

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 1044 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

DR. PRABIR CH. CHAKRABORTY

-vs-

UNION OF INDIA & ORS.

For applicant : Mr. B.C. Sinha, counsel

For respondents : Ms. K. Banerjee, counsel

Heard on : 20.9.1996

Order on : 15.11.1996

O R D E R

A.K. Chatterjee, VC

The petitioner is an Examiner of Patent & Design at Patent Office, Calcutta and also its Drawing & Disbursing Officer. On or about 3rd July, 1995, a substantial amount of cash was found missing from the chest of the Cash Section of the office and ultimately, the petitioner as a Drawing & Disbursing Officer and also the then Cashier were found to have failed in discharging their duties and 50% of the amount missing was directed to be recovered from the pay of the petitioner commencing from the month of May, 1996. The total loss suffered by the State was found to be Rs.37,106/- and 50% of this amount i.e. Rs.18,553/- was ordered to be recovered in five monthly instalments of Rs.3533/- each and the balance of Rs.888/- as the last instalment. The petitioner has made this application denying his liability regarding the missing amount and also contended that this penalty was imposed upon him without a proper DA proceeding. In the circumstances, he has prayed, inter alia, for setting aside the impugned

2. The respondents in their counter have stated that commission and omission made by the petitioner proving deriliction of duty as Drawing & Disbursing Officer and denied that the penalty was imposed without any DA proceeding.

3. We have heard the Ld. Counsel for both the parties and also perused the records before us. Now recovery from pay of a Government servant on account of loss suffered by the Government is a minor penalty and therefore, it can be imposed by following the abridged procedure as laid down in Rule 16 of CCS(CCA) Rules. This rule specifically provides that holding of an enquiry in the manner laid down in Rule 14 is necessary only if in the opinion of the disciplinary authority, ^{it} considers it fit so to do. In the instant case, there is nothing to show that the disciplinary authority was ever of the opinion that an enquiry in the manner laid down in Rule 14 was necessary in this particular case and, therefore, if the penalty of recovery was imposed by following the procedure as laid down in Rule 16, it would be perfectly legal and unassailable. This rule only requires informing the government servant in writing of the proposal to take action against him and all the imputations of misconduct or mis-behaviour on which it is proposed to be taken and giving him reasonable opportunity of making such representation as he may wish to make against the proposal. Thereafter, the disciplinary authority is to consider the representation submitted by the Government servant and record a finding on the imputation of misconduct or misbehaviour if an enquiry under Rule 14 is not considered necessary. In the case on hand, we find from the documents produced by the petitioner himself that the procedure as laid down in Rule 16 of the CCS(CCA) Rules was duly followed and the petitioner cannot reasonably ^{have} _{has} any

grievance that the penalty was imposed without any DA proceeding. Reference may be made in this connection to a Memo dated 16.1.96, which reveals that a preliminary enquiry was held in respect of the loss of cash and it indicated certain omission on the part of the petitioner. He was directed by this memo to show-cause within a specified period as to why action should not be taken against him. In response to this Memo, cause was shown by him on 23.1.96, which, however, was found to be not at all satisfactory by a memo of the Joint Controller of Patents & Designs dated 12.3.96, whereby the petitioner was also directed to show reason as to why action should not be taken against him within a certain date. The petitioner gave a reply thereto on 19.3.96 and ultimately by a Memo dt. 12.4.96, he was directed to deposit 50% of the amount lost i.e. Rs.18,553/- within 15 days, in default of which the same was to be recovered from his pay and allowance. As the amount was not deposited, an order was made on 23.5.96 directing recovery in five equal monthly instalments of Rs.3533/- and 6th instalment of the balance of Rs.888/- commencing from the month of May, 1996 as indicated before. The petitioner also preferred an appeal to the appellate authority under Rule 23(ii) of the CCS(CCA) Rules and to the concerned Secretary on 26.6.96 and on the same date also made a representation against imposition of penalty to the President of India. The narration above amply establish that the procedure as contemplated by Rule 16 of the CCS(CCA) Rules, was adequately followed and the petitioner was given enough opportunity to vindicate his position and as such there was no denial of natural justice to him. The Ld. Counsel for the respondents has also drawn our attention to various acts and omission on the part of the petitioner as D.D.O., though in a proceeding like this, it is not necessary for us to embark upon an enquiry in this regard as the finding

does not appear to be perverse. Therefore, we are unable to quash the penalty regarding recovery of the amount of Rs.18,553/- from the petitioner.

4. However, we find that there is a gross irregularity in the method of recovery of the amount as ordered by respondent No.3, which was also conceded by the Ld. Counsel for the respondents. There was no controversy that the basic pay of the petitioner was Rs.3900/- per month and under the extant rule, no recovery could be made in instalment exceeding 1/3rd of the basic pay. Therefore, recoverable limit of cash instalment was Rs.1300/- per month, though in the instant case, for atleast five months, a sum of Rs.3533/- was recovered per month. Such order was clearly irregular and even though such irregular recovery has already taken place, in our opinion, the petitioner, who had to suffer for such irregular action of the respondent No.3 must be suitably compensated. Such compensation may be in the shape of interest on the excess recovery of each instalment.

5. We, therefore, dispose of the application with a direction upon the respondents, in particular the respondent No.3 to work out and pay to the petitioner, interest @ 15% per annum on the amount by which ~~each~~ ^{actually} instalment ~~realised~~ from him exceeded the recoverable limit ~~of each~~ instalment, from the date of realisation till the date of payment. Such interest shall be paid within six weeks from the date of communication of this order. Interim order is also vacated.

6. No order is made as to costs.

28/11/96
(M.S. Mukherjee)
Member (A)

A. Chatterjee
28.11.96
(A.K. Chatterjee)
Vice-Chairman