

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No. 1058/93

New Delhi, this the 2nd day of September, 1998

HON'BLE SHRI N.SAHU, MEMBER(A)  
HON'BLE DR.A.VEDAVALLI, MEMBER(J)

(10)

1. Ved Prakash S/o Shri Mulki Ram, aged about 40 years working as Beldar under Executive Engineer (Flood Control & Irrigation), Govt. of NCT of Delhi, Khyber Pass Delhi & resident of 87, Transit Camp, Raghbir Nagar, New Delhi.
2. Ram Pal s/o Shri Chhattar Singh, aged about 34 years, working as Beldar (M/R) under Executive Engineer (Flood Control & Irrigation), Delhi Admn. Khyber Pass, Delhi & resident of B-76, Shiv Ram Park, Nangloi, Delhi-110041. ....Applicants

(By Advocate: Shri P.L.Mimroth)

Versus

1. The Chief Secretary, Govt. of National Capital Territory of Delhi, Alipur Road, Delhi.
2. The Secretary (Flood), Govt. of NCT of Delhi, Delhi.
3. The Executive Engineer (MI Division) Govt. of NCT of Delhi, Khyber Pass, Delhi. ....Respondents

(By Advocate: None)

O R D E R (ORAL)

BY HON'BLE SHRI N.SAHU, MEMBER(A)

Heard Shri P.L.Mimroth, 1d. counsel for applicant. None is present for the respondents. We find that none was present on 24.8.98 also when the case was called. However, we notice that even before registry, only one Shri S.K.Sharma, head clerk, deptt. representative appeared on behalf of respondents. No other Advocate appeared.

*Shri P.L. Mimroth*

(11)

2. This O.A. is directed against the penalty order of respondent no.3 dated 14.5.92 ~~and~~ ordering recovery of the value of stolen goods. We have gone through the pleadings on record and perused the counter reply filed. We notice that an appeal was filed under Rule 23 of the CCS (CCA) Rules, 1965 addressed to the Secretary(Flood), Delhi Administration who is impleaded in this OA as respondent no.2. This appeal is dated 27.3.93. An earlier statutory appeal was also filed on 18.9.92. We are informed, both through the rejoinder as well as orally during the course of hearing by Sh. Mimroth, that this statutory appeal has not been disposed of. As an important alternative statutory remedy has not been exhausted, it will be inappropriate for us to hear this OA on merits and give a finding on the same. The law on the subject has been conclusively established by the decision of the Full Bench in Parmeshwar Rao's case (Full Bench, Vol.II page 250) that the OA cannot be admitted without the applicant exhausting the alternative remedy. This law laid down by the Hon'ble Full Bench is supported by the decisions in the following cases:-

1. Sital Singh v. Union of India and others-1989 (1) ATLT 150 = 1989 (2) SLJ 414 (CAT)
2. Jnananda Sarma Pathak IPS vs. Union of India and others - 1987 (2) ATC 657 = 1987 (1) SLJ 104 (CAT)
3. Ram and Shyam Company v. State of Haryana and others - AIR 1985 SC 1147
4. Titaghur Paper Mills Co. Ltd. and another v. State of Orissa and others - AIR 1983 SC 603
5. S.S.Rathore v. State of M.P. - AIR 1990 SC 10

*Parasindhu*

(2)

6. Karnal Leather Karamchari Sanghatan v. Liberty Footwear Company and others - 1990 (1) SLJ 108
7. P.P.Biswas v. State of West Bengal - 1980(1) SLR 611
8. Dalip Kumar Roy v. Union of India - 1986 (2) SLJ 177
9. Re Putta Ranganayakulu and others - AIR 1956 A.P. 161
10. Kailash Chandra v. Union of India - AIR 1961 SC 1346
11. K.J.C.Bose v. Government of India and another - ATR 1986 CAT 169 = 1986(1) SLJ 52

3. As we hold that it is premature to hear this OA on merits at this stage, we direct respondent no.2 to dispose of the appeal within a period of 6 weeks from the date of receipt of a copy of this order. We are pained to remind him that a statutory appeal has remained undisposed of for a period of roughly six years denying and depriving elementary justice to the applicant. We also direct respondent no.2 to consider the following two aspects which were raised by Shri Mimroth,1d. counsel for applicant before us.

4. The first point relates to the jurisdiction of the disciplinary authority. He has drawn our attention to the notification of the Ministry of Home Affairs No. SRO-609 dated 28.2.57 in which it is stated that the CCS (CCA) Rules, 1957 do not apply to certain categories which are excluded from its application. Amongst the excluded categories are daily wage staff, daily wage workman and locally recruited staff. We would direct the appellate authority to apply his mind on this important question before disposing of the appeal.

*Parasvinh*

(3)

5. The second point relates to the orders of this court dated 28.5.93 by which the court directed that the total recovery to be made from Shri Ved Prakash, the applicant, shall not exceed the aggregate of one year's basic pay. We are informed by Shri Mimroth that the recovery far exceeded this limit and in fact, the entire amount was recovered. In support of his claim on the ceiling to the recovery, he had drawn our attention to Govt. of India instruction no.23 under Rule 11 para (c) of CCS (CCA) Rules which puts a ceiling of the total amount that can be recovered from any Govt. employee to make good the pecuniary loss suffered by the Govt. This court has confined the directions of ceiling limit to the case of applicant only. We would direct the appellate authority to examine this aspect also and examine as to how inspite of the directions of the court, recovery of an amount in excess of the ceiling limit has been done.

6. The order of the appellate authority shall be a speaking and reasoned order and shall be passed only after hearing the applicant.

7. O.A. is disposed of as above. No costs.

8. Considering the circumstances in which the applicant has been placed and the long time which respondent no.2 has taken in disposal of statutory appeal, we give liberty to the applicant to revive the O.A. if he is so advised. He is also free to file a fresh O.A. if he intends to challenge the appellate order and raise fresh claims.

A. Vedavalli  
( DR.A. VEDAVALLI )  
MEMBER(J)

Narayan Sahai  
( N. SAHU )  
MEMBER(A)

/mishra/