

14/8
CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1353/95

Transfer Application No.

Date of Decision 18.9.97

Ms. E. V. Chacko

Petitioner/s

Shri G. S. Walia

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri B. Ranganathan for Shri J. P. Deodhar

Advocate for
the Respondents

CORAM :

Hon'ble Shri. P. P. Srivastava, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not ?

~~Yes~~ No

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

No


(P. P. SRIVASTAVA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1353/95

Thursday this the 18th day of Sept 1997

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

Ms.Elizabeth V.Chacko
R/at 204, Sneh Kunj Co-op.
Hsg.Scy., Chalaka, Andheri(E),
Bombay.

By Advocate Shri G.S.Walia

... Applicant

V/S.

1. Union of India through
Controller, Personnel Div.,
B.A.R.C., Trombay, Bombay.
2. Head, Personnel Division,
B.A.R.C., Trombay, Bombay.
3. Head, Medical Division,
B.A.R.C., Trombay, Bombay.

By Advocate B.Ranganathan
for Mr.J.P.Deodhar

... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member(A))


The applicant was working as a nurse Grade 'C' in B.A.R.C. Hospital, Anushakti Nagar. The applicant was transferred from BARC Hospital to OYC dispensary at Gateway of India on 1.2.1990. The applicant has submitted that she was sick from 28.1.1993 to 24.1.1995. The applicant has filed an OA.NO. 381/94 against the transfer, which has been admitted and is pending for final disposal. The applicant submits that she has filed M.P.No. 297/95 in the above OA. regarding non-payment of salary.

The Tribunal thereon passed an order dated 28.8.1995 mentioning that the recovery of salary was a separate cause of action and the applicant was given liberty to file a separate OA. in the matter and therefore the present OA. is filed by the applicant in respect of non-payment to the applicant. In this OA. the applicant has prayed the following prayers :-

- "(a) This Hon'ble Tribunal will be pleased to order and direct respondents to pay full salary to the applicant from 25.1.1995 to 30.4.1995 with 18% interest thereon till the date of payment.
- (b) This Hon'ble Tribunal will be pleased to direct respondents to regularise the period of applicant's sick leave i.e. 28.1.1993 to 24.1.1995 by converting the existing Earned Leave into Half pay Sick Leave.
- (c) This Hon'ble Tribunal will be pleased to order and direct the respondents to regularise the leave of the applicant and make the payment of the salary accordingly by adding yearly increments and other consequential benefits from July 1993 till date."

The applicant has brought out in the OA. that the applicant is entitled to full salary from 25.1.1995 to 30.4.1995, the period for which the applicant has worked at OYC dispensary at Gateway of India.

2. Respondents have brought out in the written reply that the applicant remained absent w.e.f. 28.1.1993 and did not join his new place of posting. On or about 9.2.1993 the applicant produced a medical certificate from a BARC Doctor to the effect that she has been recommended rest for a period of one week from 28.1.1993 that is upto 3.2.1993. Accordingly, leave was sanctioned



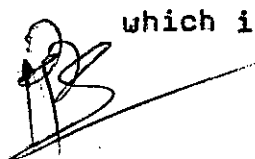
for the period from 28.1.1993 to 3.2.1993. However, from 4.2.1993 the applicant continued to remain absent unauthorisedly and the applicant instead of furnishing any certificate from BARC Doctor, the applicant produced a medical certificate from a private medical practitioner. The applicant was, therefore, asked to appear before the Medical Board at BARC Hospital for medical examination on 16.7.1993. The respondents have brought^{out} that although the applicant had remained absent with effect from 28.1.1993, her salary was being credited to her Bank Account every month erroneously, and the respondents have^{further out} brought^{out} that as soon as the discrepancy was noticed, the Accounts Division of BARC stopped crediting her salary to her account with effect from July, 1993. Therefore, according to the respondents over payment of Rs.12,813/- has been made to the applicant. The respondents have further brought out that on her resuming the duty on 25.1.1995, the respondents withheld her salary for 2 months amounting to Rs.7,733/- so as to adjust the same against the overpayment of Rs.12,813/- received by the applicant. The respondents have further brought out that on a representation from the applicant the respondents have postponed further recovery from April, 1993 and after giving credit to the aforesaid amount of Rs.7,733/-, the balance amount of Rs.5,080/- is still outstanding from the applicant.



3. After considering the pleadings of both the parties and arguments of the counsel, I am of the view that the respondents are entitled to recover over payment. However, the over payment is required to be recovered in terms of the rules. The learned counsel for the respondents was asked to show the rule under which the whole salary of the applicant has been withheld against the over-payment in the past. The learned counsel produced an extract from the Swami's compilation on the Central Government Accounts Rules. Rule 73 at page 43, according to the learned counsel, covers the case of the applicant, which reads as under :-

"73. Recoveries ordered by Accounts Officer — Deductions on account of sums disallowed from pay or other bills by the Accounts Officer in the course of post-check (or when the deduction could not be effected for any reason from the bill during pre-check) shall be made strictly in accordance with the instructions issued by him. The recovery of a sum disallowed from a pay bill may be made from the next pay bill. A sum disallowed from a travelling allowance bill may be recovered from the next payment of travelling allowance, or in cash or from the next pay bill if the Government servant concerned does not, within a month, present any other travelling allowance bill."

After reading this rule, I am of the view that the recovery of sum disallowed may be made from the next pay bill is permissible under this rule. However, over payment made in 1993 would not entitled the respondent administration to recover the whole salary in the year 1995. Therefore, that even though considering the respondent administration is entitled to deduct the over payment, it is incumbent on the part of the respondents to recover the amount in suitable instalment which is permissible under the law. No rule has been shown.



which would permit with-holding of the whole salary. Therefore, I am of the view that the applicant is entitled to payment of salary for the period from 25.1.1995 till 31.4.1995. It is clarified that the respondent administration would be entitled to deduct the over payment which has been calculated by the respondents as above, i.e. Rs.12,813/- from the salary of the applicant by suitable instalment as permissible under the rules.

4. As far as the relief at (b) is concerned, concerning the period of applicant's sick leave, i.e. 28.1.1993 to 24.1.1995, ~~for~~ converting the existing Earned Leave into Half Pay Sick Leave, I am of the view that neither this is covered by any rule nor the learned counsel for the applicant is able to show how the earned leave ^{can be} converted into half pay sick leave. Therefore, prayer (b) is rejected.

5. It is also seen that ^{for} the period under question, i.e. 28.1.1993 to 24.1.1995 the applicant has been served with a charge-sheet ~~for~~ ^{ed absence and} unauthoris~~ed~~ the disciplinary proceedings initiated against her and the same have not yet been completed.

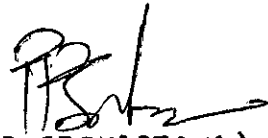
It has been brought to my notice that the applicant has submitted an appeal against the punishment. Therefore, in my opinion, it is not a question of non-payment of salary for the period from 28.1.1993 to 24.1.1995 but a disciplinary matter. Therefore, the applicant's prayer for treating this period as leave is misconceived as it will depend upon the out come of disciplinary proceedings.



The prayer is, therefore, not tenable and it is rejected. It is, however, clarified that any observations made herein would in no way influence the disciplinary and appellate authority who are obliged to decide the case on the basis of rules and as per law without being influenced by the observations made in this order. The OA. is, therefore, disposed of with the following observations :-

- (i) Relief in prayer (a) regarding direction to the respondents to pay full salary to the applicant from 25.1.1995 to 30.4.1995 is granted subject to the liberty granted to the respondents to deduct the over payment in suitable instalments as permissible under the law. No interest is granted on this salary.
- (ii) Prayer (b) concerning leave period from 28.1.1993 to 24.1.1995 for converting the existing earned leave into half pay leave is rejected.
- (iii) Prayer (c) regarding regularisation of the leave is rejected as it is dependent upon the out come of the disciplinary proceedings.

It is clarified that any observations made herein should not be taken into account for the purpose of deciding the disciplinary case. It should be decided as per the rules. No order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)