

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P. NO. 227/2003

in

O.A. NO.1467/1999.

This the 16th day of February, 2004

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HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Vishnu Prakash Sharma (Deceased)
through Smt. Sudesh Sharma W/O late
Vishnu Prakash Sharma (Legal Representative),
R/O 20B/85B, Tilak Nagar,
New Delhi-110018.

... Applicant

(By Shri Sant Lal, Advocate)

-versus-

1. Smt. Beenu Gain, Secretary,
M/O Agriculture, Deptt. of
Dairing & Animal Husbandry,
Krishi Bhawan,
New Delhi-110001.
2. Shri Vimal Kumar Dubey,
General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008.
3. Shri S.M.Gupta,
Dy. General Manager (Admn.),
Delhi Milk Scheme, West Patel Nagar,
New Delhi-110008.

... Respondents

(By Shri S.M.Arif, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, V.C.(A) :

OA No.1477/1999 was decided by order dated 5.6.2002
(Annexure P-I) with the following observations/directions
to the respondents :

"16. Under normal circumstances, this
OA would have been remitted to the
disciplinary authority for conducting the
enquiry afresh. The same has now become
irrelevant as the Charged Officer is no more.
Still justice and fair play demand that the
respondents are directed to consider the case

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once again, only keeping in mind what has been proved i.e. shortage/loss of 2367.8 kgs of Ghee from the store, which would at worst amount to negligence and consider imposition of penalty less harsh than dismissal or removal so that the retirement dues payable to the legal representatives of the deceased applicant would not be totally denied.

17. Incidentally, we also observe that the applicant's subsistence allowance, during suspension, has not been paid from January 1995, while the LRs have been directed to pay the arrears of licence fee for the official accommodation. Respondents version that payment of subsistence allowance was stopped, as the applicant's whereabouts were not known, has no relevance, once he has come back and appeared before the disciplinary authority in August 1998, holding back of the subsistence allowance was improper and the amount has to be released, subject of course to adjustment of any amount due from the applicant/LRs.

18. In the above view of the matter, the application succeeds to a substantial extent and is accordingly disposed of. The orders of dated 12.8.98, 15.12.98 and 21.5.99 passed respectively by the Disciplinary Authority, are quashed and set aside. The matter is remitted to the disciplinary authority for consideration and passing of a fresh order, if felt needed, imposing on the applicant a penalty less harsher than dismissal or removal, keeping in mind only the proved facts - i.e. the loss/shortage of ghee from the storage room and keeping out of consideration the applicant's "absconding or desertion". This exercise should be completed within three months from the date of receipt of a copy of this order. While doing so, the respondents shall also in fairness consider the question of release of the subsistence allowance of the applicant which has been held back, subject of course to the adjustment/recovery of any amount due from the applicant or his LRs. No costs."

2. The learned counsel of applicant also drew our attention to order dated 18.9.2003 relating to consideration of the question of the release of subsistence allowance of applicant which had been held back and about which the concerned authority was directed to pass an appropriate order within two months. He

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pointed out that respondents have not passed any orders in compliance of this direction, however, they have passed orders dated 20.7.2002 (Annexure P-2) in compliance of directions contained in order dated 5.6.2002. These orders state that late Shri V.P.Sharma would stand compulsorily retired from service w.e.f. 12.8.1998 and would be paid subsistence allowance at the rate of 25% w.e.f. 26.10.1995 to 11.8.1998. It has further been ordered that the period of suspension, i.e., 24.8.1994 to 11.8.1998 would be treated as not spent on duty for any purpose, and further that he would be paid full compensation pension and retirement gratuity after recovery of Government dues amounting to Rs.2.13 lakhs plus any other dues if pending or outstanding against him.

3. The learned counsel of applicant stated that the concerned Government official is no more and his LRs are contesting the claims. He pointed out that while respondents have not considered the question of release of applicant's subsistence allowance and have kept the subsistence allowance of the applicant at the initial 25% level, they could not have effected recovery of an amount of Rs.2.13 lakhs, and that this recovery does not come within the definition of "Government dues".

4. On the other hand, Shri S.M.Arif, the learned counsel of respondents stated that as per observations of the Tribunal in its order dated 5.6.2002, the subsistence allowance could be released "subject of course to adjustment of any amount due from the applicant/LRs".

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The learned counsel stated that respondents have, as such, recovered the amount of Rs.2.13 lakhs from the compensation pension and retirement gratuity of the deceased employee.

5. Rule 71(3) of the CCS (Pension) Rules, 1972 defines "Government dues" as including :

- "(a) dues pertaining to Government accommodation including arrears of licence fee, if any;
- (b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)."

The learned counsel of applicant stated that as per statement submitted on behalf of respondents, they have effected recoveries amounting to Rs.2.13 lakhs from DCRG, arrears of pension/family pension, leave encashment, CGEGIS and subsistence allowance. They have made recovery of Rs.30,246/- from the subsistence allowance as well. He maintained that these recoveries do not relate to items included in the Government dues and that procedure for recovery of dues other than dues pertaining to Government accommodation is described in rule 73 of the Rules *ibid* which has not been resorted to by the respondents.

6. In the Tribunal's orders it had been directed that subsistence allowance of the applicant had to be released subject to adjustment of any amount due from the

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applicant/LRs. Respondents could have recovered any amount due and even an amount relating to Government dues as defined in Rule 71 ibid only from the subsistence allowance in terms of the Tribunal's orders. Respondents seem to have recovered various dues from items other than subsistence allowance even which is improper. The learned counsel for the respondents assured that they would pass orders relating to consideration of the question of release of subsistence allowance in terms of Tribunal's order dated 18.9.2003 within a period of one week.

7. Respondents could not have adjusted/recovered dues from items other than subsistence allowance. They are directed to pass speaking orders relating to the question of release of subsistence allowance which had been held back within a period of one week from the date of communication of these orders. The amount recovered from items other than subsistence allowance is disobedience of directions of this Court. This amount shall be refunded to the applicant within a period of one month of receipt of these orders, however, respondents would be within their rights to effect such a recovery from the applicant by resorting to due process as per rules and law.

8. If respondents do not implement orders dated 5.6.2002 read with the present orders within the time limits now set up, applicant shall have liberty to revive the contempt petition, which is disposed of as above.

S. Raju

(Shanker Raju)

Member (J)

/as/

V. K. Majotra

(V. K. Majotra)

Vice-Chairman (A)