

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1492/2003

New Delhi, this the 23rd day of September, 2003

Hon'ble Shri Shanker Raju, Member (J)

O.P.Nayar,
Retd. Executive Engineer (Elect.),
S/o late Hari Dev Nayar,
R/o WZ-346 'F' Nangal Raya,
New Delhi - 110 046. ...Applicant

(By Shri S.K. Das, Advocate)

Versus

1. Union of India
through the Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi.
2. Chief Engineer-II,
Central Public Works Department,
Vid्युत Bhawan,
New Delhi.
3. Superintending Engineer, DCEC-III,
Central Public Works Department,
'Y' Shape Building, I.P. Bhawan,
I.P. Estate,
New Delhi.
4. Superintending Engineer, DCEC-V,
Central Public Works Department,
East Block, R.K. Puram,
New Delhi.
5. Executive Engineer, Division-14,
Delhi Electrical Circle-III,
Central Public Works Department,
New Delhi.
6. Executive Engineer (E),
Delhi Electrical Circle-V,
Central Public Works Department,
East Block, R.K. Puram,
New Delhi. ...Respondents

(By Shri R.P. Aggarwal, Advocate)

ORDER

Applicant impugns respondents Memos dated
20.08.2002, 11.2.2003 and 30.04.2003 whereby his
request for regularisation of excess telephone

calls and waiving of recovery of Rs. 26,846/- from his pension has been turned down. Quashing of the above orders have been sought with direction to drop the recovery against him.

2. Applicant, who retired on superannuation as Executive Engineer (Electrical) on 31.07.2000, was holding the charge of Executive Engineer, Incharge of Pragti Maidan as well as Electrical Division-11 pertaining to Pusa Campus for the period from 16.3.1997 to 21.08.1997. As per instructions in vogue, a Government official had a ceiling of free telephone calls at the residence to the tune of 650 calls bi-monthly. Any excess calls excluding STD calls made for official purpose and so certified by the officer concerned, have to be paid by the officer himself as per G.I., M.F. OM dated 8.6.1982.

3. On audit by the C.A.G. and as para 3 of the Inspection Report, applicant has been found to have made excess calls from the Govt. telephone installed at his residence during the period from March, 1997 to July, 1999 and as such a recovery of Rs. 26,846/- on account of over payment of residential telephone bills was recommended. As it was found that though certificates to the effect that the calls were made in public interest had been exhibited but in absence of any detailed

reasons, it was desired to have genuine position, the matter be re-examined at Executive Engineer level and if no sufficient ground is found about the genuineness, the above referred amount may be recovered under intimation to the Audit.

4. In pursuance of the above, respondents issued a show cause notice to applicant attaching therewith Audit Report on 30.06.2000.

5. Applicant responded to the above and stated that the aforesaid calls had been made on account of official work and were in public interest.

6. During the relevant period, when the bills were cleared, applicant was working as Drawing and Disbursing Officer and had not at any point of time, furnished the necessary details and sought approval of the competent authority for regularisation of the telephone bills.

7. The aforesaid request of the applicant was considered and was not found possible for approval by the competent authority accordingly recovery had been ordered by the Executive Engineer vide order dated 23.4.2001. Subsequently, representations were made to the Director General

of Works in the Directorate General Works which were not acceded to due to administrative reasons, giving rise to the present OA.

8. Learned counsel for applicant Shri S.K. Dass contends that as per rule 63 of the CCS(Pension Rules) 1992 [hereinafter referred to as 'Rules'], it is incumbent on the Head of Office to ascertain and assess the Government dues as referred to in Rule 71 and shall furnish the particulars to the Accounts Officer at least two months before the date of retirement of a Government servant so that the dues are recovered out of the gratuity before its payment is authorized.

9. In this view of the matter, it is stated that whereas the applicant retired on 31.7.2000, a show cause notice and ascertainment of dues made only a month earlier could not be countenanced. Another contention put forth by the applicant's counsel is on reliance of rule 71 ibid wherein it is stated that Government dues do not include dues on account of excess payment of telephone calls.

10. It is further stated that once on public interest the bills submitted by the applicant have been paid, respondents are precluded from the recovering any amount from the applicant.

It is also stated by the learned counsel that the applicant has been deprived of a reasonable opportunity as the Audit has also directed re-consideration of the matter by Executive Engineer to have the genuine position of the claim but the claim of the applicant has been rejected on administrative grounds without stating any reason.

11. On the other hand Shri R.P. Aggarwal, learned counsel for the respondents states that in view of G.I., M.F. OM dated 8.6.1982 as well as G.I., M.H.A. circular dated 28.02.2001, recovery is permissible from a Government servant pertaining to the calls made in excess of the prescribed limit which has to be paid by the officers themselves. It is in this backdrop stated that the applicant, who was Drawing and Disbursing Officer during this period, has managed to clear the bills and payment was made without seeking approval from the higher authority and without submission of details of calls made in excess.

12. As due opportunity has been accorded to the applicant in view of rule 73 (3) of the Rules ibid, any due, which is assessed and came to the notice subsequently and remained outstanding till the date of retirement, has to be adjusted

against the amount of retirement gratuity. In so far as contention putforth by the learned counsel Shri S.K. Dass that dues pertaining to excess payment of telephone calls on the telephone provided at the residence of the applicant is concerned, rule 71 mandates Head of the office to ascertain and assess Govt. Dues. Government Dues have been defined as per rule 71(3) of the Rules ibid which is reads as follows:

"71(3) The expression 'Government dues' - includes -

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

(b) dues other than those pertaining to Government 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 Income Tax Act, 1961 (43 of 1961)".

Rule 73(3) of the Rules provides as under:

"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 [retirement gratuity] becoming payable to the Government servant on his retirement."

13. If one has regard to above, Government dues is an amount owed by a government servant to the government to which he was not legally entitled to and was either inadvertently or wrongly paid during his service tenure. Though

Rule 71(3) in its ambit includes as dues, arrears of licence fee pertaining to Govt. accommodation, balance of house building or conveyance or any other advances and also over payment of pay and allowances etc. G.I. M.F. OM dated 8.6.1982 provides that a government servant, who has been provided with a telephone at his residence, is entitled to free calls to the tune of 650 calls on bi-monthly basis. Any calls in excess of 650 calls (excluding STD calls made for official purpose) will have to be paid by the officer himself. The only exception is that when in the public interest the calls made are found to be in discharge of official duties and for official purposes this makes it clear that excess calls which are not explained and are not in public interest for which no approval of the competent authority has been taken remained as excess calls for which payment has to be made by the officer himself. Any bill which has been paid by the government with certification in excess of 650 calls which are not in public interest, the excess payment is a due on a government servant as would come within the ambit of allowances over paid to him. An allowance is something which a government servant is entitled to. Free telephone calls would come within the ambit of allowances. A telephone allowance is in the form of free telephone calls.

14. Moreover due, as defined in rule 71(3) *ibid*, is a generic term exhaustive in nature importing within its ambit any government due irrespective of the dues reflected in the rule.

15. The expression 'Government dues' - Government dues, apart from other dues, also includes the dues. The rule of interpretation would be on the basis of harmonious construction. An interpretation should not be done in a manner which makes the rule or the statute otiose. The object of the rule is to recovery and assessment of government dues which for the purposes of enumeration, few dues are defined such as licence fee, house building allowance & other allowance paid and, if any, due has been left out would not be construed to have been excluded.

16. In this view of the matter, I am of the considered view that payment on account of excess telephone calls is a government due within the definition under rule 71(3).

17. Moreover, I find as per rule 73(3) *ibid* even if a due, which comes to the notice subsequent to assessment of dues prior to two months from the date of retirement, can be taken cognizance of if it is outstanding till the date of retirement of a government servant and is recoverable from the retirement gratuity.

18. Applying the aforesaid in the conspectus of this OA Audit which had taken place as per the time schedule in vogue find that the applicant who was entitled to 650 calls bi-monthly on account of having a telephone at his residence, excess calls have been made for which an excess payment has been made to MTNL to the tune of Rs. 26,846/-. Though cognizance has been taken of a certificate attached with the bill that it was in the public interest yet no detailed reasons have come forth on record. Accordingly the matter was recommended to be re-examined at the Executive Engineer level and if no sufficient ground exists for genuineness the amount be recovered. In pursuance thereof, a show cause notice was issued to the applicant on 30.06.2000 which was responded to by a detailed representation. The Executive Engineer vide its order dated 7.12.2000 rejected the same holding that howsoever the genuine reasons for excess calls, the same are to be regularised only after obtaining the sanction of the competent authority. As the sanction was not accorded, the same was not regularized which resulted in the proposed recovery.

19. I also find that a request made in the Directorate General of Works has been turned down observing that request of excess telephone calls though considered could not be acceded to due to administrative reasons.

20. An essence of principle of natural justice and fair play in an order passed by a quasi judicial authority is a reasoned order unless the requirement has been dispensed with. The aforesaid proposition has been laid down by the Apex Court in a Constitutional Bench's decision in S.M. Mukherjee vs. Union of India, 1990(4)SCC 594.

21. I find that a detailed request giving reasons for excess calls has been made by the applicant yet genuineness, as suggested by the Audit, has not at all been considered. This has deprived the applicant a reasonable opportunity and has been prejudiced as well.

22. It was incumbent upon the Executive Engineer as well as the Director General of Works to have maticulously examined the genuineness of the dues and disposed of the claim. Merely mentioning that it cannot be acceded to due to administrative reasons and the fact that Executive Engineer has basically satisfied to the genuineness of reasons for excess calls but for want of sanction of the competent authority for regularisation of excess calls, recovery has been ordered. This cannot be countenanced and is not fair in the circumstances.

23. In the result, for the foregoing reasons, OA is partly allowed and impugned orders

are quashed. Respondents are directed to re-examine the genuinity of the claim of the applicant for regularisation of excess calls having regard to his explanation tendered as well as order passed by the Executive Engineer on 7.12.2000 by a detailed and speaking order to be passed within two months from the date of receipt of a copy of this order. In case the excess amount is regularised, the same may not be deducted from the retiral dues of the applicant. Till then no recovery on account of excess calls be effected from the terminal benefits of applicant. No costs.

S. Raju

(Shanker Raju)
Member (J)

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