

(H)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 347/94

~~Transfer Application No~~

DATE OF DECISION

12.6.1994.

Shri R.C. Kotiankar

Petitioner

Mr. B. Ranganathan

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. V.S. Masurkar


Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri B.S. HEGDE, MEMBER (J).

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

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O.A.347/94.

Shri R.C. Kotiankar.

.. Applicant.

V/s.

Union of India & Ors.

.. Respondents.

Coram : Hon'ble Shri B.S. Hegde, Member (Judl.)

JUDGMENT :

Dated :

¶ Per : Hon'ble Shri B.S. Hegde, Member (J) ¶

The applicant being aggrieved by the order dated 23.2.1994 issued by the Respondent No.3 directing the Manager, State Bank of India, Byculla Branch to recover Rs.5,881/- being arrears of rent from dearness relief on pension of the applicant. Though he made representation to Respondent No.3 on 3.11.1993 stating that the Dearness Relief granted to pensioner is a part of pension and under the rules no part of the pension or reliefs granted on pension can be withheld or ordered to be adjusted towards any Government dues and therefore, his aforesaid instructions are against the Principles of law and the same be withdrawn. Since no action has been taken he has prayed for the following reliefs:

- i) That the instructions given by the Respondent No. 3 to Respondent No.4 for recovery of Government dues from dearness reliefs granted on pension of the applicant are illegal and accordingly the same may be set aside and quashed;
- ii) direct the respondents to expedite decision on applicant's representation dtd. 3.11.1993 for refund of excess rent recovered during the period 1.1.1989 - 31.8.1990 and adjust the arrears of rent for the months of May to August 1990 etc.

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The applicant got interim directions from the Tribunal directing the Respondent No.4 not to recover the arrears of rent from dearness reliefs granted on pension of the Applicant until final orders.

2. Admittedly, the applicant has retired from service on 31.10.1988 and stayed in the government quarters till 31.8.1990. It is the case of the applicant that while in service the quarter in occupation he has been paying normal licence fee and charges of the said premises were Rs.105/- per month from 23.9.1987 to 22.11.1987.

3. According to the applicant since the extension of stay in the quarter has been approved by the competent authority from time to time he should not have been asked to pay for the damage rent at the rate of Rs.1260/- per month from 1.1.1989 to 31.10.1989. According to him, the amount was recovered in excess than what is payable under the rules which may be refunded to him. It is an admitted fact, that he has not paid rent due for the month of May, 1990 to August, 1990 and accordingly requested the authorities to adjust the rent out of the rent deposited by him and refunded the balance amount due to him. Since no action has been taken by the Respondents, he approached this Tribunal in order to seek stay of the letter issued by the Respondent No.3 vide dated 23.2.1994.

4. Heard the arguments of Counsel for the applicant and Counsel for the respondents and perused the records carefully. Counsel for the applicant, draws our attention to two decisions of this Tribunal stating that no recovery from the 'dearness relief' or the pension amount can be touched or adjusted under Rule 9 of the pension rules or in the circumstances, of the case, it is alleged that the recovery of damage rent cannot be recovered unless procedure laid down

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in Sections 4 & 7 of the P.P. Act are complied with. In the instant case, such a procedure has not been adopted and the applicant, therefore, submits that the recovery is not permissible either under the rules or under the established procedures. He draws our attention of this Tribunal's decision in OA 700/93 J.B. Mayekar V. Union of India, wherein the Tribunal has held that the amount sought to be deducted is the amount of what the respondents claim to be damages of the illegal occupation of the Quarters. In support of his contention he has relied upon the Tribunal's decision in R.D. Sharma V. Union of India & Ors. 1989(1)(CAT), wherein, it was held, that such a recovery cannot be made from pension accordingly the Tribunal directed that the respondents not to effect any recovery from the amount of pension which is payable to the applicant and refund the amount which has been wrongfully withheld over and above the normal usual rent within two months from today.

5. The learned Counsel for the Respondents Mr. Masurkar draws our attention to the provisions of Rule 72(6) of CCS (Pension) Rules, 1972 and also to the Annexure R-9 of Ministry of Finance in their U.O.No.728(A) dated 7.2.1978 stating that under the aforesaid provisions which is permissible for the department to recover the recovery of government dues from the pensioner's Relief without the consent of the Pensioner.

6. In so far as Rule 72(6) of CCS(Pension) Rules, 1972 amended in the year 1991 wherein it envisages that "any amount becoming due on account of licence fee retention of Government accommodation beyond four months after retirement and remaining unpaid may be ordered to be recovered by the Directorate of Estates through, the concerned Accounts Officer from the 'dearness relief' without the consent of the pensioner. In such cases no dearness relief shall be disbursed until full recovery of such dues have been made".

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The said amendment came into force from 22.1.1991 whereas in the instance case the applicant has vacated the government quarters with effect from 31.8.1990 prior to the promulgation of the amendment. Apparently amended rule has not intended to give any retrospective effect which will have only a prospective effect to that legal provision. The said provision cannot be applied to the applicant, In so far as Ministry of Finance OM dated 7.2.1978 wherein it envisages that department to recover the recovery of government dues from the pensioner's Relief without the consent of the Pensioner. Prima facie, the said instructions is contrary to the pension rules, accordingly therefore these instruction has been struck down in R.D. Sharma's case referred to earlier. In Sharma's case it is observed that 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 instruction. Accordingly, the Tribunal observed that the OM of Ministry of Finance will have no legal binding force and the same was struck down. Therefore, both the contentions of the Learned Counsel for the applicant do not have any merits and the same are not tenable.

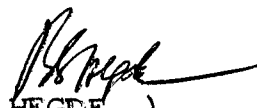
7. In the facts and circumstances of the case, I pass the following order:-

- (i) I hereby set aside and quash the letter dated 23.2.1994 at Annexure 'A' issued by Respondent No.3 to Respondent No.4, Manager, State Bank of India, Byculla Branch to recover the sum of Rs.5581/- out of the pension of the applicant for recovery of Govt. dues from 'dearness relief' as it is found to be illegal and not in accordance with the rules.

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- (ii) Since the respondents did not comply with the Provisions of Sections 4 and 7 of the P.E. Act for recovery of damage rent from the applicant the said recovery of Rs.5881/- found to be not in the accordance with the rules. Nevertheless since the applicant has already paid Rs.1260/- with effect from 1.1.1989 to 1.5.1990 willingly or unwillingly, the question of refund at this stage does not arise and regarding payment of 4 months period with effect from May to August, 1990 it is open to the respondents to make appropriate adjustment in the light of the above and no further recovery is warranted under the circumstances.
- (iii) Respondent No.4 is further directed not to recover any amount or give effect to the letter dated 23.2.1994 received by the Respondent No.3 from the 'dearness relief' as the case may be, the ad -interim ~~direction~~ already issued to Respondent No.4 would be made absolute and the Respondent No. 4 is prohibited for any recovery from the pensionary benefits of the applicant.

8. The OA. is disposed of in the light of the above. There will be no order as to costs.


(B.S. HEGDE)
MEMBER (J).

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