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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 153 of 1990

Date of Order: 10-7-90

Between:-

Ch.Narayanacharyulu

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Applicant

and

1.The Flag Officer Commanding-in-
Chief, Eastern Naval Command,
Naval Base, Visakhapatnam-14.

2.The Area Accounts Officer,
Controller of Defence Accounts (Navy),
NAD P.O., Visakhapatnam-6.

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Respondents

Appearance

For the Applicant : Party-in-person

For the Respondents : Shri E.Madan Mohan Rao, Addl.
Central Govt. Standing Counsel.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE SHRI D.SURYA RAO,
MEMBER (JUDICIAL))

1. The applicant herein is an U.D. Clerk of the Eastern Naval Command, Naval Base, Visakhapatnam. He has filed this application to declare the recovery of a sum of Rs.5,732-00 from a total sum of Rs.8,881-00 due to him as subsistence allowance pursuant to the order No.CE/9103/7, dated 5th January 1990 issued by the 1st respondent, is illegal. It is alleged that the applicant was dismissed from service by an order dated 27-2-1989. This order was set aside in O.A.171 of 1989 by this Tribunal. Thereupon the 1st respondent kept the applicant under deemed suspension w.e.f. 28-2-1989 till 5-1-1990.

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Pt. 1/2
10.7.90

and for that period he is eligible for subsistence allowance. Earlier to the quashing of the order dated 27-2-1989, the applicant was being paid compassionate pension despite his being dismissed from service. It is alleged that this compassionate pension amounting to Rs.500/-p.m., which was paid to him from 1-3-1989 to 31-12-1989 is sought to be deducted by the 2nd respondent from the subsistence allowance which is due under the order dated 5-1-1990.

2. This application has come up today for admission, and we had earlier ordered for notice before admission to the respondents, ^{and} thereupon the respondents appeared through their Counsel, Shri E. Madan Mohan Rao, Addl. Central Govt. Standing Counsel.

3. We have heard the applicant, who appeared in person, and Shri E. Madan Mohan Rao, learned Addl. CGSC, on behalf of the respondents.

4. The plea of the applicant is that consequent on the issue of the order dated 5-1-1990, the subsistence allowance due to the applicant has to be duly calculated in accordance^d with the rules and paid to him. He contends that the fact that compassionate pension was paid for the same period cannot be a ground for reducing the subsistence allowance due to him. No recovery of the said pension amount^{already} paid to him can be effected from the subsistence allowance. He contends that F.R.53, which governs payment of subsistence allowance does not permit or warrant recovery of pension amount already paid. He relies upon the Government of India's instructions issued under F.R.53, which reads as follows:-

" F.R.53 (4) Recoveries from subsistence allowance:-

At present there is no provision in any rules or orders issued by the Government of India for the recovery of Government dues from the subsistence allowance granted to a Government servant under suspension. The question of making such recoveries from the subsistence allowance

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P2-18
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has accordingly been under consideration for some time past. The permissible deductions fall under the two categories:-

- (a) Compulsory deductions
- (b) Optional deductions

2. It has been decided that the recovery of the following deductions which fall under category (a) above, should be enforced from the subsistence allowance:-

- (i) Income-tax (provided the employee's yearly income calculated with reference to subsistence allowance is taxable).
- (ii) House rent and allied charges, i.e., electricity, water, furniture, etc..
- (iii) Repayment of loans and advances taken from Government at such rates as the head of the department deems it right to fix.
- (iv) Contribution under Central Govt. Health Scheme
- (v) Contribution towards Central Government Employees Insurance Scheme, 1977.
- (vi) Subscription to the Central Government Employees' Group Insurance Scheme, 1980.

3. The deductions falling under category (b), which should not be made except with the Government servant's written consent, are as under:-

- (a) Premia due on Postal Life Assurance Policies.
- (b) Amounts due to Co-operative Stores and Co-operative Credit Societies.
- (c) Refund of advances taken from General Provident Fund.

4. It has further been decided that the deductions of the following nature should not be made from the subsistence allowance:-

- (i) Subscription to a General Provident Fund
- (ii) Amounts due on Court attachments.
- (iii) Recovery of loss to Government for which a Government servant is responsible.

5. As regards the recovery of over-payments, the competent administrative authority will exercise discretion to decide whether the recovery should be held wholly in abeyance or it should be effected at a rate not exceeding one-third of the subsistence allowance only, i.e., excluding dearness allowance and other compensatory allowances.

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P3
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10/11/80

5. It is thus the case of Sri Narayanacharyulu that once an order of compulsory retirement is set aside on a technical ground and the Disciplinary Authority decides to hold a further enquiry against him and an order is passed under Rule 10(4) of the C.C.S.(C.C.A.) Rules, 1965, the employee is entitled to get subsistence allowance payable retrospectively from the date of the original order of compulsory retirement till final orders are passed on the further enquiry commenced against him. His further contention is that any amount paid, while the order of compulsory retirement was subsisting, by way of pension cannot be set off against the amounts payable as subsistence allowance. We are unable to agree with this contention. The rule namely F.R.53(2) provides that no payment of subsistence allowance under sub rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation. Thus, if a Government servant is deriving any income by way of employment, business, profession or vocation, the said amount shall be deducted from the subsistence allowance. This would also apply to the case of deemed suspension where an order of dismissal/removal/compulsory retirement has been set aside and the employee is once again deemed to be under suspension under rule 10(3) or (4) of the C.C.S.(CCA) Rules. F.R.53(2) makes it clear that where the earnings of the employee during the deemed period of suspension are more than what he is entitled to by way of subsistence allowance, then he need not be paid anything by way of subsistence allowance. Thus, F.R. 53(2) envisages setting off ~~half~~ of the earnings during the period of dismissal/removal/compulsory retirement against the subsistence allowance. The pension which was paid to the applicant during the said period of compulsory retirement is certainly an earning of the applicant and can, there-

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P428
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To

1. The Flag Officer Commanding-in-Chief, Eastern Naval Command, Naval Base, Visakhapatnam-530014.
2. The Area Accounts Officer, Controller of Defence Accounts (Navy) NAO P.O. Visakhapatnam.-6.
3. One copy to Mr. Ch. Narayanacharyulu, UDC, E/1, Pallava Park, Kancharapalem P.O., Visakhapatnam.
4. One copy to Mr. E. Madan Mohan Rao, Addl. CGSC, CAT, Hyderabad.

5. The Dy. Registrar, Central Admn., Tribunal, Madras Bench, Tamilnadu Text Book Society Building, D.P.I. Compound, Nungambakkam, Madras-600065.
6. The Dy. Registrar, Central Admn., Tribunal, Calcutta Bench, CGO Complex, 234/4-ADC Bose Road, Nizam Palace, Calcutta-700020.
7. The Dy. Registrar, Central Admn. Tribunal, Bombay Bench, CGO Complex (CBD), 1st Floor, New Bombay-400614.
8. The Dy. Registrar, Central Admn. Tribunal, Chandigarh Bench, Sd No. 102-103, Sector-34, Chandigarh.
9. The Dy. Registrar, Central Admn., Tribunal, Allahabad Bench, 23-A, Thorn Hill, Road, Allahabad-211001.
10. The Dy. Registrar, Central Admn. Tribunal, Guwahati Bench, Rajgarh Road, off. Shillong Road, Guwahati-781005.
11. The Dy. Registrar, Central Admn. Tribunal, Bangalore Bench, Commercial complex (BDA), Indira Nagar, Bangalore-560030.
12. The Dy. Registrar, Central Admn. Tribunal, Ernakulam Bench, Kandamukulathil Towers, 5th & 6th floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin-682001.
13. The Dy. Registrar, Central Admn. Tribunal, Jabalapur Bench, CARVS Complex, 15-Civil Lines, Jabalpur, M.P.
14. The Dy. Registrar, Central Admn. Tribunal, Patna Bench, 32-A, B.M. Enterprises, Shri Krishna Nagar, Patna-1.
15. The Dy. Registrar, Central Admn. Tribunal, Jodhpur Bench, C/d. Rajasthan High Court, Rajasthan (Jodhpur).
16. The Dy. Registrar, Central Admn. Tribunal, Ahmedabad Bench, Navarang Pura, Near Sardar Patel Colony, Osmanpura, Ahmedabad.
17. The Dy. Registrar, Central Admn. Tribunal, Cuttack Bench, Delmandi, Cuttack-753001.
18. The Dy. Registrar, Central Admn. Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi-110001.
19. Sri Sanjeev Malhotra, Managing Editor, All India Services Law Journal, 22, Tagore Park, New Model Town, New Delhi-9.
20. The Editor, Kerala Law Times, High Court Road, Ernakulam, Cochin-602031.
21. M/s. Eastern Book Company, 34, Lalbagi, Lucknow.
22. M/s. Delhi Law Times, 5355, Jawaharnagar, Kolhapur Road, Delhi-7.
23. Sri Hasin Ahmad, Spl. Representative Reporter, A.I.R. Ltd, No. 21-1-1964 & 1965, Gandhi Bazar, Opp. High Court Bar Association, Hyderabad.
24. The Administrative Tribunal Reporter, Bhagat Singh Market, 90, New Delhi-110001.
25. Sri KBS Sarma, General Secretary, All India Equal Rights Association, C-58, HUDA Residential Complex, Vanasthalipuram, Hyderabad.
26. The Dy. Registrar (J), Central Admn. Tribunal, Hyderabad Bench, Hyderabad.
27. One copy to Library, CAT, Hyderabad Bench, Hyderabad.

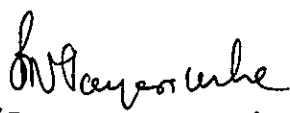
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fore, be validly set off against the subsistence allowance.

We, therefore, see no infirmity in the action of Respondent No.2 in deducting a sum of Rs.5,732/- which constitutes the pensionary benefits paid to the applicant for the period from 1-3-1989 to 31-12-1989.

6. For the reasons given above, we find no merit in this application. It is accordingly dismissed ^{but} and in the circumstances, there is no order as to costs.


(B.N. JAYASIMHA)
VICE-CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDICIAL)

Date: 10th July 1990


DEPUTY REGISTRAR (J)
10/7/90

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