

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 13th day of April, 2011.

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A.

ORIGINAL APPLICATION NO. 1548 OF 2004

Chottey Lal, S/o Barsati, R/o Village Sikari Meera, Post Parsa Udaykar,
District- Gonda .

Advocate for applicant : Sri Pawan KishorApplicant

V E R S U S

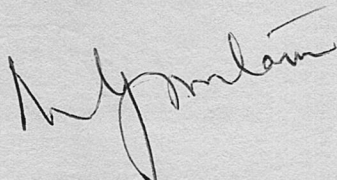
1. Union of India through General Manager, N.E.R , Gorakhpur.
2. Deputy Chief Engineer, Constructions, North Eastern Railways, Lucknow.
3. Section Engineer/Rail Track, Northh Eastern Railways, Rudrapur City.

.....Respondents

Advocate for the respondents : Sri K.P. Singh

O R D E R

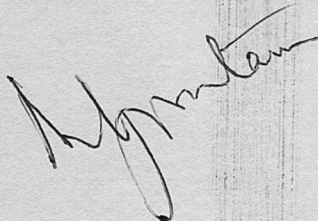
The applicant and one Sri Sachidanand Mishra were posted as Chowkidar at the Godown, Gyanpur Road Station. A theft took place in godown on 11/12.08.1993. Both were given a show cause notice dated 01.08.1995. The applicant replied to it on 01.08.1995 (Annexure-1 of O.A) and Sri Sachidanand Mishra submitted his reply on 13.08.1993 (Annexure -2 of O.A). In its reply Sri Sachidanand Mishra has stated that at the time of theft he was on duty from 06 in the evening to 06 of morning whereas the duty of the applicant was from 06 in the morning to 06 in the evening and, therefore, the applicant could not be held responsible. He himself accepted the responsibility and gave statement. After an enquiry vide order dated 24.06.1995 penalty of withholding 35 months increment was passed (Annexure -3 of O.A). Applicant has also



filed pay slip dated 12.02.1998 (Annexure-4 of O.A) which states that increments were stopped for 35 months. After some considerable lapse of time on 26.03.2003 an office note was issued for imposing second punishment against the applicant by making deduction from the salary of the applicant towards the cost of the material stolen in the theft and finally on 28.09.2004 orders were passed by the respondent No. 2 directing recovery of amount equivalent to the cost of stolen material in place of stopping of 35 months increment.

2. The case of the applicant, therefore, is that he was not on duty when the theft took place. Sri Sachidanand Mishra, who was on duty at the time of theft, gave in writing that the applicant in no way was responsible for the theft but inspite of that the respondents have imposed the penalty for withholding his increments for 35 months. The punishment was completed and suddenly in the year 2004 i.e. after almost 9 years the respondents passed order dated 28.09.2004 that instead of stoppage of increments the recovery of the amount equivalent to the cost of stolen goods should be recovered from the salary. Aggrieved the applicant has filed present Original Application seeking following relief/s: -

- i. Issue an order or direction in the nature of certiorari quashing the impugned order dated 28.09.2004 to the extent of the applicant.
- ii. Issue an order or direction in the nature of mandamus restraining the respondents from initiating any recovery proceedings against the applicant pursuant to the impugned order dated 28.09.2004.”.



3. In the Counter Reply filed by the respondents have taken stand that the present Original Application is time barred as it has been filed after 11 years from the date of theft i.e. 11/12.08.1993. The respondents have stated that temporary Gang Hut was provided to both the Chowkidars and that the applicant himself has admitted that he was present alongwith Sri Sachidanand Mishra during occurrence of theft. Accordingly the responsibility was fixed on both the Chowkidars. Inquiry was conducted and it was decided for withholding increments for 35 months. No reasons have been given in the Counter Reply as to how after 9 years this matter was open again. But in para 21 of the Counter Reply it has been stated that to safe guard the loss of Railway administration and public property recovery amounting to Rs. 30,000/- was ordered from each Chowkidars. It has also been stated that total cost of Stolen material comes to Rs. 90,000/- and cost of material is based on the rate of year 1993. In Para 26 of the Counter Reply it has been stated that three persons namely Sri S.C. Srivastava, PWI, Sri Sachidanand Mishra and the applicant were involved in this case. But during the inquiry proceedings Sri Sachidanand Mishra and the applicant were found to be responsible in the theft and amount of Rs. 90,000/- was distributed between the two persons equally which comes Rs. 45,000/- each. Similarly the punishment of stoppage of increment for 35 months was also imposed upon Sri Sachidanand Mishra alongwith the applicant.

4. I have heard Both the counsel for parties and perused the records on file.

5. A perusal of the facts shows that the applicant was held guilty of theft which occurred in Godown inspite of the statement in writing given by Sri



Sachidanand Mishra that the applicant was not on duty at the time of theft and he was in no way responsible for the theft. Without considering this fact punishment of withholding of increment for 35 months was imposed on both Chowkidars. The applicant has filed his pay slip for the month of February 1998 intimating that the increments have been withheld for 35 months. In spite of that in para 17 of the Counter Reply the respondents have stated that the applicant has not submitted the concrete proof regarding non-payment of 35 months increments. If pay slip is not concrete proof then what else is required is not clear to me.

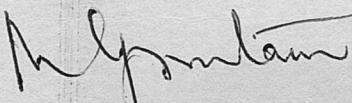
6. Further after lapse of 9 years second punishment was sought to be imposed upon the applicant vide letter dated 28.09.2004 wherein it was decided that instead of stoppage of increments the recovery of Rs. 30,000/- should be recovered from the salary of the applicant. It is very strange that this decision was taken in spite of the fact that on the basis of enquiry proceedings against the applicant punishment had already been imposed upon him for withholding 35 increments in the year 1995. The punishment was completed by about 3 years and suddenly in the year 2004 it was decided to substitute the punishment, which had already been implemented, by another one. Strangely the Counter Reply of the respondents is silent on this point and they have tried to justify the imposition of second punishment. At this point of time what is to be decided in this case is that decision regarding imposition of second punishment after lapse of 9 years particularly when the first punishment had already been implemented. It shows ignorance of the fact that the period of withholding of increments of the applicant had already lapsed and therefore, financial loss had already been caused to him by way of punishment. It is not clear to me how the respondents could pass the order of



punishment of recovery from the salary of the applicant in place of withholding of increment for 35 months. Once the matter has been decided and the punishment has been imposed it is settled position of law that a person cannot be punished twice for the same offence. The order dated 28.09.2004 is, therefore, illegal and totally in violation of rules and principle of natural justice and deserves to be quashed and set aside.

7. Accordingly the Original Application is allowed. The impugned order dated 28.09.2004 of O.A ^{are} ~~is~~ hereby quashed and set aside and the respondents are directed not to make any recovery from the salary of the applicant and recovery, if any, has been made pursuant to the impugned order dated 28.09.2004, ~~it~~ shall be refunded to the applicant within a period of three months from the date of receipt of certified copy of the order.

8. No order as to costs.


MEMBER- A

Anand/