

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

DATED THIS THE 6TH DAY OF SEPTEMBER, 1993

PRESENT

HON'BLE SHRI S. GURUSANKARAN .. MEMBER (A)

HON'BLE SHRI A.N.VUJJANARADHYA .. MEMBER (J)

APPLICATION No.498/93

Shri Brahm Dutt,
S/o. late H.S. Sharma,
Secretary to Govt. of Karnataka,
Education Department,
M.S.Building,
Sachivalaya - II,
Bangalore - 560 001. ... Applicant

(Shri B.B. Bajentri ... Advocate)

Vs.

1. The Government of India
by its Foreign Secretary in
the Ministry of External Affairs,
'Videsh Mantralaya', South Block,
New Delhi - 110 011.
2. The Director of Audit,
Embassy of India,
Washington,
U.S.A.
3. The Accountant General,
Karnataka State,
Bangalore. ... Respondents

(Shri M.S. Padmarejaiah .. Advocate)

This application, having come up before this Tribunal
today for orders, Hon'ble Shri S. Gurusankaran, Member (A),
made the following :

ORDER

Briefly stated the case of the applicant is as
follows.

2. During his period of deputation to the Govt. of India
from August, 1988 to September, 1990, he worked as Counsellor (C&F)



from August 1987 to September, 1990 in the Embassy of India at Washington D.C., under the control of Respondent (R for short) No.1. After completion of his tenure at the Embassy the applicant was repatriated and he is at present working as Secretary, Govt. of Karnataka, Bangalore. Govt. of India had ordered revision of foreign allowance under their order dated 18.8.1989 (Annexure A-1) effective from 1.1.1989. Accordingly, the applicant was paid arrears of foreign allowance including wages for part time local help at enhanced rate for the period from 1.1.1989 to 31.7.1989. However, R-2, vide his letter dated 26.7.1990 (Annexure A-2) indicated to R-1 an audit objection that there was over payment of arrears of foreign allowance in respect of 23 officers of the mission including the applicant. The name of the applicant is at sl.no.3 at Annexure A-2.to the letter dated 26.7.1990 indicating the amount of over payment as Rs.18,692.87. Based on the same, the applicant was advised vide letter dated , 8.8.1990 (Annexure A-3) that a sum of Rs.18,692.87 is recoverable from his pay from the month of August, 1990. The applicant submitted his representation dated 16.8.1990 (Annexure A-4) pointing the correct position in respect of his individual case. He has stated that he had engaged a part time local help and he was entitled to the enhanced rate of allowance with effect from 1.1.1989. The applicant also advised the Joint Director (Audit) the position vide his note dated 20.8.1990 (Annexure A-5) and requested for re-examination of the matter in the light of the explanation given by him. However, the applicant was advised vide letter dated 12.9.1990 (Annexure A-6) informing him that the Ministry of External Affairs have not agreed to

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the proposal to grant revised rates of part time local allowance with retrospective effect and had directed to recover over payments made. The applicant sent a detailed representation dated 20.2.1991 (Annexure A-10) to R-1. He had also requested therein that pending decision of the Government, R-3 should be advised not to effect any recovery from his pay. Accordingly, R-1 advised R-3 not to recover any amount until R-1 had reconsidered the matter vide letter dated 19.1.1993 (Annexure A-12). R-1 communicated its final order stating that the payment of arrears for the period from 1.1.1989 to 31.7.1989 amounting to Rs.17,325.00 at the rate of Rs.2,475/- per month is irregular and is recoverable from the applicant. The applicant referred the matter again on 6.2.1993 (Annexure A-14) stating that the recovery would be contrary to Rule 8 of the Foreign Allowances Rules and is legally not tenable. However, vide their letter dated 4.4.1993 (Annexure A-15), R-1 has advised the applicant that the enhanced wages for the servant is admissible only from 1.8.1989 citing the Government circular dated 7.1.1987. The applicant has contended that the Government circular dated 7.1.1987 prescribes intimation regarding payment of enhanced wages as and when changes takes place and Govt. cannot issue any such instructions in violation of Rule 8 as of Foreign Allowances Rules of Annexure -III. He has, therefore, filed this application praying for the following reliefs:



1. To quash, by issue of writ of certiorari or any other appropriate writ or order the impugned letter No.Q/PF/661/6/87 dated 19.1.1993, of the 2nd Respondent (Annexure A-12), with directions not to effect any recovery of the payment made of the foreign allowance at the enhanced rate towards wages of part-time local help for the period from 1.1.1989 to 31.7.1989; and
2. To pass, such other order or direction as this Hon'ble Tribunal deems fit in the facts and circumstances of the case including an order for award of cost.

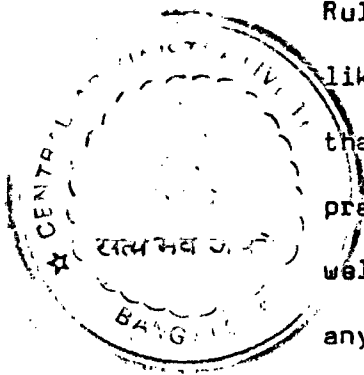
3. The respondents have filed their reply contesting the application and have brought out the following points. The applicant was on deputation to the Embassy of India, Washington from 28.8.1987 to 30.9.1990. During that period he was entitled to draw foreign allowance as admissible to a Counsellor. Provision for the payment of the standard wages for the prescribed India-based and/or local domestic servants is made in the said foreign allowance. The servants wages are paid as reimbursement against the actual expenditure and is authorised through a well-laid down procedure. The drawal of foreign allowance including servants wages is governed by Annexure III to the IFS(PLCA) Rules and instructions thereon issued from time to time. Pay and allowances of representational officers in Indian Missions abroad are drawn on the basis of pay slips issued by the Ministry of External Affairs in each individual case. The first pay slip for an officer serving Indian Missions abroad is issued after the receipt of his first arrival report, wherein the officer has to indicate the number of servants maintained by him in accordance with his entitlements. Subsequent pay slips are issued as and when there is a change in pay and allowances of the officer and circulars issued in this regard since 1984 are enclosed as Annexures CC, dated 24.1.1984, Annexure-DD, dated 9.1.1985, Annexure-EE, dated 7.1.1987 and Annexure-FF, dated 28.11.1991. Para 4 of Annexure-EE has reiterated that officers are required to intimate to the Ministry the revision of wages of servants as and when it takes place. It also provides that enhanced servants wages would be authorised only from the first of the month in which intimation in this regard is furnished. Vide certificate dated 31.8.1989 (Annexure-GG) the applicant intimated to the Ministry that he has revised the wages of his part time local domestic help to US \$ 580/- (Rs.8572/-)

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per month with effect from 1.1.1989. Since, the certificate was furnished by the applicant on 31.8.1989, the wages for his part time help were revised with effect from 1.8.1989 in terms of order dated 7.1.1987 (Annexure-EE). Therefore, the wages for the part time local domestic help paid to the applicant for the period 1.1.1989 to 31.7.1989 amounting to Rs.17,325/- are therefore not admissible to him and are bound to be recovered from him.

4. We have heard Shri B.B. Bajentri for the applicant and Shri M.S. Padmarajaiah for the respondents and perused the pleadings and the annexures produced along with the pleadings.

5. The first point raised by Shri Bajentri, the learned counsel for the applicant, was that drawal of servant wages is governed by Rule 8 of Annexure-III of IFS (PLCA) Rules (Rule for short). It has been laid down in the rule that "the drawal of wages of part time local servants, provision for which is included in the foreign allowances is not subject to the production of any certificate." The learned counsel argued that since the Rules permit the drawal of wages of part time local servants as per Rule 8, the Government cannot issue any circular instructions like the one dated 7.1.1987 in violation of Rule 8. We observe that in the reliefs prayed for by the applicant, he has not prayed for quashing the circular dated 7.1.1987. It is by now well settled that if the action of the respondents is as per any existing circular, the vires of which have not been questioned, the consequent results of the circular would automatically follow and cannot be challenged. Even otherwise, we find that the last sentence of Rule 8 reads as follows: " But the Government expects the officers to actually engage part time local domestic help to the extent provided for in their foreign allowances".



In view of this, the circular dated 7.1.1987, which reiterates the existing instructions cannot be said to be in violation of Rule 8. It is a well accepted principle that such special allowances like the one for reimbursing the amount spent on part time local help can be only to the extent of expenditure actually incurred by the concerned official in engaging such part time local servants. Hence, the circular letter dated 7.1.1987 (Annexure-EE), which lays down the procedure for granting of enhanced servants wages, only fills in the gaps in Rule 8 and we are unable to hold that the circular is in violation of Rule 8, particularly since Rule 8 has specifically mentioned that the Government expects the officer to actually engage part time local domestic help to the extent provided for in their foreign allowance. As a corollary, the officer cannot be reimbursed to the full amount provided for in the foreign allowance if he does not incur the full amount provided for in the foreign allowances in engaging part time local domestic help.

6. Shri M.S. Padmarajaiah, the learned Senior Central Govt. Standing Counsel pointed out that the circular dated 7.1.1987 specifically lays down that it would be the exclusive responsibility of the concerned officer to bring such changes to the notice of the concerned section and it has been decided that enhanced servant wages will be authorised only from the first of the month in which intimation is given, if information is not furnished as soon as the changes takes place. He further submitted that the same principle holds good even in case of officers, who are promoted with retrospective effect. We find that the circular dated 7.1.1987 was very much in existence, when the applicant was posted to the Embassy on 20.8.1987. We

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also observe that the applicant has given a certificate (Annexure-GG) on 31.8.1989 only and he has certified therein that the actual expenditure incurred by him on payment of part-time domestic servant/help is not less than the amount claimed by him, i.e., US \$ 580/- per month for the period 1.1.1989 to date. It is true that as per Rule 8, the drawal of wages of part time local servant is not subject to the production of any certificate. However, the Rule does not clarify as to what should be done in case there is an increase in the wages of servants due to local conditions or there is a retrospective revision in the foreign allowances, in which there is a provision in the wages ~~for~~ part time local servants. It is for this reason circulars filling in the gaps in the Rules have been issued and reiterated vide circular dated 7.1.1987. It is clear from the certificate dated 31.8.1989 given by the applicant, ^{that} he had not intimated to the concerned authorities on 1.1.1989 or any subsequent date till 31.8.1989 that he is incurring more on the wages of part time local servants than provided for in the foreign allowances. As per Annexure - BB, it has been indicated that the applicant was engaging part time local servants with wages amounting to Rs.4,346.00 only, which is less than the maximum amount of Rs.4,428.00 per month permissible. It is also seen that as per Annexure-A12, R-1 had authorised vide pay slip dated 29.9.1989 to pay full foreign allowance with effect from 1.8.1989 only. In view of this, the applicant has to fail.

7. In the light of the above, we find no merit in this application and the application is accordingly dismissed. The Interim Orders dated 23.4.1993 staying the recovery of over-payment and continued until further orders is hereby vacated.



TRUE COPY

SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

MEMBER (J)

MEMBER (A)

Recd. by Post. Enter in SLP list,
SLP Register & main Register. Add to file
& note thereafter, etc as per R. 143 of ROP.
With a copy of A. order. K20/6/94
So (JII)/S+B.

From :- The Registrar,
Supreme Court of India
New Delhi.

D.NO. 1236/94 /SEC. 14 A
SUPREME COURT OF INDIA
NEW DELHI.

Dated :- 24-5-94.
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To
The Registrar
Central Admins Tribunal
Bangalore Bench
Bangalore

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL/CRL.) NO 1903/94

(Petition under Article 136(1) of the Constitution of India
from the Judgment and Order dated 6-9-93

of the ~~High Court of Judicature at~~ C.A.T. at
Bengaluru in Appln. no 1987/93).

Brahm Dutt

..Petitioner(s)

Versus

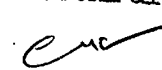
Govt of India & ors

...Respondent(s)

Sir,

I am directed to inform you that the petition above
mentioned filed in the Supreme Court was dismissed
by the Court on 2-3-94.

Yours faithfully,


FOR REGISTRAR



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