

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 206/97.

Date of Decision: 16.10.1997.

Shri H. K. Chellani,

Applicant.

Shri K. B. Talreja,

Advocate for  
Applicant.

Versus

Union Of India & Others,

Respondent(s)

Shri R. K. Shetty,

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. M. R. Kolhatkar, Member (A).

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- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to  other Benches of the Tribunal?

M.R.Kolhatkar  
(M. R. KOLHATKAR)  
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 206/97.

DATED this Thursday, the 16th day of October, 1997.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

H. K. Chellani,  
Office Superintendent,  
Small Industries Service Institute,  
Saki-Naka Kurla-Andheri Road,  
Mumbai - 400 072.

...Applicant

R/o. Brk.No. 1571/3, Section No. 27,  
Ulhasnagar -4, Dist. Thane (M.S.).

(By Advocate Shri K.B. Talreja)

VERSUS

1. The Union Of India,  
through the Director,  
Small Industrial Service Institute,  
Saki-Naka, Kurla-Andheri Road,  
Mumbai - 400 072.

2. The Development Commissioner,  
Small Scale Industries,  
Nirman Bhavan, 7th floor,  
Maulana Azad Road,  
New Delhi - 110 011.

... Respondents.

3. The Controller of Accounts,  
Ministry Of Industry,  
Internal Audit Wing,  
517-E, Udyog Bhavan,  
New Delhi - 110 011.

(By Advocate Shri R. K. Shetty)

: ORAL ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

In this O.A., the applicant is challenging the intimation dated 17.09.1996 addressed by the Deputy Director (Admn/Food), of Small Industries Service Institute, Saki-Naka to the Pay & Accounts Officer, directing to withhold an

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amount of Rs. 20,250/- from his D.S.R.G. towards irregular payment of honorarium.

2. The admitted facts are that - the applicant while retired on 28.02.1997 ~~as~~ he was working as Office Superintendent Grade-II in the Small Industries Service Institute, ~~as~~ by the order dated 05.08.1989 from the Director of Small Industries Service Institute, he was asked to perform the work of Indo-German Tool Room in addition to his own duties. Annexure-4, page 13, issued by the General Manager, Indo-German Tool Room, on 2nd September, 1991 shows that the I.G.T.R. has decided to sanction honorarium of Rs. 500/- per month to the applicant for extension of additional services to the General Manager of I.G.T.R. from 01.09.1991 until further orders. It is not disputed that the applicant extended such additional services upto October, 1993. However, there was a audit note vide page 19 stating that payment of honorarium to the applicant was in violation of Rule 11 and Fundamental Rules - Rule 9(9) read with Rule 46 (b) and therefore, the same was directed to be recovered from him. It is not necessary to go into the details of the correspondence which is to the effect that representations were made to obtain sanction of the Finance Ministry as a special case, to the payment of honorarium in excess of the ceiling of Rs. 2,500/- attached to the payment of honorarium.

3. The contention of the applicant is that the recovery of the amount is barred by limitation as well as by certain decisions of the Tribunal. Keeping in view the particular interpretation being taken by me, I do not think it necessary to go into the applicability of these decisions. The Counsel for the applicant has also invited my attention to the decision of the Small Industries Service Institute to treat the payment of honorarium <sup>in some offices</sup> as "incentive" and in this connection, reference to a decision taken in relation of Indore office of S.I.S.I. in the context of work involved in N.R.F. (National Renewal Fund) is made.

3. The Counsel for the respondents has taken me through the written statement and has stated that in view of the Audit note the respondents were bound to recover the amount and the Audit Note was strictly in terms of applicable Fundamental Rules and therefore, recovery was perfectly legal.

4. Coming to Fundamental Rules, Rule 9(9) defines 'Honorarium' as a recurring or non-recurring payment granted to a Government servant from the Consolidated Fund Of India or the Consolidated Fund of a State or the Consolidated Fund of a Union Territory as remuneration for special work of an occasional or intermittent character. It is not disputed that if the payment is of recurring nature, then in that case, the

the ceiling of Rs. 500/- in an individual case and Rs. 2,500/- in a financial year is applicable. Regarding applicability of the remaining Fundamental Rules, Rule - 11 states that the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenues, from a local fund or from the funds of a body incorporated or not, which is wholly or substantially owned or controlled by the Government. R.R. 46 (b) deals with honoraria in the context of additions to pay.

5. It is clear from the record that the amount, although termed as 'honorarium', is not really honorarium because it has not been paid out of Consolidated Fund of India but it has been paid out of I.G.T.R., which is a registered society under the Development Commissioner, Small Scale Industries, ..., Government Of India. I.G.T.R. is a separate entity and the payment to the applicant was not made out of the Consolidated Fund Of India. Even assuming that the payment was made by mistake out of the Consolidated Fund Of India, in substance it is to be considered as payment of <sup>a</sup>fee, which is governed by Fundamental ... - Rule 46(a), which reads as below :-

"F.R. 46 (a) Fees - Subject to any rule made under Rule 46-A and Rule 47, a Government servant may be permitted, if this can be done without detriment to his official duties and responsibilities to perform a specified service or series of services for a private person or body or for a public body including a body administering a local fund and to receive a remuneration therefor, if the service be material, a non-recurring or recurring fee."

It is clear that Rule 46(a) relating to the fees, squarely applies to the facts of the case and merely because the Small Industries Service Institute, Bombay did not give the correct terminology in relation to the payment, which was legitimately sanctioned and paid to the applicant, the same cannot be recovered, especially, since it is not disputed that no ceiling applies to the payment of fees. Ofcourse, the payment of fees would also be governed by Rule 46(G), which is common for Fees and Honorarium, which provides that - "in the case of both fees and honoraria, the sanctioning authority shall record in writing that due regard has been paid to the general principle enunciated in Fundamental Rule 11 and shall record also the reasons which in his opinion justify the grant of the extra remuneration." The same may be deemed to have been made at the time the governing council of the I.G.T.R. decided to sanction the payment of an amount, wrongly, called honorarium, to the applicant.

5. In the circumstances, the O.A. is allowed. It is hereby declared that the payment of amount made to the applicant was not in the nature of honorarium but in

the nature of fees. It is further directed that the respondents may issue appropriate formal sanctions to the same, which are necessary for audit purposes. The respondents are also directed to refund the amount of Rs. 20,250/- recovered from the D.C.R.G. to the applicant with 12% interest from the date of recovery till the date of actual payment. Action to be completed within two months from the date of communication of the order. No order as to costs.

*M.R. Kolhatkar*

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(M.R. KOLHATKAR)  
MEMBER (A).

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