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CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

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Registration No. T.A. 300 of 1986.

Union of India and . . . vs. . . . Ram Nath Kakkar.
another.

Hon'ble Justice Shri S.Zaheer Hasan, Vice Chairman.

Hon'ble Shri Ajay Johri, Member(A).

(Delivered by Hon. S.Zaheer Hasan, V.C.)

Civil Appeal No. 305 of 1983 filed by the Union of India and the Cross Objection filed by Ram Nath Kakkar pending in the court of District Judge, Sultanpur have been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1985).

Ram Nath Kakkar, to be described as the plaintiff, was working as Assistant Post Master at Head Post Office, Sultanpur and Chhabi Lal was working as ~~xxx~~ Postal Assistant. On 25.9.1980 19 ensured letters valued at Rs. 7,550/- were stolen while in custody of Chhabi Lal. Half of the money was recovered from Chhabi Lal and the remaining half was ordered to be recovered from the plaintiff since Chhabi Lal was working under his supervision. Report was lodged and the police made investigation in this case. A charge-sheet

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was submitted for a major penalty on 15.7.1981 against the plaintiff. He filed his explanation and thereafter on 25.3.1982 the charge-sheet was dropped without prejudice to future action. On 1.6.1982 another charge-sheet was submitted on the same facts and on 31.12.1982 it was ordered that the remaining half amount (that is Rs. 3,225/-) be deducted by withholding 10 months' salary of the plaintiff at the rate of Rs. 213/- per month and by recovering Rs. 1,95/- from the Death-cum-Retirement Gratuity (D.C.R.G.). The plaintiff filed Suit No. 64 of 1983 for declaration that the order dated 31.12.1982 was illegal and the authorities be directed not to make recovery from the salary and of the gratuity etc. The case of the Department is that there was no defect in the departmental proceedings and the deductions were rightly made. The learned Munsif decreed the suit. Union of India filed Civil Appeal No. 305 of 1983 and the Cross Objection was filed by the plaintiff.

At the time of arguments following two points ~~only~~ were pressed:

Firstly, in view of the D.G., P. & T's letter No. 114/334-Disc. dated 5.7.1979 the second proceedings could not be started since the first proceedings were dropped without giving any reasons. This letter runs as below:-

" It is clarified that once the proceedings initiated under Rule 14 or Rule 16 of C.C.S.

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(C.C.&A.) Rules, 1965, are dropped, the Disciplinary Authorities would be debarred from initiating fresh proceedings against the delinquent officer unless the reasons for cancellation of the original charge-sheet or for dropping the proceedings are appropriately mentioned and it is duly stated in the order that the proceedings were being dropped without prejudice to further action which may be considered in the circumstances of the case. It is, therefore, important that when the intention is to issue a subsequent fresh charge-sheet, the order cancelling the original one or dropping the proceedings should be carefully worded so as to mention the reasons for such an action and indicating the intention of issuing a subsequent charge-sheet appropriate to the nature of charges the same was based on."

The first charge-sheet was given on 15.7.1981 and when the explanation was submitted by the plaintiff, the proceedings were dropped on 25.3.1982 with a simple note that ^{The same was} ~~it were~~ being dropped without prejudice to future action. No reasons were given. In the written statement a vague allegation was made that the proceedings were dropped on "administrative ground". Here again no reasons ^{or details} have been given in the written statement. According to this letter dated 5.7.1979, the disciplinary authority

is debarred from initiating fresh proceedings unless the reasons for cancellation of the original charge-sheet are clearly mentioned. In this way, the directions contained in the aforesaid letter were not followed. In this connection it may be added that Chhabi Lal was handling these 19 ensured letters valued at Rs. 7,550/-. He was charge-sheeted. The matter was reported to the police. The occurrence took place on 25.9.1980; the charge-sheet was submitted on 5.7.1981; and on 25.3.1982 without assigning any reason the proceedings were dropped with a note that it were being dropped without prejudice to future action.

Secondly, the provisions of Rule 109 of the P. & T. Manual, Volume-III have not been followed. Rule 109 of the P. & T. Manual runs as below:-

"In a case of recovery of loss imposed on a Government servant as a measure of penalty, the recovery from pay should be effected 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 Rule 9 of C.C.S. (Pension) Rules, 1972. In cases where a Government servant is due to retire shortly and the amount of loss caused by a

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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 Rule 9 of C.C.S.(Pension) Rules, 1972, along with the record of disciplinary proceedings. "

In this case the disciplinary authority stated in the order that 10 instalments of Rs. 213/- each from the salary of the plaintiff's and remaining amount of Rs. 1,095/- be recovered from the gratuity etc. The plaintiff was due to retire shortly and the amount of the loss could not be recovered in full from his salary due to his impending retirement. Therefore, the final punishment order should not have been passed and the case should have been referred to the Directorate for action according to law. The

The learned Munsif rightly held that the impugned order was against the aforesaid rule(i.e. Rule 109 of the P. & T. Manual), and, therefore, was bad in law. Plaintiff's suit was rightly decreed.

No other point was pressed before us. The plaintiff did not press his cross-objection, and, therefore, it is not necessary for us to go into the merits of the same. The appeal filed by the Union of India has no substance and is liable to be

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dismissed.

This application (Civil Appeal No. 305 of 1983) is dismissed. The cross-objection filed by the plaintiff is disposed of as not-pressed. Parties are directed to bear their own costs.

December 18th, 1986. Vice Chairman.

R. Pr.

Pran

अनिल नाथ
Member (A).