

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH: JODHPUR

Date of order : 29.8.1996

O.A.No. 497/95

Budhan Singh

Applicant.

v e r s u s

Union of India & Ors. ...

Respondents.

Mr. S.N. Trivedi, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.P. Biswas, Administrative Member.

BY THE COURT :

Applicant Budhan Singh, Superintendent (Stores & Purchase) and Officer Incharge, Central Sheep & Wool Research Institute, Arid Region Campus at Bikaner, is aggrieved because of A/1 and A/2 orders issued by the respondents. By A/1 order dated 17.10.95, a recovery of Rs. 278/- per month in 35 instalments has been ordered. By A/2 order dated 26.9.95, the applicant has been put on a notice for depositing of Rs. 10,000/- which was lost in the incidence of a theft that reportedly occurred in the night of 30th October / 1st November, 1992.

2. The facts of the case lie in a narrow compass and could be narrated as hereunder. While working as Superintendent (Stores & Purchase), the applicant took an amount of Rs. 10,000/- from Cashier for purchasing of a few Stores items. He could purchase only some of items by 7.00 p.m. on 29.10.92. On the next day, he was busy in organising a retirement farewell party of an employee and hence, no further purchase could be made. Next day, i.e., 1.11.92 was Sunday. The left over of the amount was kept in the official Almirah allotted in the name of the applicant. On the morning of 2nd November, 1992, he was told that a theft has taken place involving applicant's Almirah. An official committee was constituted to prepare an inventory of articles / files. While submitting his explanation in November, 1992, the applicant denied involvement in the theft case.

3. I have heard rival contentions of both the parties.

Shri S.N. Trivedi, learned counsel for the applicant,

argued applicant's case extensively and submitted that notice for recovery as proposed in Annexure A/1 and notice to deposit Rs. 10,000/- as in Annexure A/2 were issued without any opportunity of hearing. The principles of natural justice has been violated in not offering the applicant an opportunity of hearing his side before effecting the recovery. The counsel also submitted that no authority has held the applicant responsible for the theft nor the theft even took place in his house. Relying upon the decisions of Hon'ble Supreme Court in the case of Shri Bhagwan Shukla vs. Union of India & Ors., AIR 1994 SC 2480, the counsel argued that there has been flagrant violation of the principles of natural justice. Based on these principles, the appellant in the aforementioned case was provided necessary reliefs by the Apex Court. The counsel also cited the decisions of the Calcutta Bench of the Tribunal in the case of Barindra Kumar Ghosh vs. Union of India & Ors., 1991 (1) A.T.J. (Vol.10) 230. In this case, the applicant was charged for the loss of Govt. money from his custody. Recovery of loss was ordered to be made from the Death-Cum-Retirement-Gratuity (DCRG, for short). No formal enquiry was held under Discipline & Appeal Rules. The order recovering the loss was quashed by the Tribunal. Learned counsel for the applicant would submit that the circumstances prevailing in the instant case are identical to the facts and details of the two cases cited by him. On the strength of above two decisions, the counsel has prayed for quashing of Annexures A/1 and A/2 and to issue a direction to the respondents not to hold the applicant responsible for the theft amounting to Rs. 10,000/-.

4. In reply, Shri V.S. Gurjar, learned counsel for the respondents argued that the applicant cannot escape from the responsibility as per the norms laid down on the subject. The applicant herein had the entire day on 31st October, 1992 to deposit back the balance amount, but he failed to do so on that day, when he had no other official responsibilities to shoulder except to attend the farewell function of one of his colleagues. Therefore, he is under legal obligation to make good the loss which arose on account of his negligence. The fact that 1.11.1992 was Sunday was known to him in advance. As per the counsel for respondents, the applicant's contention cannot be accepted for the reason that the applicant had allegedly brought back the balance amount in the office of the respondents on the following day, i.e., 31st October, 1992, but had not deposited amount to the Cashier nor did he go for purchase of Articles for which the amount was drawn.

5. Learned counsel also submitted that the first instalment of the recovery (Rs. 278/-) was effected in the month of November, 1995, in compliance with the order at Annexure A/1 dated 17.10.95. The respondents have also submitted that the applicant was afforded ample opportunities to explain the alleged theft. He had participated in the enquiry constituted by the department and has recorded his statement. In reference to a legal notice dated 10.7.95 from the counsel for the applicant, the respondents had clarified the position alongwith a warning that the amount of loss have to be compensated by the applicant by means of depositing the amount failing which recoveries would be effected. This was done by Annexure R/2 dated 21.9.95, well before the issue of impugned order at A/1 order dated 17.10.95. The respondents have even doubted the bonafides of the applicant in that there was a recovery of Rs. 11,647.82 ps. from the same Almirah after the alleged theft occurred. It has been contended that no thief, while committing the theft, would only pick up Rs. 10,000/- when a sum of Rs. 20,000/- was lying in the same Almirah. The circumstances, therefore, speak for the truth. The applicant cannot absolve himself from the liability to make good the loss caused on account of his gross negligence for which he is held directly responsible as per rules. The applicant, in fact, did not make any formal representation against the impugned orders at Annexure A/1 and A/2.

6. The short issue for consideration is whether the recoveries effected in the instant case with the issue of A/1 order are valid in law. I find that A/1 notice dated 17.10.95 mentions that the recovery of the aforesaid amount will be made from the applicant's salary from the month of November, 1995 onwards. This was a warning in advance. The applicant was also offered an opportunity to establish his innocence before the fact finding enquiry. Moreover, in response to the lawyer's notice, the applicant was told on 21.9.95 about the legal position and that the recovery would be effected from his salary. In these circumstances, it would be wrong to say that the applicant was not given opportunity of hearing to represent his case.

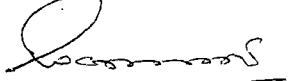
7. Learned counsel for the applicant has cited a decision of the Calcutta Bench of the Tribunal in the case of Barindra Kumar Ghosh vs. Union of India & Ors. (supra). In this case, the loss was ordered to be recovered from the DCRG. The applicant therein had retired on superannuation. The recovery from the retiral benefits could be ordered

only in terms of Rule 315 of the Railway Pension Rules, 1950 under which the President of India is authorised to issue orders of recovery from the retiral benefits of a Government servant. In the instance case, the applicant is still in service. The decision of the Hon'ble Supreme Court (supra) cited by the applicant relates to a case wherein the applicant had joined the Railways as a Trains Clerk with effect from 18.12.1955, was promoted as Guard with effect from 18.12.1970 in a running pay scale. But after 21 years, in July, 1991 the pay was refixed downwards at Rs. 181/- from Rs. 190/- per month with effect from 18.12.1970. Their Lordships decided that such an action involving retrospective reduction of basic pay must be backed by an opportunity to show cause. In the instant case, it is not an issue involving retrospective reduction of basic pay after two decades. The facts and circumstances in these two cases cited by the applicant do not render any help to him.

8. I also find that the rules concerning Receipts and Payments read with the Central Treasury Rules 111 have laid down that the procedure for the safe custody of money in the hands of Government officers referred to in Rule 4 shall be regulated by the provisions contained in Part IV (Rules 109 to 112 in particular) of the Treasury Rules of the Central Government. Under these rules, the departmental officer concerned who had taken the cash for official purposes will be responsible for their contents.

9. In view of the aforementioned circumstances, the application fails and is accordingly dismissed.

There shall be no order as to costs.

  
( S.P. BISWAS )  
Member (A)

cvr.

Part II and III destroyed  
in my presence on 26/2/03  
under the supervision of  
section officer ( ) as per  
order dated 19/3/2001

  
Section officer (Record)

Received  
Atura 8/1/06  
(Signature)

Dev  
15/3/06