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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1423 of 1986

S.K. Jain Plff- Applicant.

Versus

Union of India & another Defdt-Respondents.

Hon'ble S. Zaheer Hasan, V.C.

Hon'ble A. Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

Suit No. 213 of 1984 has been received on transfer from the court of Munsif, Nagina under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff's case is that against a penalty for deduction of Rs. 3,318.74 p. imposed upon him, his appeal was allowed by the Divisional Railway Manager, Moradabad but subsequently the refund of the deducted amount was withheld and thus the appellate order passed in his favour has not been implemented.

3. A penalty of deduction of Rs. 3,318.74 p. was imposed on the plaintiff when he was working as Station Master, Rishikesh on 24.4.1976 by D.C.S., Moradabad. He was held responsible for acting in violation of the orders regarding handling of Coal Wagons at Rishikesh and permitting its carting by an out Agent who was not authorised to take goods for cartage. The cartage charges claimed by the out Agent, though not paid to him and under consideration of the defendants, were recovered from the plaintiff. On appeal the Divisional Railway Manager ordered the refund of the amount

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recovered. These orders were passed on 16.6.1979 which reads as under :-

".....it is clear that the claim of the Out Agency was not tenable under the terms of agreement and has not been paid. Therefore, the amount is not recoverable from the S.M. and as already decided by Sr. D.C.S. at pp 22 the debit should be withdrawn and amount refunded to the employee."

Subsequently by another order dated 28.9.1979 the question of refund to the plaintiff was kept in abeyance till the issue of cartage charges was finally decided. It is this decision that has been challenged by the plaintiff.

4. The facts of the case are not in dispute. The suit has been challenged by the defendants on the grounds that the recovery is not a ~~service~~ matter and the suit is not maintainable because the Union of India has not been impleaded and it is also barred by time. The position, however, was that the recovery imposed was as a result of disciplinary action and any punishment imposed in a disciplinary case is a service matter. Secondly ~~thx~~ we find that by an amendment the Union of India has been made a defendant. Lastly we do not find any limitation applying to the relief claimed. Thus these contentions of the defendants' learned counsel cannot be accepted.

5. There is no doubt that an appellate order can be reviewed by the appellate authority, but the delinquent has to be given reasonable opportunity of making a representation against the penalty proposed. It is not the defendants' case that they reviewed the appellate order. They only kept the order in abeyance for a certain period. It is also clear that

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the defendants have not changed their conclusion that the plaintiff was not responsible. Thus the recoveries made should have been refunded. This indefinite abeyance of the appellate order has visited the plaintiff with evil consequences. He was advised on 23.3.1981 that ~~the~~ ³ further action will be taken on expiry of time limit for the claim, i.e. a period of three years from the date of receipt of the claim from the Out Agent. This period elapsed in November, 1982.

6. It is thus clear that the appellate order which was not reviewed according to rules became final. The defendants in any case could not review it after the expiry of six months if they wanted to enhance the penalty, and, therefore, the indefinite abeyance of implementation of the appellate order was illegal and is liable to be quashed.

7. The plaintiff has also claimed interest on the amount. In their written statement the defendants have said that the plaintiff is not entitled to interest. The plaintiff retired on 31.7.1980. He has been repeatedly requesting for the refund but the defendants have not refunded the same yet. With the galloping inflation the value of the amount has gone down appreciably since 1980. No arguments have been advanced by the learned counsel for the defendants as to why the interest should not be paid. We are, therefore, not able to convince ourselves why the request should be denied. The appellate order became final, it could not be reviewed after the expiry of six months if the defendants wanted to revise it to the detriment of the plaintiff. They took no such action. They have been

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making abortive correspondence with the Headquarter office. The refund which should have been made within reasonable time, has not yet been paid.

8. Under the above circumstances we order that the appellate order should be implemented forthwith and the plaintiff should be refunded the deductions of Rs.3,318.74 p. recovered from his salaries. The plaintiff will also be entitled to interest at the rate of 10% (per cent) per year for the period 31 4.1.1980 to the date the payment is made. We make no order as to costs.

Yours
VICE-CHAIRMAN.

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MEMBER (A).

Dated: August 31, 1987.

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