

(RESERVED)

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**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 19/12 DAY OF DEC, 2012)

PRESENT:

HON'BLE MR. D. C. LAKHA, MEMBER-A

ORIGINAL APPLICATION No. 1405 OF 2006
(U/s, 19 Administrative Tribunal Act.1985)

Suresh Chandra Pandey, S/o Sri Laxman Swaroop Pandey, Presently working as Junior Engineer-I (Works) under Additional Divisional Engineer (Lines), N.E. Railway, Izzat Nagar, Bareilly.

.....Applicant

By Advocate: Shri S.K. Om.

Versus

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Senior Divisional Personnel Officer, N.E. Railway, Izzat Nagar, Bareilly.
3. Divisional Engineer, N.E. Railway, Izzat Nagar, Bareilly.
4. Additional Divisional Engineer (Lines), N.E. Railway, Izzat Nagar, Bareilly.

..... Respondents

By Advocate: Shri P.N. Rai.

ORDER

(DELIVERED BY:- HON'BLE MR. D.C. LAKHA, MEMBER-A)

This application has been instituted for the following relief(s) :

- (i) To issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 27.11.2006 and 28.09.2006 passed by respondents (Annexure A-1 and A-2 respectively to Compilation-I).
- (ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to recover any money from the salary of petitioner and refund the entire recovered amount with interest @ 9% per annum.
- (iii) To grant all the consequential relief which the petitioners are entitled for.

2. The facts, as stated in the OA, in the capsulated form are that the applicant, when he was working as Junior Engineer -I was transferred to N.E. Railway, Bareilly City as Junior Engineer-I under Senior Section Engineer (Works), Bareilly City vide order dated 6.10.2005. Many of his Juniors were given independent charge for the post of Section Engineer, while he was directed to work under Senior Section Engineer. The applicant made representation, but without awaiting the reply from Senior Divisional Engineer the charge of the petitioner was given to one Sri Neeraj Kumar Singh, Section Engineer while the applicant was never directed to hand over the charge, even while the petitioner was available at the station from 6.10.2005 to 17.11.2005 and had not refused to hand over the charge. In the stock sheet dated 14.12.2005 and 4.1.2006, prepared by Shri Neeraj Kumar Singh, in the absence of the applicant a sum of Rs. 36,192/- and Rs. 1,33,043/- was shown short, copy of which was not supplied to the applicant, and the stock was verified in the absence of applicant. Without assigning any reason or any show cause having been given, a recovery of Rs. 5,128/- from the salary for the month of Oct, 2006 and November, 2006 was made. To know the position, the applicant represented on 27.11.2006 (A-4) to respondent No.2 , in response to which, the applicant was supplied a copy of letter dated 27.11.2006 (A-1) stating that in pursuance to letter dated 28.9.2006 (A-2) there was a shortage of Rs. 1,69,235 for which recovery as stated above was being made. The applicant has challenged the impugned orders on the ground that the petitioner was never associated in giving the charge or verifying the stock though the applicant was present in the office; that the impugned orders have been passed without giving any show cause notice, therefore, are wholly illegal, arbitrary and against the principles of natural justice. Hence, the O.A.

3. On notice, the respondents have filed the counter denying the averments made in the OA. It is further stated that the applicant was given charge sheet several times and Shri Niraj Kumar Singh Section Engineer (Works) was given charge, as per rule, as he is senior to the applicant. It is submitted that inspite of letter dated 7.10.2005 (CA-1) the applicant did not give charge, instead he ill

behaved with Sri Niraj Kumar Singh, which was reported by Shri Niraj Kumar Singh to respondent No. 4 vide letter dated 11.10.2006 (CA-2). Applicant did not remain present w.e.f. 6.10.05 to 17.11.2005. In this regard letters dated 22.10.2005 and 28.10.2005 (CA-3 and CA-4) were also written to the applicant directing him to give charge. Copy of the stock was made available to the applicant vide letter dated 6.7.2006 (CA-5) which was received by the applicant. In fact, the applicant did not cooperate in the stock verification, the stores verifier and stores accounts examiner, on finding deficiency in stores directed the applicant to give reply, then the applicant prepared the reply but did not put his signature, therefore, the reply was sent by Shri Neeraj Kumar Singh to the accounts department, which, on finding deficiency informed for deduction of Rs. 36,192/- and 1,33,43/- which was sent to the officer concerned and vide letter dated 27.11.2006 due information was sent to the applicant in respect of the aforesaid deduction. There is no violation of any rules, or principles of natural justice. The O.A. lacks merit and is liable to be dismissed.

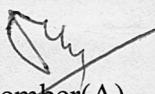
4. Rejoinder affidavit is filed by the applicant reiterating the averments made in the OA and denying the contentions made in the CA. Supplementary Counter has also been filed reiterating their stand taken by the by the respondents in the pleadings. On 18.9.2012, both the learned counsel for the parties requested for filing written arguments within one week, but no written arguments have been submitted by either of the parties. So, the O.A. is being disposed of on the basis of pleadings on record.

5. I have heard the learned counsels for both the parties and have also gone through the documents submitted alongwith their pleadings. The learned counsel for the applicant has vehemently argued that the stock verification was done by Shri Niraj Kumar Singh in his absence without associating him, though the applicant had been attending to the office regularly; that the order for recovery has been passed without giving opportunity of hearing and the copy of report/reply submitted by Neeraj Kumar Singh and the order passed by Additional Division Engineer (Works) was not issued to the petitioner. The learned counsel for the respondents, has on the other hand argued that the



applicant remained absent during stock verification and did not cooperate and he was given opportunity to submit reply after the deficiency having been found in the stock and the copy was also made available to him. Thus opportunity was given to the applicant before passing the recovery orders impugned.

6. Having heard the learned counsel for the parties and perusing the entire pleadings I find that no opportunity or show cause was given to the applicant before passing the impugned orders by the respondents, which is violation of principles of natural justice as is revealed from the impugned order at A-1 and A-2). The Hon. Supreme Court in the case of **Lakshmi Narayan Mukhopaadhyaya vs. Union of India, (2002) 10 SCC 379**, has held that no recovery could be effected without affording an opportunity to the applicant. In view of these facts and circumstances I observe that the impugned orders are not at all sustainable. The impugned orders are set aside and quashed. The O.A. is accordingly allowed. However, the respondents are at liberty to initiate action against the applicant by following the due process under the rules. Enquiry after proper stock verification can be undertaken giving opportunity to the applicant. In that situation, the applicant shall cooperate. No order as to costs.



Member(A)

s.a.