charges, Rs.765/- recovered on account of over-payment for the period 13/2/75 to 10/3/75.

2. According to the respondents, in view of the Railway Board's letter dated 2/1/60 payment of 2 months salary towards family pension is required for which recovery was continued u.s.f. 22/2/77 and in the applicant's case 2 months' salary was to be recovered since he retired on 21-1-75 and thereafter on 31-3-76. His wife died on 18/10/76. As such recovery for 2 months pay was to <sup>be</sup> made. The applicant's wife died after his retirement, this amount should not have been deducted and the applicant was entitled to the deduction of this amount. As so far as the amount of Rs.540/- towards quarter rent is concerned, there is no dispute that the rent was Rs.44.50 which he continued to pay and after his retirement, without giving him opportunity, to which he was entitled to, a sum of Rs.540/- was deducted as his salary went on increasing, and this 10 months deduction @ 10% was made. In this connection it is to be stated not only on the ground of opportunity, but also on the ground of justice, no person should suffer because of the error and delay and lapses on the part of the government. As such the respondents should not have deducted the amount from the gratuity of the applicant obviously after his retirement. In the case of State of Maharashtra Vs. Jagannath Achyut J. Karandiker, A.I.R. 1989 S.C. page 1133 in which it was held that the officials should not be penalised for the lapses on the part of the Government. As such the applicant should not have been penalised because of the lapses on the part of the Government. The applicant has admitted that so far as the electric consumption is concerned, regarding the recovery of Rs.760.40, it was over-payment. It is seen that while giving him extension, it is clearly mentioned that the entire period between the date of his retirement and date of his joining his duty (intervening period)

should be treated as leave without pay. But later on, it appears, that behind the back of the applicant, he was given the benefit of E.L. of 15 days. This is against the order passed and without giving him any opportunity of hearing. This should not have been done as it would have nullified the order which was passed earlier. The said order should not have been nullified in this manner. Accordingly, the recovery of this amount was also unwarranted. As far as the applicant's claim that on the date of his retirement he was getting pay of Rs.720/-, in his application dated 22/6/73 for pension and gratuity also he mentioned that his pay is Rs.620/- that is why his gratuity was calculated on the basic pay of Rs.620/-. The applicant who is present in person has argued that he was entitled to the benefit of the observations made by their Lordships of the Supreme Court in the case of D.C. Makara Vs. Union of India, 1983 S.C. page 305. The applicant is not entitled to the benefit of any observations made in the said case, as those whose matters have been decided earlier are not entitled to the benefit of the observations made in a subsequent case. Accordingly the claim of the applicant has to be rejected.

3. The respondents have clearly mentioned that gratuity of Rs.7540/- was offered to the applicant twice but he refused to accept the same. The applicant will now accept the same. In case the offer was made after 2 months from the date of retirement, the respondents will pay interest also at the rate of 12% till the date the said amount was offered to the applicant. The respondents will pay all the amount due within a period of 2 months from the date of receipt of this order. With these observations the applicant's application stands disposed of. No order as to the costs.

*[Signature]*  
Member (A)

*[Signature]*  
Vice-Chairman.

Date: 4th January, 1982, Lucknow.