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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 456/87

DECIDED ON : 28.01.1993

Jai Prakash Singh

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Applicant

Vs.

Union of India & Ors.

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Respondents

CORAM : THE HON'BLE MR. P. C. JAIN, MEMBER (A)

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

Applicant present in person

Shri P. P. Khurana, Counsel for Respondents

J U D G M E N T (ORAL)

Hon'ble Shri P. C. Jain, Member (A) :

While the applicant was working as Sub Post Master, Nagina, District Bijnor, he was served with a chargesheet under Rule 16 of C.C.S. (C.C.A.) Rules, 1965 in connection with the alleged irregular/unauthorised payment of some allowances to one Shri Babu Ram for the period from 15.2.1983 to 31.10.1984. The applicant participated in the inquiry in which an order for recovery of Rs.1537.50 from him was ordered vide Office Memo dated 6.6.1985. His appeal filed against this order was rejected. The applicant retired from service on 30.6.1985. It is his contention that the entire amount of Rs.1537.50 was ordered to be recovered from the amount of leave encashment which became due to him on account of encashment of leave to his credit on the date of

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retirement. However, the respondents in their reply have stated that one instalment was ordered to be recovered from the pay of June, 1985 and the ¹⁶rest amount of Rs.1337.50 was ordered to be recovered from the amount of leave encashment.

2. It is in the above background that the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 in which he has prayed for quashing the order of punishment as also of recovery as well as the appellate order by which his appeal was rejected. He has also prayed for that the amount of Rs.1537.50 wrongly recovered from the applicant's leave salary be refunded to him. Interest at the rate of 17% per annum on the above amount of Rs.1537.50 from 1.7.1985 to the actual date of payment has also been prayed for.

3. The respondents have contested the OA by filing their reply. We have heard the applicant who appeared in person as also the learned counsel for the respondents. We have also perused the written arguments submitted earlier by the applicant. The first contention of the applicant is that as respondent No.3 was displeased with the applicant, he made out a case of irregular practice of substitute in place of extra departmental employee. The fact, however, remains that it is not in dispute that the

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payment made by the applicant to one Shri Babu Ram for the work could not have been made to him as Shri Babu Ram did not do that work and the applicant was responsible under the rules for all payments made by him. Therefore, the basic ground of punishment is there and the penalty imposed on the applicant cannot be said to be illegal or unjustified. The contention of the applicant that as he had joined at Nagina only on 16.1.1983 the allowance paid to Shri Babu Ram for 15.1.1983 could not have been recovered from him. He does not deny that the allowance for 15.1.1983 was also paid by him. In view of this, this contention of the applicant does not have any force.

4. The next main contention of the applicant is that if any recovery was to be made from him after his retirement, the order could have been passed only after taking the approval of the competent authority which has not been done in this case. This contention is misconcieved because the disciplinary proceedings against him were initiated while he was in service and the order of punishment was also passed before he retired from service. Thus, it is not a case where the disciplinary proceedings initiated while in service are continued or deemed to have continued after retirement and punishment of withholding the pension in whole or in part is said to be imposed.

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5. Another contention of the applicant is that in accordance with Government of India instruction No. 18 under Rule 11 of the C.C.S. (C.C.A.) Rules, 1965, particularly in sub-para (c) the punishment order could not have been passed on a few days before his retirement. The relevant sub-para *ibid*, as quoted by the applicant on page 10 of the OA, is reproduced below :-

"(c) In the case of officials due to retire shortly :-

In a case of recovery of loss imposed on a Government servant as a measure of penalty, the recovery from pay should be affected in the normal course. If during the course of recovery, the official retires from service and a balance is still outstanding for recovery, the amount so outstanding cannot be adjusted against the gratuity without following the procedure laid down in Art. 351 A, C.S.Rs. In case where a Government servant is due to retire shortly and the amount of loss caused by a Government servant cannot be recovered in full because of his impending retirement, the final punishment order should not be passed and the case referred to the Directorate for initiation of action under Article 351-A of the C.S.Rs. along with the record of disciplinary proceedings."

6. A perusal of the above shows that this instruction has been issued with a view to avoiding the necessity of having ^{the loss} recovered the amount after the retirement of the Government servant from the amount of DCRG admissible to him. In the case before us, as

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already stated above, the amount was recovered from the amount which became due to the applicant on account of encashment of the earned leave in balance to his credit on the date of retirement. Accordingly, the above instruction is not really relevant. Moreover, sub-rule (3) of rule 39 of the C.C.S. (Leave) Rules, 1972 provides as below :-

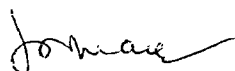
(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

7. Though the case before us is not a case of first withholding the amount/encashment due to the applicant, yet it is clear from the above provision that the Government dues, if any, can be recovered from the amount of leave encashment. From the above rule it is also clear that the amount which may be ordered to be recovered from a Government servant in pursuance of a disciplinary/criminal proceedings can also be recovered. Thus, there is nothing before us

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to suggest that unrecovered amount of the sum ordered to be recovered from the applicant in pursuance of the disciplinary proceedings could not have been recovered from the amount of leave encashment which was otherwise due to the applicant.

8. In the light of the foregoing discussion, we see no justification for finding fault with the action of the respondents in recovering the amount as per the order of punishment either from his pay for the month of June, 1985 and/or from the amount of leave encashment which was otherwise due to the applicant. This OA is accordingly dismissed leaving the parties to bear their own costs.



(J. P. Sharma)
Member (J)



(P. C. Jain)
Member (A)

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