

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BEACH
ALLAHABAD

Original Application No. 768 of 1995

Allahabad this the 25 day of Sept. 1996

Hon'ble Dr. R.K. Saxena, Member (J.D.)

Hans Raj Sharma, S/o Late Sri R.N. Sharma,
Senior Auditor in the office of Chief Controller
of Defence Accounts (Pension) Allahabad.

APPLICANT

By Advocate Sri Satish Dwivedi

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief Controller of Defence Accounts (Pensions), Draupadighat, Allahabad.
3. Sri Ghan Shyam Lal, Assistant Controller, (Administration), Office of the Chief Controller of Defence Accounts(Pensions), Draupadighat, Allahabad.

RESPONDENTS.

Advocate Sri N.B. Singh.

O R D E R

BY Hon'ble Dr. R.K. Saxena, Member (J)

* This application has been moved under Section 19 of the Administrative Tribunals Act, 1985 challenging the order (annexure A-1) dated 04.8.1995 whereby the applicant was directed to deposit the amount which was drawn from the account of Controller of Defence Accounts (Pensions) Employees Cooperative Housing Society Limited, else the amount shall be deducted from his salary.

2. The brief facts of the case are that the applicant is working as Senior Auditor under the Chief Controller of Defence Accounts (Pensions).

He had formed a Cooperative Housing Society which was a registered society; and the applicant was elected President thereof. One Sri Mahabir Prasad was elected as the Secretary of the said Cooperative Housing Society. There had been some dispute between the applicant on the one side and Sri Mahabir Prasad on the other. It appears from the averments made in the application that Sri Mahabir Prasad was instrumental~~in~~ in getting the audit of the Cooperative Society done. According to the applicant that audit was illegal and without bringing the facts to the notice of the applicant, was done. It is further pleaded that certain amount was shown to have been withdrawn by the applicant and it was in connection with that amount that the impugned ~~order~~^{notice} (annexure A-1) was ~~passed~~^{prepared} and issued to the applicant. It is also averred by the applicant that the respondents had nothing to do with the activities of the said Cooperative Housing Society and any act done by the office bearers of the said Housing Society, did not come within the control and supervision of the respondents. It is, therefore, urged that the notice (annexure A-1) which is ⁱⁿ no way connected with the service matters of the applicant, be quashed.

3. The respondents filed counter-reply through Sri R.C. Srivastava, Deputy Controller of Defence Accounts (Pensions), Allahabad. It is admitted that the applicant is working as Senior Auditor

under the respondents and Cooperative Housing Society was formed of which the applicant was President. The respondents also admit that they are in no way associated with the forming of the above Society nor is provided any accommodation for the functioning of the Society. It is averred that Sri Mahabir Prasad, Secretary, Cooperative Housing Society had vide his letter dated 08.7.93, made a request to the respondent no.2 to arrange the payment of the sum which was due for payment to the Society on behalf of the applicant. It is also admitted that if any dispute relating to the constitution, management or business of a cooperative society arises, such dispute should be referred to the Registrar for orders. The respondents claimed to have advised the applicant that being a Government servant, he was required to maintain all times absolute integrity and should do nothing which may render ~~it~~ unbecoming of a Government servant. It is further contended that the impugned notice was issued at the instance of the final orders of District Assistant Registrar of Cooperative Societies, U.P. which was communicated through letter dated 28.7.95. It is alleged that the District Assistant Registrar, Cooperative Societies is the competent authority to give such direction. The plea of the respondents is that the jurisdiction of this Tribunal cannot be invoked.

4. The applicant filed rejoinder, reiterating the facts which were mentioned in the O.A.

5. I have heard the learned counsel for the applicant. None appeared for the respondents at the

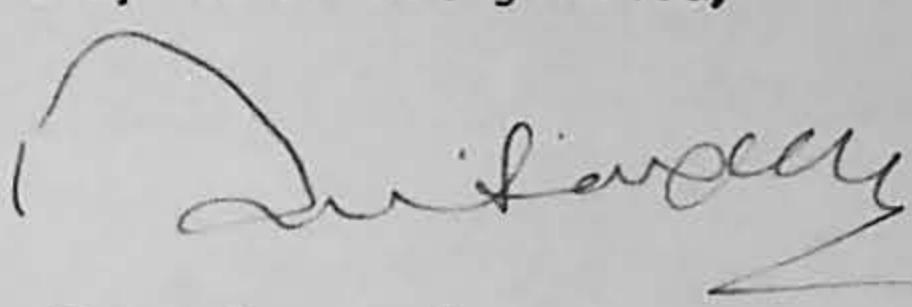
time of arguments. The record is perused.

6. It is an undisputed fact that the applicant while he was working as President of Cooperative Housing Society, was not doing any work which was connected with the affairs of the State. The respondents themselves admitted that they had no connection with the said Society. What appears from their averments is that the impugned notice (annexure A-1) was issued only on the request which was made by the District Assistant Registrar of Cooperative Societies, U.P. The learned counsel for the respondents did not appear for arguments and no provision could be shown to me if the respondents could issue the notice (annexure A-1) on their own behalf in compliance with the final order of the District Assistant Registrar of Cooperative Society. Not only this, the order as is alleged to have been passed by the competent authority for recovery, is also not produced. What generally happens is that if some statutory authority passes any order of recovery and the said order is transmitted to the employer for the purpose of recovery, the copy of the order is invariably attached therewith. In the absence of any such order, it is not possible to uphold the legality of annexure A-1. The language of annexure A-1 indicates that the respondent no.4 had been trying to gather information about the alleged withdrawal of money of the Cooperative Society by the applicant and after gathering the said information, he had issued the notice himself. Thus, he was not discharging any duty as an employer.

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To issue the notice for recovery of any money of the Cooperative Housing Society is also not the function of the respondent no.4.

7. In view of these facts, I come to the conclusion that the notice (annexure A-1) is not sustainable in law and is, therefore, quashed. The O.A. is disposed of accordingly. No order as to costs. The stay which was granted, stands vacated.


(Dr. R.K. Saxena)
Member Judicial

/M.M./