

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No:
T.A. No:

C-A 643 of 1990

DATE OF DECISION: 25/8/94

Dr. A. V. K. Kumar PETITIONER

Sri. Ramesh Singh ADVOCATE FOR THE
PETITIONER

V E R S U S

State and others RESPONDENTS

Sri. C. S. Singh ADVOCATE FOR THE
RESPONDENTS

C O M M

The Hon'ble Mr. S. Das Gupta, AM

The Hon'ble Mr. T. L. Verma, JM

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? yes
4. Whether to be circulated to all other Bench?

Signature

MANISH

(10)
Reserved:

12/10/90
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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O.A. No.643 of 1990

Dr. Arvind Kumar Applicant.

Versus

Union of India
and others Respondents.

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Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. T.L. Verma, Member(J)

(By Hon. Mr. S. Das Gupta, Member(A))

In this application filed under Sec. 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 4.7.1989 (Annexure- A 1) passed by the respondent no. 3 for recovery of certain sums of money from the applicant and has prayed that the impugned order dated 4.7.1989 be set aside and the amount of Rs. 5778.00/- already recovered from his pay be refunded to him.

2. Briefly stated the facts of the case are that the applicant was appointed as Medical Officer Incharge of Static-cum-Mobile, Medical Unit, Thana Kunda Rampur, a Unit of the Labour Welfare Organisation functioning under the Ministry of Labour, Government of India. He was appointed to this post w.e.f. 21.5.1988 and the applicant claims that he is performing both Static and Mobile duties assigned to that post regularly and faithfully. On 7.7.1989, the applicant received^{the} impugned order ordering

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recovery of a sum of Rs. 5778.00/- from his pay on account of the alleged absence of the applicant from duty from 3.4.1989 to 12.4.1989 and 3.5.1989 to 11.5.1989, even though the applicant claims that he was actually performing his duty during this period. Recovery was also ordered on the ground of non-performance of Mibile duty allegedly on the plea that the vehicle was defective, though in actuality the same was in order. The respondent no.3 also ordered the recovery of the pay and allowances of the supporting staff as well as utilization of Government and vehicle for unauthorised purpose/ of the cost of medicine which was distributed during this period. The petitioner claims that although the impugned order indicates that the same was passed after holding an inquiry into certain allegations but such enquiry was behind the back of the applicant and he was not given any opportunity whatever to defend himself. The applicant states that he made a representation against the impugned order to the respondent no. 2, a copy of which is at Annexure- A 2. He sent a reminder dated 8.8.1989 (Annexure- A 3). The applicant states that he also personally met the concerned authority from time to time and pressed for early disposal of the representation but the same is yet to be disposed of. This has led the applicant to file this petition claiming the reliefs aforementioned.

3. In the counter reply filed by the respondent no. 3, on behalf of the respondents, it has been

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stated that the applicant was appointed on adhoc basis in the absence of regular appointees through U.P.S.C. During the course of his service, the petitioner, the respondents claim, acted in a manner which has not only resulted loss to the Government but also great hardship to the family of Bidi workers of the area for whose benefit, the Static-cum-Mobile unit was established. It has been alleged that the petitioner failed to discharge his duty regularly and honestly. He was violating the laid down procedure for maintenance of different registers. It is further claimed that the impugned order was passed by the respondent no. 3 after he himself enquired into the matter. During the enquiry, statements of the staff members were recorded. They deposed that the petitioner was absent from 3.4.1989 to 12.4.1989 and from 3.5.1989 to 11.5.1989 and that it has also come in evidence that though, the petitioner was absent during this period, he unauthorisedly signed the attendance register afterwards. It has been averred that it has also come in evidence that on 15th, 20th and 26th April, 1989 the petitioner did not perform Mobile duty on/ pretext that the vehicle was not in order whereas, it was perfectly in order. Certain other allegations of the misuse of the Government Vehicle are also stated to have been proved in enquiry and it has been contended that all the charges were confirmed by the witnesses ~~the petitioner~~ and the petitioner himself.

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confessed his guilt before the staff members of the medical unit.

4. The applicant has filed a rejoinder affidavit in which he has denied that there was any confession made by him admitting his guilt before the staff of the medical unit. He has reiterated his plea that the impugned order was passed without giving him an opportunity to show cause.

5. We have heard the learned counsel for both the parties and carefully gone through the records of the case.

6. Recovery of loss caused to the Government from the pay of a Government Employee is a penalty recognised as a minor penalty in the G.C.S.(CC&A) Rules, 1965. There is procedure laid down for imposition of such penalty which inter alia stipulates that before such a penalty is imposed, the employee must be given an opportunity to show cause why such penalty shall not be imposed. In this case, we find that no show cause notice whatever had been given to the applicant. We have not been told by the respondent that the applicant is not governed under the CCS(CC&A) Rules, 1965 and penalty cannot be imposed on him without following any procedure whatever. Even if, such had been the case, the rules of natural justice predicate that a reasonable

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opportunity must be given to a person before an adverse order is passed against him. It is a cardinal principle laid down by the courts of law that an executive order which has civil consequences must abide by the principles of natural justice. This appears to us to be a case where these principles have been flagrantly violated. It has been alleged by the respondents that an enquiry was carried out by the respondent no. 3 himself. A copy of the enquiry report has not been annexed with the counter reply. Even if, such enquiry has actually been held, it can only form the basis for issuing charge-memo/ show cause notice to the applicant before taking any penal action. Admittedly, no charge-memo/show cause notice was given to him and ^a peremptory order was passed by the respondent no. 3 ordering recovery not only of pay and allowances of the applicant during the periods he was allegedly absent but also all the pay and allowances of the supporting staff who were allegedly rendered idle on account of non performance of duty by the applicant. This is a unique example where ~~where~~ vicarious liability of a government servant has been extended beyond any stretch of imagination. Not only that, even the cost of medicine which is supposed to have been issued to a patient has also been recovered on the ground of non-performance of duty by the applicant. The impugned order is, therefore, totally arbitrary and illegal, to say ^{the} least. Moreover,

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the order also would appear to suffer from lack of competence on the part of the respondent no.3, since, it has been stated in the counter reply itself that the power of appointment of the medical officers vested in the Ministry of Health, Family Welfare w.e.f. 19.1.1989 and thus the power to punish a delinquent medical officer vested in that authority. The impugned order which was passed on 4.7.1989 was, therefore, clearly beyond competence of the respondent no.3 by his own statement in the counter reply.

7. In view of the foregoing, we have no hesitation whatever in concluding that the impugned order is totally arbitrary, illegal and void ab-initio. The order is, therefore, quashed and set aside. The respondents shall refund ^{the} sum of money which has already been recovered from the pay and allowances of the applicant in pursuance of the impugned order dated 4.7.1989 together with interest at the rate of 10% ^{per annum} from the date of recovery till the date of the refund of the money within a period of 2 months from the date of communication of this order.

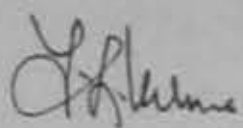
8. In view of the fact that we have passed an order for payment of interest, we see no


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necessity for passing any order in favour of the applicant as regards the costs of the petition.


Member (J)


Member (A)

Dated: 25 August, 1994.

(n.u.)