

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 40/93

New Delhi, this the 26th day of May, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Shri Nihal Singh s/o late Harphool Singh,
R/o village and post office Kheri Jat,
Tehsil Jhajar, District Rohtak (Haryana)...Applicant

(By Advocate: Shri K.L.Sharma)

Versus

1. General Officer Commanding-in-Chief,
Western Command,
Chandimandir.
2. The Engineer-in-Chief,
Engineer-in-Chief Branch,
Army Headquarter, Kashmir House,
DHQ New Delhi.
3. Garrison Engineer,
Water Supply & Air Conditioning,
Delhi Cantt. ..Respondents

(By Advocate: Shri A.K.Bhardwaj)

JUDGEMENT

By Hon'ble Shri T.N.Bhat, Member (J)

We have heard at length the learned counsel for the parties and, for reasons that follow, we are convinced that this OA has to be partly allowed.

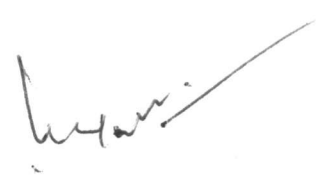
2. This OA is directed against the confidential letter dated 14.3.1992 issued by R-3 directing the applicant to deposit a sum of Rs. 15,000/- in the State Bank of India, Delhi Cantt. This action has been taken by R-3 in pursuance to the directions of the GOC-in-C and the Engineer-in-Chief on the basis of some Court of enquiry allegedly held to investigate the circumstances leading to certain deficiency in stocks of steel and cement.

By order
26.5.99.

(24)

3. It appears that the alleged deficiency in the store was discovered some time in the month of November, 1989 and a court of inquiry was held by the GOC-in-C, Western Command. It further appears that a total deficiency of the value of Rs. 42,228.11 was found and the Garrison Engineer, Assistant Garrison Engineer, Superintendent (B/R), and Store Keeper Gr.II, the applicant herein, were blamed for the deficiency. An order was accordingly made by GOC-in-C that the recovery from the applicant and the other officials should be made. The applicant was accordingly directed to deposit a sum of Rs. 15,000/- and odd. There was an accumulated amount due to the applicant totalling Rs. 35,005/- which has not been paid to the applicant and the condition placed by the respondents is that he first deposit the penal recovery of amount Rs. 15,000/-.

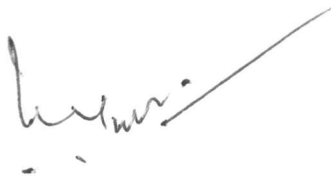
4. It is not disputed that no departmental enquiry as envisaged by CCS (CCA) Rules was held. The punishment of recovery of any amount could have been awarded only after a regular enquiry was held in which the applicant was also allowed to participate. That could be done only after a regular chargesheet was served upon the applicant and he was given adequate opportunity to defend himself. A summary order even though passed by a higher functionary of the Army like GOC-in-C could not be a substitute for a valid order passed after holding an enquiry under Rule 14 of the CCS (CCA) Rules. It is interesting to note that the respondents themselves had decided to initiate action under Rule 14 of the aforesaid Rules but without holding such an enquiry the impugned orders for recovering an amount of Rs. 15,000/- from the applicant was passed. Under no law or rules can such an order be defended.



5. The learned counsel for the respondents, however, takes us through the departmental records and states that although a decision for initiating the regular enquiry under CCS (CCA) Rules had been taken the applicant retired in the meantime and as such enquiry could not be held though the respondents later took a decision to initiate enquiry under Rule 9 of the CCS (Pension) Rules, for which the sanction of the President of India was required.

6. While conceding that the respondents have every right to initiate a regular enquiry under the CCS (Pension) Rules we must hold that the recovery of Rs. 15,000/- from the applicant without such enquiry would not be legally justifiable. The respondents are at liberty to initiate an enquiry against the applicant in accordance with law. But so far as the post retiral benefits of the applicant are concerned no amount on the basis of the alleged recovery can be withheld from that amount.

7. The learned counsel for the respondents also takes the plea that this OA suffers from multiplicity of reliefs. We have carefully gone through the OA and find that the main relief asked by the applicant is that his credit money amounting to Rs. 35,005/- should be paid to him without recovering or withholding any amount from the same. The relief prayed for in sub para (d) of para 8 of the OA for directing the respondents not to make penal recovery of Rs. 15,000/- from the applicant is a consequential relief of the main relief.




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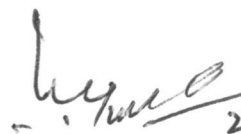
8. As regards the relief claimed in sub para (e) for a direction to the respondents not to initiate any enquiry against the applicant, can certainly not be granted. As already mentioned respondents have every right to initiate disciplinary action permissible under law. But the respondents cannot withhold or recover any amount from the applicant as a punitive measure.

9. For the foregoing reasons we partly allow this Oa and direct the respondents to pay to the applicant the credit money without withholding the amount of Rs. 15,000/- from the same or asking the applicant to deposit the aforesaid amount. The respondents are directed to make payment of the full amount due to the applicant within two months from the date of receipt of a copy of this order.

10. As regards the applicant's prayer for a direction to the respondents not to initiate any disciplinary action, the said prayer is hereby rejected.

11. The OA is disposed of in terms of the above order, but without any order as to costs. The departmental records furnished by the learned counsel for the respondents shall be returned to him forthwith.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)
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