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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1672 OF 2003

New Delhi, this the 11th day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Dr.R.S. Tiwary,
206, Jagdamba Tower,
Plot - 13, Preet Vihar,
New Delhi.
(Retd. Director, ICMR, Group -A)

.....Applicant

(By Advocate : Shri S.P. Chadha)

Versus

1. Union of India
Through,
The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.

2. The Director General
Indian Council of Medical Research (ICMR),
Ansari Nagar, New Delhi-110029.

.....Respondents

(By Advocate : Shri V.K. Rao with Shri Satish Kumar)

ORDER (ORAL)

This Original Application under Section of 19 of the Administrative Tribunals Act, 1985 was filed seeking a direction to the respondents:-

- "(i) Quash and set aside order dated 17.2.2003 refusing to allow encashment of EL.
- (ii) Quash the order dated 17.2.2003 (Annexure A/2) asking the applicant to recover Rs.31,928/- alleged as against gratuity."

At the time of hearing, the learned counsel of the applicant does not press so far as his relief of encashment of earned leave is concerned, as the same is hit by the provisions contained in Rule 10 of CAT (Procedure) Rules, 1987, with liberty to file a

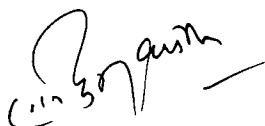
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separate OA for this purpose. Liberty claimed was allowed and this OA is being confined to the claim of the applicant to the extent that the amount of gratuity, which has been paid to him in excess of Rs.31,928/- whether it is recoverable or not.

2. The applicant before joining this service was employed as a Commissioned Officer in the Army Medical Corps for 26 years. He came on deputation to the respondents - Indian Council of Medical Research (for short 'ICMR') from 17.7.1989 and on 1.2.1991 was absorbed as Director, Regional Medical Research Centre, i.e., respondents organisation. When he got himself absorbed with ICMR, he was granted pensionary benefits in respect of his Army service, which he got commuted to the extent of 100% as one time settlement. The applicant had also received Army gratuity of Rs.89,888/-. He has received total amount of Rs.2,92,040/- as gratuity from ICMR. The total gratuity received by the applicant is Rs.3,81,928/-. Thus an amount of Rs.31,928/- has been paid in excess by the prescribed limit of maximum gratuity of Rs.3,50,000/- under Rule 50 (1)(b) of CCS (Pension) Rules, 1972. Accordingly, the respondents by their impugned letter dated 17.2.2003 have written to the applicant as follows:-

"I am directed to draw your attention on the subject and to inform that according to the first proviso under Rule 50(1) (b) of CS (Pension) Rules, 1972, the amount of retirement Gratuity shall in no case exceed Rs.3,50 lakhs. However, you have received a sum of Rs.2,92,040.00 and Rs.89,888.00 for the period of service rendered under RMRCT/ICMR and the Military service



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respectively. Although, you were entitled for Rs.3,50,000/- as Retirement Gratuity (for both the services), a total sum of Rs.3,81,928.00 (Rs.2,92,040 + 98,888) has been received by you on account of Retirement Gratuity for the combined services rendered by you. Hence, it could be noted that a sum of Rs.31,928.00 has been paid in excess of the amount due and payable to you. This fact has already been brought to your knowledge vide this office letter no.3232/2003 dated 27.1.2003 wherein it was desired that excess amount of retirement gratuity received by you may kindly be refunded to Council through demand draft drawn in favour of the Director General, ICMR, New Delhi and that the draft may be sent to the Officer-Incharge, RMRCT (ICMR), Nagpur, PO-GARHA, Jabalpur. Receipt of this amount is still awaited."

3. It is stated by the learned counsel of the applicant that the action of the respondents is not in conformity with the rules on the subject. He referred to the provisions contained in Rule 64 of CCS (Pension) Rules, 1972 wherein it has been provided under sub Rule 6 (c) as follows:-

"(c) (i) If the amount of provisional gratuity disbursed by the Head of Office under sub-rule (4) is larger than the amount finally assessed, the retired Government servant shall not be required to refund the excess amount actually disbursed to him.

(ii) The Head of Office shall ensure that chances of disbursing the amount of gratuity in excess of the amount finally assessed are minimized and the officials responsible for the excess payment shall be accountable for the overpayment."

4. The claim of the learned counsel is that the applicant may or may not be entitled to the amount above Rs.3,50,000/- but in view of the provisions contained in CCS (Pension) Rules, 1972, as extracted earlier, no recovery from the applicant could be made.

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5. The learned counsel of the respondents opposed the prayer of the applicant on the ground that the upper limit of gratuity for an employee is of Rs.3,50,000/-. He referred to the provisions contained in Rule 64 of CCS (Pension) Rules to demonstrate that the provisions are intended to curtail delay and to grant provisional pension with provisional gratuity in case there is likelihood of any delay. According to the learned counsel if the payment is in excess of Rs.3,50,000/- that amount could certainly be recovered but if there is payment in excess of the entitled amount within the overall ceiling of Rs.3,50,000/- that cannot be deducted.

6. After hearing the learned counsel of both the parties, it appears that the requirement of Rule 64 of the Rules *ibid* are that on retirement of an employee immediately the provisional pension with provisional gratuity has to be fixed. Any adjustment of provisional pension has to be made under sub-rule (1) of Rule 64 of CCS (Pension) Rules, which provides as follows:-

"...For this purpose, he shall -

- (i) rely upon such information as may be available in the official records, and
- (ii) ask the retiring Government servant to file a written statement on plain paper stating the total length of qualifying service including details of emoluments drawn during the last ten months of service but excluding the breaks and other non-qualifying periods of service."

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7. There is nothing on record that this aspect of provisions contained in Rule 64 of the CCS (Pension) Rules, 1972 has been examined by the departmental authorities with reference to material on the record. In case the applicant has not at all furnished the details of gratuity received by him that might had different colour to the whole claim but no definite views are expressed on the subject. But the respondents are only directed to verify the records to find out what claims were made by the applicant. The respondents are also directed to decide with reference to their records whether excess payment made to the applicant so far as gratuity is concerned can be recovered from him in view of the provisions contained in Rule 64 (6) (c) of the CCS (Pension) Rules, 1972. For this purpose, the applicant is directed to send a copy of this order alongwith further representation, if any, as well as a copy of the OA to respondent No.2 within a period of one month from the date of receipt of a copy of this order. In case, the applicant complies with the directions as aforesaid, the respondent No.2 is directed to pass a reasoned and speaking order under intimation to the applicant within a period of two months from the date of receipt of such representation alongwith a copy of this order and a copy of the OA. 8. In view of what is stated in the preceding paragraphs, this OA is disposed of without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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