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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.326/2002

New Delhi, this the 2nd day of January, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman  
Hon'ble Shri V. Srikantan, Member(A)

Aman Singh  
H.10/1, Durgapur Extn.  
Loni Road, Shahdara, Delhi-93 .. Applicant  
(Shri Sant Lal, Advocate)

versus

1. Director General  
Employees State Insurance Corporation  
Panchdeep Bhawan  
Kotla Road, New Delhi  
2. Director (Medical)  
ESI Hospital Complex  
Bansaidarapur, Ring Road  
New Delhi-110015 .. Respondents  
(Shri R.P. Aggarwal, Advocate)

ORDER(oral)

Shri Justice V.S. Aggarwal

Present none.

2. By virtue of the present application, applicant Shri Aman Singh seeks to quash the order dated 7.1.2002, copy of which is placed at Annexure A-3. By virtue of this order, recovery of Rs.9186 has been directed to be recovered from the applicant. Some of the relevant facts are that applicant has been functioning as a Pharmacist at ESI Dispensary, Bhola Nath Nagar, New Delhi w.e.f. 6.2.97. With respect to misconduct/misbehaviour certain articles of charge have been served on him, which include that he had failed to perform his duty properly and to hire appropriate mode of vehicle/transport to carry monthly indent of drugs from Zonal Store (East) of IG Hospital, Jhilmil to ESI Dispensary, Bhola Nath Nagar.

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He also failed to take adequate measures and reflected gross negligence in safe delivery of drugs to the dispensary leading to loss of Rs.30411 being the cost of missing drugs.

3. After the enquiry, the disciplinary authority imposed penalty of withholding of two increments without cumulative effect by order dated 9.3.2001. The appeal filed by the applicant has been dismissed by order dated 24.8.2001. Thereafter the impugned order was passed, which reads as under:

"Sir,

I am to inform you that Hqrs. Office has ordered that a sum of Rs.9,186/- not paid by Insurance Company in above case be recovered in ten equal monthly instalments from Shri Aman Singh, Pharmacist immediately.

You are requested to make the recovery of Rs.9,186/- from the salary of Shri Aman Singh, Pharmacist w.e.f. January 2002 in ten monthly instalments e.g. nine instalments @ Rs.918/- per month and tenth instalment @ Rs.924/- under intimation to this office.

Please acknowledge receipt."

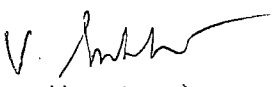
4. It appears that the impugned order has been passed without issuing show cause notice in this regard and calling for applicant's explanation. At this stage, we deem it necessary to mention that directing recovery of the amount which could be recovered for dereliction of duty necessarily needs to be a part of disciplinary proceedings referred to above. However the order in question entails civil consequences. Reply filed by

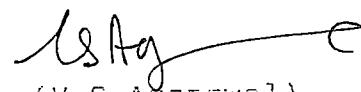
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respondents indicates that no such show cause notice before directing recovery of the impugned amount has been served on the applicant. Once the orders entails civil consequences, in accordance with recognised principles of law observed in all civilised countries, it would only be appropriate that explanation of the applicant should have been called. Thereupon, after due consideration, appropriate order in this regard should have been passed. The same has not been done.

5. Necessarily, therefore, the impugned order is quashed. It is however made clear that if respondents so feel proper they may in this regard issue show cause notice and then after picking up the loose thread start taking necessary fresh action.

  
(V.Srikantan)  
Member(A)

  
(V.S. Aggarwal)  
Chairman

/gtv/