

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.889 of 1991

DATE OF JUDGMENT: 1st october 1992

BETWEEN:

Mr. D.V.Subba Rao

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Applicant

AND

1. Union of India, represented by
the Secretary,
Ministry of Transport,
Dept. of Railways (Railway Board),
New Delhi.

2. The Divisional Railway Manager,
South Eastern Railway,
Waltair,
Visakhapatnam. District. ..

Respondents

COUNSEL FOR THE APPLICANT: Mr. T.Jayant

COUNSEL FOR THE RESPONDENTS: Mr. N.R.Devaraj, Sr.SC for Rlys.

CORAM:

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE SINGLE MEMBER BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER (JUDL.)

This is an application under section 19 of the Administrative Tribunals Act, 1985 claiming a relief to direct the respondents herein to effect payment to the applicant herein, the sum of Rs.11,979/- which has been withheld from his DCRG, by declaring the impugned orders dated 17.5.1991 and 21.5.1991 as illegal, null and void.

2. The facts giving rise to this application, in brief, are as follows:-

The applicant while working as Deputy Station Superintendent, South Eastern Railway, Visakhapatnam, voluntarily retired from service on medical grounds with effect from 12.11.1990 by an order of the 2nd respondent dated 8.11.1990. Thereafter he made a representation dated 13.12.1990 for an early settlement of his pensionary benefits, followed by a reminder and a Lawyer's Notice dated 9.1.1991 and 11.3.1991 respectively. Thereafter, he received Pension Payment Order dated 9.4.1991 fixing his pension at Rs.1024/- per month with effect from 12.11.90.

3. As the applicant did not receive the DCRG Payment Order, he submitted a representation dated 7.5.1991 requesting early payment of DCRG. Thereupon, he received a cheque for Rs.33,825/- by an order dated 17.5.1991 in which

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it has been stated that an amount of Rs.11,979/- has been deducted from his DCRG in the name of certain items. On a representation made by the applicant requesting to clarify the items of recovery from DCRG, the 2nd respondent issued a letter dated 21.5.1991 stating that-

a) During the course of internal check it was noticed that the pay of the applicant has been erroneously ~~been~~ fixed at Rs.530/- instead of Rs.515/- due to restructuring of cadre and this fixation was continued upto 1.1.1986.

b) Again the pay of the applicant has been fixed ~~as~~ as Rs.515/- in (RPS) basing on the pay fixed earlier.

c) Due to rectification of earlier fixation, an amount of Rs.6,801/- has been paid excess.

d) Due to refixation of pay when promoted to the post of Deputy Station Superintendent, the excess pay in the scale of Rs.1660-2660 (RPS) from 20.7.1988 to 31.7.1989 paid to the applicant stands to be recovered which has been worked out to Rs.1247/-.

e) An amount of Rs.3,500/- has been kept in deposit since the applicant was holding cash transactions and stores materials for which clearance has to be received from the Sr.DCS/WAT. An amount of Rs.8479/- has been recovered from the DCRG towards over payment.

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4. Thus, it is clear that an amount of Rs.11,979/- has been withheld from the DCRG payable to the applicant. Hence, this application.

5. A counter is filed by the ~~xxx~~ respondents stating that the DCRG amount has been released on 17.5.1991 deducting the the following amounts:-

1. Overpayment of pay and allowances paid earlier (items C & d on pre-page)	: Rs.8048=00
2. Cost Medical identity card	: Rs. 2=00
3. Arrears of house rent from 1.10.70 to 31.3.78.	Rs. 429=00
Total	----- Rs.8479=00 -----

In addition, ~~xxxx~~ an amount of Rs.3,500/- was kept in deposit and the same was released and paid to the applicant on receipt of clearance from Sr.DCS/WAT vide his letter dated 5.8.1991 and 14.8.1991. The excess fixation of pay was resulted on a clerical mistake and the said mistake continued to result in drawal of excess pay and allowances till retirement. The applicant was well aware of his rate of pay @ Rs.515/- since he was imposed with the penalty of stoppage of increment due on 1.11.1982 raising his pay from Rs.515/- to Rs.530/- for a period of 3 months non-cumulative effect vide punishment order dated 22.12.1981. Before commencement of the said penalty, another punishment notice dated 26.2.1982 was issued stopping his increment for a period of another 3 months. The applicant was aware that his pay was Rs.515/- only on 1.8.1982 and that on his

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promotion his pay works out to Rs.545/- instead of Rs.560/- under FR 22C(Rule 2018B-R.II). The applicant therefore drew excess amount with the knowledge that he is not entitled to it under the rules. The recovery of Rs.8048/- is, therefore, legal and the application is liable to be dismissed.

6. Heard the learned counsel for the applicant, Mr. T. Jayant and the learned Sr.Standing Counsel for the Respondents, Mr. N.R.Devaraj.

7. Rule 71 of the CCS (Pension Rules) reads as follows:

"(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of death-cum-retirement gratuity becoming payable.

(3) The expression 'Government dues' includes-

(a) dues pertaining to Govt. accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to Govt. accommodation, namely balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of Income Tax deductible at source under the I.T. Act, 1961 (43 of 1961)."

Rule 73 of the CCS (Pension) Rules reads as follows:-

"Adjustment and recovery of dues other than dues pertaining to Government accommodation:

(1) For the dues other than the dues pertaining to occupation of Government accommodation as referred to in clause (b) of sub-rule (3) of Rule 71, the Head of Office shall take steps to assess the dues two years before the date on which a Government servant is due to retire on superannuation; or on the date of which he proceeds on leave preparatory to retirement, whichever is earlier.

(2) The assessment of Government dues referred to in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government servant.

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(3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of death-cum-retirement gratuity & becoming payable to the Government servant on his retirement."

8. From the above it is clear that the Government can always recover the excess payments made erroneously. ~~However, unascertainable dues cannot be recovered from the DCRG.~~ Though the applicant states that an amount of Rs.11,979/- has been withheld from the DCRG, in the counter the respondents stated that an amount of Rs.8479/- has been withheld from the DCRG, showing details as below:-

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|--|-----------|
| 1. Arrears of house rent for the period from 1.10.1970 to 31.3.78 | Rs.429=00 |
| 2. Non-return of medical identity card. | Rs. 2=00 |
| 3. Over payment of pay and allowances due to erroneous pay fixation. | Rs.8048/- |

9. Hence, under Rule 73 of the CCS (Pension) Rules, the applicant is liable to return the excess payment made to him.

10. The main contention of the applicant is that he has not been issued notice before effecting the recovery. Since it is a recovery of excess payments made and the dues towards arrears of house rent recovered is not by way of any punishment or pecuniary loss, no notice as such is required in the rules. Any how, the respondents vide their communication dated 21.5.1991 had given the details of the recovery made from the DCRG. The applicant has not disputed with the details in his O.A. He has also not ^{filed} preferred any rejoinder to the counter affidavit of the respondents in which the details were reiterated. In these circumstances, it is presumed that the applicant has accepted the amounts calculated by the respondents towards the dues from the applicant in respect of the overpayment of pay and allowances, dues towards the arrears of house rent etc. The applicant only contends that the Department is not entitled to recover the same because of the limitation and non issue of prior notice ^{and unascertainable} dues. We have already stated supra that as per Rule 73 of the CCS (Pension) Rules, the Department is entitled to recover the excess payments made erroneously. In the case of the recoveries by the Department from its employees, the limitation prescribed under the Limitation Act is 30 years. However, it has been stated in the counter that an amount of Rs.3,500/- kept in abeyance from the DCRG towards the deposit has since been released to the applicant.

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In view of this, it cannot be said that the recovery effected from the DCRG of the applicant is time barred. Under these circumstances, there are no merits in the application and the application is liable to be dismissed.

11. The application is accordingly dismissed with no order as to costs.

(C.J.ROY)
Member(Judl.)

Dated: 14 October, 1992. Dy. Registrar(Judl.)

Copy to:-

1. Secretary, Ministry of Transport, Department of Railways (Railway Board), Union of India, New Delhi.
2. The Divisional Railway Manager, South Eastern Railway, Waltair, Visakhapatnam.
3. One copy to Sri. T.Jayant, advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One spare copy.

Rsm/-

vsn

Handwritten signature and initials at the bottom left corner.

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O.A. 889/91

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER(JUDL)

Dated: 1/10/ -1992

ORDER/JUDGMENT:

~~R.A. / C.A. / M.A. No.~~

in

O.A. No.

889/91

T.A. No.

(wp. No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected

No orders as to costs.

pvm

