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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO. 346/92

DATE OF JUDGEMENT:

19-4-1993

Between

A.Venkat Rao .. Applicant

and

1. Director
Defence Electronics
Research Lab(DLRL)
Hyderabad.

2. The Defence Pension
and Disbursement Officer
Fort St.George
Madras 600 016 .. Respondents

Counsel for the Applicant :Mr V.Venkateshwar Rao

Counsel for the Respondents:Mr Jagan Mohan Reddy M.

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

JUDGEMENT

This is an application filed under Section 19 of the Central Administrative Tribunals Act, to set aside the letter No.PS 8048/37/55 dated 17.7.91 issued by the Defence Pension Disbursement Officer, Fort.St.George, Madras as illegal and direct the respondents to refund the amount of Rs.23,461/- recovered from the pension of the applicant in November,1990 and December,1990, and restrain them from effecting any further recovery from the pension of the applicant with such order(s) all consequential benefits and pass ~~any~~ other ~~any~~ as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, may be stated as follows:

The applicant had served in the office of the 1st respondent i.e. Director, DLRL, Hyderabad as Chief Administrative Officer. The applicant was a subscriber for General Provident Fund. The applicant on 28.10.87 submitted an application for grant of final withdrawal of Rs.25,000/- from the GPF for his own medical treatment. At that time, the GPF balance of the applicant stood at Rs.30,509/- ~~at the~~ The competent authority in terms of Rule 16 of General Provident Fund (Central Services) Rules, 1960 had granted the applicant an amount of Rs.22,500/- equal to 75% of the balance standing at his credit as on the date of his ~~application~~ application on 28.10.1987. Accordingly, the applicant had withdrawn the said amount of Rs.22,500/- from the GPF balance towards part-final withdrawal. However, the applicant made another application dated 5.10.87 1.2.1988 part for final withdrawal of Rs.10,000/- from his GPF for meeting the expenses in connection with his ~~xxxxxx~~ illness. GPF that balance stood ~~at his~~ credit on the date of 2nd application worked out to Rs.11,609/-. The applicant was sanctioned an amount of Rs.8700/- equal to 75% of the balance standing ~~at~~ the credit of the applicant on the date of his ~~application~~ second in terms of Rule 16 ibid.

4. In the meanwhile, the applicant submitted an application dated 5.10.87 giving 3 months notice seeking for voluntary retirement w.e.f. 29.2.88 and accordingly ~~retired~~ retired w.e.f. 01.3.88. The ~~x~~ second instalment of Rs.8700 towards part final withdrawal of GPF for the applicant, had been paid to the applicant on 3.2.88. So, an actual amount of Rs.2,909/- was the balance left to the credit of GPF Account of the applicant, over at the time the applicant retired.

There had been some mistake on the part of the respondents in debiting the withdrawal of the applicant that above amounts viz Rs.22,500 and Rs.8700/- towards part-final withdrawal amounting to Rs.31,200/-. So, in view of the said mistake, at the time of retirement of the applicant, the respondents arrived at ^{the} figure of Rs.41,079/- standing to the credit of GPF account of the applicant as on September, 1988 and issued a cheque for the sum of Rs.41,079/- in favour of the applicant towards GPF amount payable to the applicant at the time of his retirement. Later on, the mistake of Rs.31,200/- not being debited in the GPF balance of the applicant, was noticed. In other words, the excess applicant was paid an amount of Rs.31,200/- on 25.10.88 for which he was not entitled. So, the respondents informed the applicant by correspondence as also by means of legal notices and vide the impugned order dated 17.7.91, ordered to recover from the pension of the applicant the said sum in monthly instalments at the rate of Rs.700/- for Nov., 1990 and Rs.1333/- from December, 1990 onwards, and the same was recovered by the respondents from the pension of the applicant. At the time of filing this OA, the amount recovered by the respondents stood at Rs.23,461/- and the applicant has approached this Tribunal for the relief(s) as indicated above.

5. Counter is filed by the respondents opposing this OA.

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6. We have heard Mr V. Venkateswar Rao, Counsel ^{Standing} for the applicant, and Mr M Jaganmohan Reddy, Counsel for the respondents.

7. Before the applicant approached this Tribunal legal there had been exchange of notices ~~in~~ which is part of the record. There is also correspondence in between the applicant and the respondents, wherein the respondents have brought that the applicant was liable to refund the excess amount of Rs.31,200/- that was paid to the applicant by mistake. Ofcourse, the applicant had denied any excess payment of GPF to him either by mistake or otherwise. In view of the legal notices that were exchanged between the applicant and the respondents, with regard to GPF in that is said to have been paid excess to the applicant, and in view of the correspondence in between the applicant and the respondents which correspondence forms part of the record, we are satisfied that reasonable opportunity to the applicant, to show cause against the proposal for reduction of pension for excess payment of GPF had been given ~~in~~ by the respondents and that the principle of audi-altero partem had been duly complied by the respondents in this case.

8. One of the contentions of the learned counsel for the applicant is that there is no excess payment of Rs.31,200/- as contended by the respondents and so, the recovery of any amount from the pension payable to the applicant towards the alleged excess payment of GPF is illegal. In view of the contention raised

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by the learned counsel for the applicant, we thought it fit to peruse the records whether any excess payment had been made to the applicant ~~to~~ towards GPF ~~and~~ and ~~to~~ the alleged excess payment can easily be ascertained from the records.

9. The file discloses that the applicant had put in an application for part-final withdrawal of Rs.8700/- on 3.2.88. In the said application, he has disclosed that ~~his~~ his basic pay is Rs.3825/- and that the balance ~~of the GPF~~ on the date of application was Rs.11,609/-. In the statement showing ~~the~~ details of information for grant of GPF for a second time, it has been mentioned ~~that~~ that in the month of April, 1987 that the applicant had withdrawn an amount of Rs.22,500/- towards part-final withdrawal and that Rs.8700/- which he ~~had~~ ^{then was} has asked ~~now~~ ^{now} a second time for medical treatment at Vellore. So, from the said application dated 3.2.88 it is quite evident from the statement of the applicant ~~that~~ that the balance of GPF was only Rs.11,609/- as on 3.2.88 and within that amount that the applicant claimed ~~had~~ part-final withdrawal of Rs.8700/-. Admittedly, the said amount had been paid to the applicant on 3.2.88 and so, at the time of retirement, the applicant was left over with only Rs.2909/- ~~to~~ credit in his GPF account.

10. It is needless to point out that admission is the best piece of evidence. When the applicant himself has stated in his own statement that only a sum of Rs.11,609/- stood to his credit at the time of his second withdrawal, as and the applicant had been sanctioned Rs.8700/- out of the balance of Rs.11,609/-, it is inconceivable how the applicant had to his credit the sum of Rs.41,079/- ~~to~~ his credit in GPF account at the time of his retirement. So, there

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cannot be any doubt about the fact as could be seen from the own statement of the applicant that an excess payment of Rs.31,200/- had been made to the applicant by the respondents towards GPF settlements.

11. It is not in dispute that the applicant, after his voluntary retirement, had been paid a sum of Rs., 41,079/- towards GPF by means of a cheque. The respondents, without giving debit to the amount of Rs.22,500/- and Rs.8700/- that had been withdrawn by the applicant, had arrived ^{at} the figure of Rs.41,079/- and had paid the same to the applicant for which the applicant was absolutely not having any right to receive the same. So in view of the mistake committed by the respondents in making excess payment of Rs.31,200/- ~~for a second time~~ towards GPF settlement, the respondents are justified in taking action to recover the said amount of Rs.31,200/-.

12. Any sum paid by mistake would be refundable as and ~~when~~ when the mistake is found ~~by the competent authority~~ by the competent authority. So, in this case, the competent authority had found out the mistake committed by the respondents in settling the GPF account of the applicant already as indicated. In view of this position, there cannot be any doubt about the fact that the applicant ~~became due to the respondents~~ the entire amount that was paid in excess towards settlement of his GPF account and there is every legal liability on the part of the applicant to repay or refund the said excess amount that became due to the respondents.

13. One of the contentions raised by the learned counsel for the applicant is that the respondents have ^{part of} no right to withhold payment of pension and that the President alone has got the powers to withhold the pension and hence, the order of recovery from the pension of the

applicant will be valid only if in any departmental enquiry the applicant had been found guilty of grave misconduct or negligence or had caused loss to the Government due to grave misconduct or negligence while in service. It is also the argument of the learned counsel for the applicant that as the respondents, themselves are responsible for excess payment that is not open for them to withhold part payment of pension towards excess payment of GPF. The learned counsel for the applicant mainly relies on Rule 9 of the CCS Pension Rules in support of his argument.

14. In our opinion, Rule 9 of CCS Pension rules absolutely has no relevance to the ~~xxx~~ facts of this ~~case.~~ We have got to look into Rule 73 of CCS Pension Rules, 1972 which deals with the adjustment and recovery of dues other than dues pertaining to Govt. accommodation. Under the said rule under Govt. of India Decision (7) as per DG P&T lr. No. 4-4/78-TA dated 28.3.78 it is ~~stated~~ ^{laid down} as follows:

"(7) Recovery of Government dues from Pensioner's relief permissible:-

The Min. of Finance has ~~clarified~~ clarified in their UO No. 718-EV(A) dated 7.2.78 that the Pensioner's Relief is not covered by the Pension Act and there may be no objection to the recovery of Government dues from the Pensioner's Relief without the consent of the Pensioner."

The validity of the said letter is not questioned in this CA before us. In view of the said letter, we do not have any doubt to come to the conclusion that even though no amount

T. C. A. J.

To

1. The Director, Defence Electronics Research Lab(DLRL) Hyderabad.
2. The Defence Pension and Disbursement Officer, Fort St. George, Madras-16.
3. One copy to Mr.V.Venkateswar Rao, Advocate, CAT.Hyd.
4. One copy to Mr.M.Jaganmohan Reddy, Addl.CGSC.CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One spare copy.

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can be deducted from the pension of the applicant, that the respondents have got every power to recover the amount due to the respondents that had been paid to the applicant by mistake from the relief on the pension payable to the applicant. Hence, an appropriate direction is liable to be given to the respondents accordingly bearing in mind the facts and circumstances of this case, having due regard to the recoveries already effected.

15. When this OA came up for admission hearing before Single Member Bench of this Tribunal, by way of an interim order, this Tribunal had directed the respondents to recover only Rs.500/- from the month of June, 1992 out of the pension payable to the applicant. So, in pursuance of the interim orders, the respondents are withholding a sum of Rs.500/- out of the pension payable to the applicant and adjusting the same towards the excess amount of GPF that had been paid to the applicant by mistake. But, ^{tobe} in view of the orders that are passed, the said interim order dated 23.4.92 is liable to be vacated and is accordingly vacated, with effect from the date of receipt of copy of this order by the respondents.

16. In the result, we direct the respondents to recover the balance amount due to the respondents towards excess payment of GPF that was made to the applicant by mistake, only out of the 'relief' that is payable to the applicant on his pension, as per DG P&T letter dated 28.3.78 cited supra. We make it clear that the respondents do not have right to recover any amount from the basic pension of the applicant in future. ~~Similarly~~, In view of the facts and circumstances of the case, we make it clear that the applicant is not entitled for refund of any of the amount that was recovered by the respondents out of basic pension till the applicant approached this Tribunal, and during the pendency of this OA. OA is disposed of accordingly with the above directions leaving the parties to bear their own costs.

T. C. R. R. (T. CHANDRASEKHARA REEDY)
Member (Judl.)

Deputy Registrar (J) Dated :

19-4-1993

TYPED BY (a) COMPARED BY
CHECKED BY (a) APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.R.BALASUBRAMANIAN :
MEMBER(ADMN)

AND

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

DATED: 19 - 4 - 1993

~~ORDER~~/JUDGMENT

R.P./ C.P/M.A.NO.

in

O.A.No. 346/92

T.A.No. (W.P.No)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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