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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1790/2003

New Delhi, this the 21st day of January, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri D.D. Jain,
S/o Shri N.D. Jain,
R/o A-3, House No. 282,
Paschim Vihar,
New Delhi.

Ex-Scientist of Indian
Agricultural Statistics
Research Institute (IASRI),
Pusa, New Delhi

Applicant
(By Advocate : Shri M.L. Verma)

V e r s u s

1. Union of India, through
Secretary, Ministry of Agriculture,
Krishi Bhawan, New Delhi
2. The Director, (General),
Agricultural Statistics Research
Institute (IASRI), Pusa,
New Delhi
3. The Director,
Agricultural Statistics Research
Institute (IASRI), Library Avenue
Pusa, New Delhi

... Respondents
(By Advocate: Shri Jainendra Maldahiyar, proxy
for Shri V.K. Rao)

O R D E R

The applicant has preferred this Original Application against the Office Memorandum of the respondents (Indian Agricultural Statistics Research Institute) issued on 23.1.1998 directing the applicant to deposit an amount of Rs. 2,52,270/- towards decree for the period 1.1.1989 to 31.7.1990, damage charges from 1.8.1990 to 13.11.1997, interest on decree w.e.f. 1.7.1990 and cost of suit. It is observed that in the said impugned order the respondents had also mentioned that in the event of failure on the part of the applicant to deposit the balance amount of Rs. 83,320/-



with the Institute, strict action would be initiated against him. He has accordingly prayed for quashing of the said OM and for payment of all retiral/consequential benefits with interest. He has also prayed for refund of the amount of Rs.2,15,539.96 deducted by the respondents from his pension and release of interest of Rs.30,037.39, arrears of salary and leave salary to the tune of Rs.10,000/- and also declaring that the Civil Court had no jurisdiction in service matters.

2. The facts of the matter, briefly, are that the applicant was employed with the Indian Agricultural Statistics Research Institute (IASRI), Pusa, New Delhi, as a Scientist and he retired from their service on superannuation on 31.10.1989. While he was promoted as a Scientist in 1985 as against 1976 when he had been due for the said promotion, he received the said orders only after his retirement in the year 1989, by which time his juniors had already been given precedence. He has alleged that he has not been paid arrears of salary and leave salary after retirement consequent to his promotion. To aggravate the matter further, his pension together with dearness and interim relief was stopped from 1990 and which was released only in the year 1999. During the said period, he suffered acute hardship. There were other sad happenings also in his family including the sad and sudden demise of his son-in-law, leading to his daughter and her young son living with him and being completely dependant on him and his wife, who had been suffering from terminal illness for two years having expired in 1996; all these led to the financial liabilities of the applicant increasing further.



A handwritten signature in black ink, appearing to read 'J. M. Shrivastava', is written over a horizontal line. The signature is fluid and cursive, with 'J. M.' on the left and 'Shrivastava' on the right.

3. The applicant was in possession of quarter No. 91, Type IV, Krishi Kunj Niketan, Paschim Vihar, New Delhi, which became the subject matter of Civil Suit No. 159/93 filed against the applicant and in which an amount of Rs. 9,621/- with cost of Rs. 6,309.75 and interest at the rate of 18% per annum from the date of institution of the Suit till realisation of the Decree amount and recovery of possession not executable before 5th January, 1998, was decreed. The applicant has taken a position that the matter of the Civil Suit being related to service matters, its institution and trial in the Civil Court was barred under Section 14 of the Administrative Tribunals Act, 1985 and therefore, the decree and judgement of the Civil Court was a nullity and void ab initio. He has referred to the subjects raised in the said Civil Suit in Paragraph 11 of the amended OA and has argued that no relief regarding damages pendentilite in future till recovery of possession is accordingly prayed for in the OA, though he has insisted that the decree and the judgement of the Civil Court is without jurisdiction and he is not accordingly bound by the same. According to him, charging damages for the house is an after thought on the part of the TASRI even though he had undertaken to pay the same at the rate of Rs. 1079/- per month and Rs. 15/- per month for water charges. The applicant is aggrieved by the fact that instead of clearing the dues payable to the petitioner, the respondents sent a notice for payment of an amount of Rs. 2,52,270/- inclusive of Rs. 22,206.96 to be deposited by him. He is also quite dis-appointed with the break-up of damage charges of Rs. 2,23,206.96 as shown in the OM dated 23.1.1998. He has questioned the rationale of the orders of the respondents

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whereby they have charged 18% interest per annum on the decreed amount, but they have not paid any interest payable to the applicant on the amount which had illegally been held up by the respondents till its release. He also does not appear to have been paid salary and leave salary in the revised scale of pay. He has held that, while deducting the damage charges, the respondents cannot withhold his pension or reduce the same under the law except following the due process as provided for under Rules 8 and 9 of the CCS (Pension) Rules. Accordingly, he has submitted that the respondents should refund the said amount with interest upto date. The applicant did submit a representation to the Director General, ICAR in this regard, which has not been replied to by the said authority so far. It seems that the applicant has questioned the jurisdiction of the Hon'ble Delhi High Court also in the Civil Writ Petition No. 1626/2002 challenging their jurisdiction by filing counter affidavit (Annexure-K). While disposing of the said Civil Writ Petition, the Hon'ble High Court granted liberty to the applicant to approach this Tribunal and hence this OA.

4. The applicant has relied on the following decisions of the Hon'ble Courts as mentioned against each of the decisions while supporting the reliefs that he has prayed for in paragraph-8 of his amended Original Application:-

- i) AIR 1971, Supreme Court 1409 in Deokinandan Prasad vs. State of Bihar and Ors. and Writ Petition No. 217 of 1968 dated 4.5.1971 upholding, among other things, that pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand, the right to pension is a valuable right vesting in a Government servant;
- ii) (1994) 28 Administrative Tribunals Cases 516 in R. Kapur vs. Director of Inspection

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(Painting and Publication) Income Tax and Another in Civil Appeal No. 6342 of 1994 decided by the Supreme Court on September 29, 1994, in which, among other things, it has been held that right of a retired employee to gratuity is not dependent on vacating the government accommodation and rate of interest enhanced without prejudice to the respondent's right to recover the damages under F.R. 48-A;

- iii) (1996) 32 Administrative Tribunals Cases 370 (FB) in *Wazir Chand vs. Union of India and Others* decided by the Central Administrative Tribunal, New Delhi (Full Bench) in OA 2573/1989 decided on October 25, 1990 in which, among other things, it was held that the Circular of the Railway Board referred to in Rules 123 and 124 of the Code in which steps for vacation of Railway accommodation unauthorisedly retained have been enumerated has been treated as statutory in character; it has, however, not been made clear by the learned counsel for the applicant as to how the decisions of the Tribunal were relevant to the present case;
- iv) AIR 1990 Supreme Court 1923 in Civil Appeal No. 5025 of 1985 dated 7.8.1990 in *D.V. Kapoor v. Union of India and Others*, in which, among other things, it has been held that right of an employee to pension is statutory and powers of President regarding withholding of pension are hedged with conditions precedent;
- v) AIR 1985 Supreme Court 356 in Special Leave Petition (Civil) No. 9425 of 1984 dated 17.12.1984 in *State of Kerala and Others v. M Padmanabhan Nair* in which, among other things, it has been held that Government is liable to pay interest on gratuity in the event of delayed payment of retirement dues due to non-production of last pay certificate; and
- vi) AIR 1999 Supreme Court 1212 in Writ Petition No. 771 of 1995 dated 22.3.1999 in *Dr. Uma Agrawal v. State of U.P. and Another* in which, among other things, it has been held that delay of nearly 5 years in disbursement of retiral benefits is inexcusable and penal interest payable.

5. Copies of Judgements as mentioned above have been placed on record and have been perused. It is, however, observed that the facts of the cases relied upon by the applicant are not necessarily and directly relevant to the present case and, therefore, the applicant cannot

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straight-away seek extension of the benefits as have been granted by the Hon'ble Courts in the said cases.

6. The respondents have taken me through their submissions particularly to the effect that the entire OA is an after thought and that the grounds for filing the amended OA being available to the applicant even at the time of filing of the Original Application, and it is not clear as to what had prevented him from raising the issues as raised in the OA in the very first instance. They have also drawn my attention to the fact that the Civil Suit had been filed by them as early as 1993 and a decree was passed in the Suit and accordingly the matter attained finality in the absence of any appeal filed by the applicant in this regard. They have, therefore, contended that it is not relevant at this point of time for the applicant to have raised the matter relating to the Suit when it has already been decided and the proceedings have attained finality. They have vehemently denied that the decree and the judgement of the Civil Court was a nullity and void ab initio or that the applicant is not bound by the findings of the Civil Court. The main reason given for this position taken by the respondent is that the TCAR had not been notified for being amenable to the jurisdiction of this Tribunal when the Suit had been instituted in the Civil Court and, therefore, the findings of the Civil Court had attained finality, the applicant not preferring any appeal against the orders in the meantime. Moreover, they have also taken a position that the Tribunal is not the appropriate forum to assail the findings of the Civil Court. In their opinion, the Civil Court had the necessary jurisdiction to hear and adjudicate

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the matter. They have categorically denied that the amount deducted from the pension of the applicant was illegal, arbitrary, voidable or contrary to the provisions of CCS Pension Rules and that the deducted amount is liable to be refunded to the applicant with interest.

7. The respondents in their written submissions filed with the Tribunal subsequently have, while reiterating some of the submissions made earlier, submitted that the applicant had been allotted Type IV quarter at Krishni Niketan, Paschim Vihar, New Delhi while he was employed as a Scientist in the Institute and that the Rules regarding allotment of the said quarters stipulate that continuation of the quarter by the allottee beyond the period stipulated under the said Rules shall be illegal and unauthorised and the occupants shall be liable to pay damage rent. They have further submitted that, instead of vacating the said staff quarter, he continued to retain the same beyond the period permissible. However, he did not pay damage rent, water charges and garbage charges despite repeated reminders. It appears that, while the respondents withheld the dearness and interim reliefs payable to the applicant on pension, they also filed a Civil Suit for possession and recovery against the applicant.

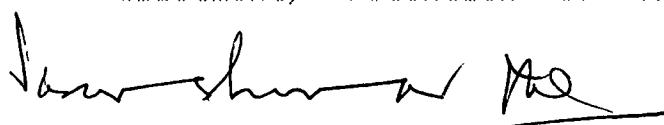
8. As has already been mentioned above, the said Suit was decreed by the Civil Court for an amount of Rs. 9,621/- alongwith cost and interest and the applicant was directed to vacate the quarter within four months. As the Civil Court had directed that the decree would not be executed insofar as the possession of the quarter was concerned

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before 5.1.1998, the damage charges continued to accumulate during the pendency of the case, as the applicant continued to be in unauthorised occupation of the quarter. They have also taken the position that they had not been precluded from charging the damage charges, water charges and garbage charges as per orders issued by the Government of India from time to time and accordingly they issued the impugned Office Memorandum dated 23.1.1998 whereby an amount of Rs. 2,51,949/- was recovered from his retirement dues and the balance was paid to him. In their view, there is no illegality in the respondents having issued the said OM. They have reiterated that the judgement of the Civil Court having attained finality, the applicant cannot plead contrary to what has been held in the judgement so far as recovery of damage charges is concerned. They have further submitted that the arrears to which the applicant was entitled have since been paid to him.

9. I have given careful consideration to the rival contentions of the parties and hold a view that the issues which have already been adjudicated by a Civil Court need not be gone into by this Tribunal. Accordingly, the matter relating to the recovery of damage charges stands settled. As regards the action of the respondents in issuing the impugned OM deducting the decreed amount, damage charges, interest on the decreed amount as well as the cost of the Suit, (three of the said items having been decreed by the Civil Court) the Tribunal is not the appellate forum and as a result of which they have already attained finality. It is felt that the applicant did not keep the Rules regarding allotment/ retention of the Institute's quarter in mind



while retaining the same beyond the period permissible under the said Rules and as a result he avoidably became liable for payment of damage charges. While it has been noted that the applicant passed through severe personal problems due to the sad demise of his close relations, as referred to above, and that might have aggravated his financial as well as personal positions, compelling him to stay in the quarter beyond the permissible period, it is not clear as to why he could not comply with the rules. Apparently, he has himself created conditions unfavourable to him in the shape of having to pay damage rent in addition to what have been decreed by the Civil Court.

10. As regards the claim of the applicant that damage rent and the other dues could not have been deducted from his retirement dues/pensionary benefits, it has been observed that the cases which have been relied upon by him have varying facts and are not ex-facie relevant to his case. He has not clearly stated whether he was not liable to pay the damage rent and other dues as mentioned in the impugned OM of the respondents. It is, therefore, difficult to appreciate his submissions that the respondents were not within their rights to recover the said amounts from the pensionary benefits that were yet to be released by the respondents. The respondents have, however, not clarified their position with regard to arrears of salary/leave salary to the tune of Rs.10,000/- which the applicant has claimed should have been paid to him. It is possible that this amount has also been adjusted by the respondents while recovering the damage rent etc. from the applicant.

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However, the factual position would need to be clarified to the applicant by the respondents.

11. Incidentally, I do not find any submissions made by either of the parties as to whether there was a provision for considering relaxation being granted to the applicant for waiving the damage rent for the reasons as given by the applicant in his submissions particularly the ones relating to his personal hardships resulting from the sad demise of his son-in-law and wife causing him to retain the quarter beyond the permissible period, and if so, the applicant had approached the authorities (respondents) concerned seeking the said relaxation and whether the respondents considered the same before issuing the impugned OM. Keeping in view the gravity of the hardship which the applicant has suffered due to bereavement of his close relations and the personal tragedy involved, though it has hardly much to do with following the Rules on the subject so far as the applicant is concerned, I am inclined to feel that the subject matter of the case could have been dealt with from humanitarian angle also before disposing of the matter as has been done by the respondents.

12. Thus, having regard to the facts and the background of the case, the applicant is given liberty to approach the respondents to see and consider whether there is any room for relaxing the provisions relating to retention of the quarter beyond the permissible period and whether his case could be given a fresh consideration by them under the said provisions after completing the necessary formalities, if any, under the said provisions. The respondents shall, on

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having been approached by the applicant, reconsider the matter and dispose it of appropriately by issuing a reasoned and speaking order within two months of their thus having been approached.

13. The OA stands disposed of accordingly. No costs.



(SARWESHWAR JHA)
MEMBER (A)

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