

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 10th day of December 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/00980/2019

Dr. A.K. Prakash, age about 57 years, presently working as Addl. Chief Medical Supdt. N.E. Railway, Allahabad City, Varanasi Division, R/o M-48, Type IV, Rambagh Railway Colony, Allahabad City, Allahabad.

.....Applicant

By Advocate: Shri Shiv Kumar/Shri Sudama Ram

Versus

1. Union of India through General Manager, North Eastern Railway, Head Quarters Office, Gorakhpur.
2. Divisional Railway Manager (Personnel), N.E. Railway, Lahartara, DRM's Office, Varanasi.
3. DEE (General)/Sr. Divisional Electrical Engineer/North Eastern Railway, DRM's Office, Varanasi.
4. Dy. Chief Vigilance Officer (Electrical)/G.M. (Vig.) North Eastern Railway, Gorakhpur.
5. Shri Jai Prakash Verma, Senior Section Engineer, Electric General , North Eastern Railway, Allahabad City.

.....Respondents

By Advocate: Shri Rishi Kumar

ORDER

1. The present O.A. has been filed by applicant Dr. A.K. Prakash seeking following reliefs:-

“(i) The Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order for penal recovery of Rs.1045980/- imposed by Divisional Electrical Engineer (General)/N.E. Railway, Varanasi vide impugned order dated 30.8.2018 (Annexure A-1) and direct the respondents to refund the illegally recovered penal amount of electric charges i.e. Rs.10000/- per month from Sept. 2018 onward to till date against total penalty of electric charges of Rs. 1045980/- (ten lakhs forty five thousands nine hundred eighty).

- (ii) **The Hon'ble Tribunal may also graciously be pleased to direct the respondents to ascertain the assessment of penalty of electric charges by conducting proper enquiry associating the applicant keeping in view of the electric charges already recovered from June 2016 to August 2018.**
- (iii) **Any other suitable order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case, be issued.**
- (iv) **Award cost in favour of the applicant".**

2. The brief facts of the case are that applicant was allotted Railway Officer's Bungalow No. M-48, Rambagh Railway Colony, Allahabad in 2007 and on advice of doctor for giving Air Conditioning facility to daughter of applicant, he installed an A.C. in the said bungalow and its connection was given by Senior Section Engineer connecting the same with the existing meter installed in aforementioned Bungalow M-48. It is the further case of applicant that his Bungalow was checked by the Vigilance Team and it is alleged that applicant has installed one A.C. in his allotted Bungalow without permission. It is also the case of applicant is that the meter was found to be defective and now the respondents started recovery of Rs.1045980/- @ Rs.10000/- per month from his salary as arrears of penalty of electricity charges for which no show cause notice was issued and no enquiry was conducted before the recovery of the penal electric charges. Hence, the present O.A.

3. In the counter reply, the respondents have submitted that during the surprise inspection by a vigilance team of N.E. Railway, Gorakhpur, it was found that A.C. was installed and in running condition and it was not connected to electric meter and bypassing the meter, the A.C. lines was directly connected to overhead electricity lines and applicant had not taken permission from competent authority to install

the Air Conditioner. Respondents have further submitted that applicant was not paying the bills of A.C. use and for such act of applicant, department imposed recovery of Rs.10,45,980/- as per Rule which was to be deducted in instalment of Rs.10000/- per month from the salary bill of the applicant. It is further submitted that representation of the applicant dated 19.8.2019 is on record which is similar to representation dated 01.04.2019 and 11.09.2019 which is being considered by the competent authority for revision of the electricity charges and penalties and further action is being done as per extent rules.

4. I have heard and considered the arguments of learned counsel for the parties and gone through the material available on record.
5. The dispute in the present O.A. boils down to the question as to whether order for deducting the amount from the monthly pay of the applicant was passed without providing opportunity of hearing to the petitioner and thereby violating principle of natural justice.
6. Learned counsel for the applicant submitted that the deduction from his pay has been ordered by the respondents without notice and without providing opportunity of being heard and that it was incumbent upon the respondents to give him an opportunity of being heard against the deduction so, ordered by way of impugned order which entail to visit him with civil consequences. Learned Counsel for applicant placed reliance upon ***Brijendra Kumar Tripathi v/s State of U.P., 2019 (4) ADJ 690 (LB) and S.N.Vishwakarma v/s State of UP, 2006 AA C.J. 1062*** in support of his arguments and prays that the impugned order be quashed.

7. On the other hand, learned counsel for respondents submitted that during the raid of applicant allotted bungalow, it was discovered by the Vigilance team of the Railways that applicant had installed a air conditioner in his house and using it bypassing the electricity meter and that the seal of meter was broken and therefore, order for recovery was imposed upon the applicant for the electricity consumed by him in running of the Air conditioner and that the representation of the applicant against the penal recovery of the electric charges is being considered by the competent authority. During the course of arguments, learned counsel for respondents further argued that the inquiry has been initiated against other employees who colluded with the applicant in misuse of the electricity and submitted that keeping in view the illegal actions of the applicant, the O.A. be dismissed.
8. The fact remain uncontroverted that the impugned order has been passed without giving an opportunity of being heard to the applicant against the allegation of misuse of electricity and the recovery of its cost by way of deduction from the salary.
9. The question is, can the respondents be allowed to make the recovery from the applicant in violation of principles of natural justice. The respondents are under obligation to at least following the principles of natural justice before issuing any order contrary to interest of the applicant as the same visits him with civil consequences.
10. The Hon'ble Apex Court in ***K.I. Shephard v/s Union of India, AIR 1988 SC 686***, held that even administrative acts have to be in accordance with natural justice if they have civil consequences. It was also held

that natural justice has various facets and acting fairly is one of them. (Read with advantage ***Indu Bhushan v/s State of Jharkhand, 2010 (11) SCC 278. Going further, Hon'ble Apex Court in Chamoli District Co-operative Bank Ltd. v/s Raghunath, AIR 2016 SC 2510*** held that even if rule / regulation does not talk of the following the principles of natural justice, even then law requires it to be followed. Thus, the impugned order cannot be sustained on the touchstone of principles of natural justice.

11. In the instant case, the impugned order dated 30.8.2018 (Annexure – A1) has been passed in violation of the principles of natural justice i.e. without hearing the applicant on the entire matter which is alleged against the applicant. Therefore, the impugned order is set aside. However, respondents are at liberty to proceed under law against the applicant regarding the theft of electricity alleged against him. However, the amount of deduction made from the salary of applicant be kept in proper Accounting Head of the department and its retention or refund by the department shall be in accordance with the result of proceeding, if any, by the department against the applicant or the disposal of the representations filed by the applicant, which shall be disposed off by the respondent/competent authority at the earliest time. O.A. is accordingly disposed off. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

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