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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH,
AT HYDERABAD

O.A.No. 1772/97

Between:

A. Divakar Rao

..... Applicant

VS

Union of India & Others

..... Respondents

Memo of Submissions on behalf of the Applicant.

- (1) This application calls in question the legality of the recovery made by the Department from my salary towards the loan which was alleged to have been taken by me from State Bank of India, Berhampur Branch.

The above aspect of the matter has been clearly mentioned at Page-2 Para 1 (IV) of my application. Towards the prayer this aspect is also find mention at the concluding paragraph at Page-11 of my application before this Honourable Tribunal. In this connection, I ~~have~~ have reference to the decision reported in A.I.R.1957 A.P. Page 784 in which it has been clearly mentioned that the Court can grant reliefs in matters where there is no specific prayer.

- (2) I beg to submit that the total loan amount from the Bank is Rs.13,000/- with interest. The Department has already recovered an amount of Rs.15,000/- from my salary. This O.A. is confined to the recovery of the balance amount.
- (3) I beg to submit the recovery as made by the department is without the Authority of Law. The present recovery is not a recovery of Government dues. It is recovery of a personal loan of mine from the Bank. It is respectfully submitted that such recovery cannot be made during the pendency of Money Suit 207/95 before the Civil Judge, Berhampur.
- (4) I beg to submit a recovery of the loan amount cannot be made unless there is an order of the Court. In the instant case the department did not produce any order of the Court to make such recovery.

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A. Divakar Rao

21-8-98.

rely because there is an undertaking given to the Bank such undertaking cannot be utilised for the purpose of recovery from my salary since the Bank has already resorted to a Money Suit before the Civil Judge, Berhampur Court.

- (6) The Bank filed the suit M.S.207/95 for recovery of Rs.8,641/- as the Principal amount of Rs.5,000/- and interest. In the said suit notices are being issued to applicant to his Berhampur address though he was transferred long ago. Hence, summons could not be served on applicant till now. The Bank should have made detailed enquiry to findout the address of the applicant. Presently the Suit stands posted to 15-9-1998 for S.R. So far the applicant has not been served with the summons.
- (7) The order of the opposite party No.3 directing deduction from salary and emoluments of the applicant towards the time barred State Bank of India loan is illegal, arbitrary and beyond the Jurisdiction of the opposite party No.3 in as much as its recovery is to be affected within 3 years from the date of advance under Article 21 of the Schedule, Part III of Limitation Act 1963.

The State Bank of India has not sent any intimation to the applicant for the repayment of Bank loan at any time to the applicant (vide Paragraph 5 (1) at pages 9 & 10 of O.A.1772/97). The reasons of the same are detailed in Paragraph - 4 at pages 6 to 9. The recovery of Rs.15,000/- effected towards time barred State Bank of India Loan without the intervention of Civil Judge, Berhampur, Ganjam where the State Bank of India filed Money Suit No.207 of 1995 is now pending and the applicant is now contesting the Bank's claim by appearing in person or by engaging a competent advocate to defend his stand.

- (8) Since recovery is to be affected through a Court provided a decree is passed by the Court against applicant. The recovery affected from the applicant wrongly and illegally be refunded to the applicant required from the dues payable to opposite party.

A. Divakar Rao

21-8-98.

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- (9) More importantly the loan of Rs.8,000/- in the year 1990 for recovery of which no suit has been filed as yet. However salary deductions are made for repayment of this loan and hence such recoveries are to be considered illegal and the same are to be refunded with interest to the applicant.
- (10) As regards the recoveries made in respect of pending suit, it is submitted that a huge amount of Rs.15,000/- has been already recovered on this score. Admittedly the Principal amount is only Rs.5,000/-. The applicant intends to contest the suit and there is every likelihood of the suit being dismissed in which event the recoveries already made become liable to be refunded with interest. The amount already recovered Rs.15,000/- is 3 times the Principal amount.

Hence, it is just and necessary to continue cessation of recoveries from salary of the Applicant till final disposal of M.S.207/95 civil judge, Berhampur.

- (11) I beg to submit there cannot be two modes of recovery. One by way of Suit and the other from my salary by the Department. Such action is clearly violative and infraction of the Principles of Natural Justice.
- (12) Admittedly there is no decree passed by any Court making the applicant liable for payment of any amount. The applicant's salary is not attached by any Court in execution of the decree.
- (13) I beg to submit that when the recovery is made from my salary, it is of paramount importance that due opportunity should be given to me before such recovery is effected. In the instant case, the Department has not given any opportunity before making such recovery.
- (14) In the circumstances the impugned recovery from my salary be quashed with a direction to the Department to refund the amount which has already been recovered from me.
- (15) The applicant respectfully again submits, that the recoveries made from his salary in respect of the time

A. Divakar Rao
21-8-98.

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barred loan of Rs.8,000/- be refunded to the applicant and orders may please be passed for continuance of cessation of recoveries from his salary in respect of Rs.5,000/- for which the M.S.207/95 is pending in the Civil Court at Berhampur.

- (16) The Second prayer of the applicant is to award cost of proceedings for the ends of Justice and grant such other reliefs as deemed for in the circumstances of the case vide paragraph 6 (B) of O.A.No.1772/97 at page 11 of the original application. The reason for claiming cost is that the applicant is unjustly proceeded against opposite parties 1 to 4 and his application registered as O.A. No.1772/97 is now pending at Hyderabad before the Central Administrative Tribunal and the applicant is to proceed of Hyderabad for pressing his points of submission raised above for which he is to go to Hyderabad for a minimum period of 5 times which involves huge expenditure to go to Hyderabad and come back to Visakhapatnam.

It is therefore, prayed that Equity, Justice and Good conscience be applied in awarding costs of the proceeding for which act of kindness the applicant shall ever remain bound in pray.

A. Divakar Rao.
(A.DIVAKAR RAO)²¹⁻⁸⁻⁹⁸
APPLICANT