

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

O.A.No.1344/96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

GOBARDHAN GOSWAMI

VS.

UNION OF INDIA & ORS.

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

For the respondents : Ms. B. Ray, counsel

Heard on : 19.3.99

Order on : 19.3.99

ORDER

The applicant Sri Gobardhan Goswami, retired Office Superintendent, Gr.I under A.C.O.S, S.E. Rly., Shalimar filed this application challenging the validity of the impugned order dated 25.3.96(Annexure A-2) issued by the Assistant Controller of Stores by which Rs.5542.16 has been recovered from the DCRG money of the applicant and kept in deposit till finalisation of the case proposed to be started against the applicant for loss of the Govt. to the extent of Rs.27710.80 as cost of 9 Nos. Holtest. It is alleged by the applicant that the said impugned order dated 25.3.96(Annexure A-2) has been passed by the authority without affording any reasonable opportunity to the applicant to state his case. It is stated that the applicant retired from service on superannuation w.e.f. 30.9.95 and the ~~is~~ alleged loss of the Govt. had been occurred in the department before 1985. But till date no ~~is~~ departmental proceeding whatever has been started against the applicant for the alleged loss to the Government. So, such inordinate delay in the matter on the part of the respondents caused injustice to the applicant.

2. Respondents filed written statement denying the claim of the applicant. It is stated by the respondents that the missing of 9 Nos. Holtest valued Rs.27,710.80 had taken place

on 15.11.84 from SLD Wagon No.13112 and in this case the fact finding enquiry committee ~~had~~ recommended joint responsibility on five persons including the applicant as per letter dated 14.4.87(Annexure R-II). It is also stated by the respondents that no charge sheet or show cause notice was issued and no D&A case was processed against the applicant during the tenure of his service. But a Note Sheet dated 13.5.95 was submitted to the Chief Personnel Officer(Admn.), S.E. Rly., Gardenreach regarding the recovery of proportionate amount of Rs.5,542.16 paise from the applicant namely Shri Gobardhan Goswami, Ex.O.S/Gr.I(applicant) wherein the C.P.O. (admn.), Gardenreach recommended to recover the said amount and to keep the same in deposit till finalisation of the case(Annexure R-I).

3. Id. counsel Mr. B.C. Sinha appearing on behalf of the applicant urged before me that admittedly the incident of loss to the Government took place in the year 1984 and the fact finding enquiry committee submitted its report recommending joint responsibility on five persons including the applicant. But on the face of the admissions made in the written statement of the respondents, it is found that no steps were taken by the respondents for realisation of the said amount from ~~the~~ the persons responsible for the alleged loss to the Government period during the service of the applicant and no departmental proceeding had been initiated under the D&A rules before the retirement of the applicant i.e. on 30.9.95. So, such inordinate delay has caused prejudice to the applicant and there is administrative lapses in the matter of realisation of the amount of Rs.5542.16 from the applicant for the alleged loss caused to the Government.

4. It is also submitted by the Id. counsel Mr. Sinha that the principle of natural justice has been blatantly violated in this case because of the fact that no notice of show cause or no opportunity of stating his case has been given to the applicant before recovering the said amount and such action of the respondents no doubt caused hardship to the applicant. So, the impugned order dated 25.3.96(Annexure A-2) is liable to be quashed with a direction upon the respondents to make payment

of the same amount forthwith with interest.

5. Id. counsel Mr. B. Ray appearing on behalf of the respondents submits that no final order has been passed regarding the recovery of the said amount of Rs. 5542.16 and the said amount was recovered temporarily till finalisation of the case proposed to be initiated against the applicant. So, the question of natural justice is not warranted in this case as alleged by the Id. counsel for the respondents. Ms. Ray Id. counsel for the respondents further submits that the department may be allowed to complete the enquiry within a reasonable time.

6. I have considered the submissions of the Id. counsel for both the parties and have gone through the records. It is found that a joint fact finding committee had submitted the report regarding the recovery of the amount of loss caused to the Government due to missing of 9 Nos. Holtest long back, fixing the responsibility on five persons of the department. But no explanation whatsoever has been assigned or could be put forward by the respondents as to why the disciplinary proceeding was not started against the applicant even after receipt of the joint fact finding committee report. It is also found that the respondents did not initiate any charge sheet under the D&A rules or issued any show cause notice to the applicant. Admittedly the applicant retired from service w.e.f. 30.9.95 and the report of the enquiry committee had been submitted in the year 1987. But the respondents did not take action even before retirement of the applicant. It is found that the said disciplinary proceeding cannot be initiated after a lapse of 4 years from the date of incident as per the Pension Rules. Moreover, it is settled law that principle of natural justice demands that any order detrimental to the interest of the Government employee should be passed by the authority after affording him reasonable opportunity to state his case. But in the instant case, that principle has

not been followed and thereby I find that there had been blatant violation of principle of natural justice in this case. The inordinate delay and laches on the part of the respondents in the matter of taking action against the applicant for the alleged loss caused to the Government, can be attributed to the department and the applicant is no way responsible for ~~such~~ ^{the} delay. It is the respondents ~~to~~ caused delay in starting proceeding against the applicant and others and no reason could be ~~not~~ shown by them as to why they did not take action immediately after receipt of the report from the fact finding enquiry committee till the date of retirement of the applicant.

7. In view of the aforesaid circumstances, I am of the view that it is a fit case to direct the respondents to release the DCRG money of the applicant amounting to Rs.5542.16 after setting aside the impugned order dated 25.3.96(Annexure A-2). Accordingly the impugned order dated 25.3.96(Annexure A-2) is hereby set aside and the respondents are directed to make payment of the said amount of DCRG i.e. Rs.5542.16 with interest at the rate of Rs.12% p.a. from the date of retirement(30.9.95) till the payment is made, within two months from the date of communication of this order. With these observations, the application is disposed of awarding no costs.

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(D. PURKAYASTHA
MEMBER(J)

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