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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1692 OF 2003

New Delhi, this the 28th day of January, 2003

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

Capt. K.S. Malhotra
S/o Late Shri P.S. Malhotra,
Retired Junior Staff Officer,
Directorate General of Home Guards &
Civil Defence, Delhi.

Resident of
A-16, DDA Colony,
Naraina Vihar, New Delhi.

.....Applicant

(By Advocate : Shri M.C. Dhingra)

Versus

1. Government of NCT of Delhi
through Chief Secretary,
Players Building,
Delhi Government Secretariat,
IP Estate, New Delhi.
2. Secretary Home,
Government of NCT of Delhi,
Players Building, 5th Floor,
Delhi Government Secretariat,
IP Estate, New Delhi.
3. Director General Home Guards-
cum-Director Civil Defence,
Nishkam Sewa Bhawan,
Directorate General Home Guards
and Civil Defence,
Raja Garden, New Delhi-110027. ..Respondents

(By Advocate : Shri Ram Kawar)

ORDER (ORAL)

This Original Application under Section 19 of
the Administrative Tribunals Act, 1985 has been filed
seeking a direction to the respondents to refund
Rs.9206/- recovered from the applicant on account of
telephone provided at the residence, Rs.1971/-
recovered from the applicant on account of official
use of staff car and Rs.1035/- recovered from the
applicant on account of Benevolent Fund.

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2. It is stated by the applicant that he joined Indian Army as Emergency Commissioned Officer (Group 'A'). On completion of five years, he was released in 1968 and subsequently joined service as Junior Staff Officer (Central Training Institute) ('GSO (CTI)' for short), a Group 'B' post under Delhi Administration. He retired from service on superannuation on 31.10.2001. It is further stated that the respondents have deducted the amount of Rs.9206/- for telephone charges, Rs.1971/- for use of staff car and Rs.1035/- on account of Benevolent Fund from the admissible gratuity of the applicant.

3. The claim of the applicant is that he never asked for being provided with telephone facility at his residence on the other hand, the Head of Department provided the telephone at his residence during the period from 4.4.1994 to 31.3.1997 and the amount of Rs.9206/- pertains to the recovery of telephone charges. For this purpose, the learned counsel of the applicant invited attention to the letter dated 6.11.1997 (Annexure A/2) written by Ajay Kumar Singh IPS Commandant General Home Guards & Director Civil Defence to the Principal Secretary (Home), Government of NCT of Delhi in which it has been stated as follows:-

"It is the Head of Department, who visualising the circumstances, decided to let these officers have the facilities of residential telephones at Govt. cost in public interest. The officers concerned cannot be penalised for the same.

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It is reiterated that:-

- (i) No recovery is intended from the concerned officers.
- (ii) At present no non-entitled officer is availing telephone facility at the residence.

It is again requested that the expenditure involved may please be regularised by according ex-post facto sanction."

He also referred to another letter dated 22.12.1988 (Annexure A/3) written to the Principal Secretary (Home), Govt. of NCT of Delhi in which it was further pointed out as follows:-

"If the residential telephone connections are not provided to Junior Staff Officers, I am afraid that the deployment of Home Guards particularly beyond office hours will also have to be looked after by the Police Deptt. since JSO (HG) will not be in a position to contact field staff. Similarly, JSO(CD) will not be able to mobilise Civil Defence Corps even in emergency or calamities for the same reason and so will be the case with other branches."

4. The learned counsel stated that the fact that the applicant never asked for residential phone is not disputed by the respondents. If the Head of Department decided to provide a telephone at the residence for official use, the applicant cannot be asked to bear the cost of maintaining such telephone. It is, therefore, urged that no recovery on that account should have been made.

5. Regarding recovery of Rs.1971/- for use of staff car, it was pointed out by the learned counsel that this has been done on the basis of audit

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objection. He stated that a perusal of the conclusion as made by the respondents available on page 35 of the paper book indicates that the amount of Rs.1971/- with reference to journey performed between residence to Headquarter. It was further pointed out by the applicant vide his letter dated 23.12.1998 (Annexure A/11 Colly) wherein it was specifically stated as follows:-

"Please refer to letter No.26/(17)/82-83/ CDHG/Pt.II/14557 dated 18.11.98 on the subject mentioned above. In this regard I am to state that I was given a special task of conducting inquiries of different cases of Home Guards and to complete the work in time for submission to the Head of Department, for this purpose I had to attend to the office on saturdays as well as on sundays and other holidays to complete the work in time because of which I had to come to the office on Holidays. gradually the work assigned to me went on increasing with the retirement of Sh. W. Chauhan, SSO (CD), transfer of Sh. P.K. Loreng, CHG and retirement of Shri S.S. Dagar, Comdt. (CTI). The work load of all these officers i.e. that of SSO(CD), CHG and Comdt.(CTI) was assigned to me. To cope with the timely disposal of work of all these posts I had to come to the office on week ends and on holidays to the office.

In this regard the H.O.D. has been intimated vide note dated 07.08.97, copy enclosed and he has permitted me for the purpose. Therefore the Govt. vehicle used for attending office on saturdays, sundays and holidays is not a misuse of the Govt. vehicle. The use of the Govt. vehicle has been in public interest."

6. He also invited attention to the sanction of Head of Department, which is stated as follows:-

"He has regularly been summoned to office for completing the work.

Sd/
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7. The learned counsel of the applicant invited attention to the reply filed by the respondents in which it has been stated in para 4.17 that "There was no permission him to attend office on Saturdays, Sundays and holidays. There was no permission to visit field offices and other places as indicated by the applicant in the logbook. Hence, his using a Government vehicle to places other than residence [Naraina]-office-residence is incorrect".

8. It was pointed out by the respondents' counsel that the recovery so made has been on the advice of accounts and audit departments. A copy of the audit objection has already been communicated to the applicant. The recovery is in accordance with the existing rules and, therefore, no interference is called for.

9. The material available on records as well ~~have been~~ ^{as} arguments of both the parties taken into account.

10. So far as expenditure regarding the telephone is concerned, there is no denial of the fact that the applicant never asked for it. As a matter of fact, the respondents have taken up the matter with the higher authorities to regularise the same by ex-post facto approval. Even if an officer was not entitled to a residential telephone and if the administration decides to provide a telephone in exigencies of administration, the applicant cannot be held responsible for expenses thereon. Of course, by

Unjustified

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the administrative instructions, there have been ~~not~~ limits prescribed for use of such telephone. In this case, it is not the case of the respondents that the applicant used the telephone for his personal purpose or in excess of prescribed limit. The whole issue is regarding provision of a telephone at the residence of an officer who was not entitled for a telephone facility. It is the considered view of this Tribunal that if a telephone is provided by the administration in the interest of administrative exigency, no recovery in respect of such provision of telephone can be made. Therefore, the recovery of Rs.9207/- was not in order.

11. So far as the recovery of use of staff car is concerned, the same is also uncalled for on the facts of this case. The Head of Department as per his note dated 12.8.1997 extracted earlier has confirmed that the applicant was regularly summoned to office for completing the work. The ~~amount~~ ^{calculation or} ~~authorities relating to~~ ^{in use of} staff car for the distance covered from "Hq-Resi-Hq". There is no recovery in respect of use of staff car for any other work. The respondents in their reply have stated that use of staff car from one office to another was not authorised. But the perusal of the material at page 35 of the paperbook indicates that the amount of Rs.1971/-, which has been recovered from the applicant, is not in respect of any such journey. Most of the journeys performed ~~are~~ ^{are} on Saturdays, Sundays and holidays. If the staff car has been used

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on the basis of the orders of the Head of Department for official purpose, no recovery can be made. In this view of the matter, recovery on this account is also illegal.

12. So far as the recovery of Rs.1035/- in respect of advance of Benevolent Fund is concerned, the claim of the applicant is that he had spent this money in the year 1988 on the items for which the advance was taken. It is also the claim of the applicant that he must have submitted relevant vouchers at that particular time. The unused portion of the advance taken was refunded on 14.6.1988 and 26.9.1988. Further claim of the applicant is that the amount of Rs.1035/- is now being asked for after 13 years. It appears to be merely for the purpose of harassment to the applicant. The applicant's apprehension appears to be justified on the facts of this case. The applicant was regular Govt. servant and retired only on 31.10.2001. If some advance was taken by him on 31.5.1988, the same should have been recovered immediately within a reasonable time. If the same was not recovered, the only logical conclusion is that the alleged amount of Rs.1035/- must have been spent for the purpose for which the advance was taken with proper receipts. The applicant cannot be burdened to produce those receipts now much after his retirement. On the facts of this case, recovery on this account is also held to be unjustified.

13. For the reasons mentioned hereinbefore, it is held that recoveries of Rs.9206/-, Rs.1971/- and

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Rs.1035/- equal to Rs.12,212/- from the retiral dues of the applicant was unjustified and the applicant has to be refunded the said amount already recovered alongwith simple interest at the rate of 6% per annum from the date of recovery till the payment of the said amount. The respondents are directed to comply with this order within a period of two months from the date of receipt of a copy of this order.

14. Accordingly, this OA~ is allowed. However, keeping in view the facts and circumstances of this case, there will be no order as to costs.


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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