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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Date of order : 3/12/97

OA No. 285/1996

Muvaji Bhil S/o. Shri Lalluji Bhil aged about 45 years, resident of 7-C, Madhuban, Udaipur, at present employed on the post of Chowkidar in the Office of Anthropological Survey of India, Western Regional Office, Udaipur.

... Applicant.

v e r s u s

1. Union of India through the Secretary, Ministry of Human Resource Development, Department of Culture, Government of India, Shastri Bhawan, New Delhi.
2. The Director, Anthropological Survey of India, Indian Museum, 27, Jawahar Lal Nehru Road, Calcutta.
3. The Deputy Director, Anthropological Survey of India, Western Regional Centre, 16, Madhuban, Udaipur (Rajasthan)
4. The Junior Administrative Officer, Anthropological Survey of India, Western Regional Office, Udaipur.

... Respondents.

Mr. Sunil Joshi, Counsel for the applicant.

Mr. K.S. Nahar, Counsel for the respondents.

CORAM :

Hon'ble Mr. A.K. Misra, Member (Judicial)

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PER HON'BLE MR. A.K. MISRA :

The applicant has filed this O.A. with the prayer that the impugned order dated 16.8.1996 (Annexure A/1) and Office Memorandum dated 13/20th May, 1996, be quashed and the respondents be restrained from recovering the amount as shown in Annexure A/1 from the pay of the applicant. The applicant has further requested that the circular dated 25.10.1995

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(Annexure A/6) be also quashed and the respondents be directed to consider the case of the applicant in the matter of granting holidays.

2. Notice of this O.A. was given to the respondents. They have filed their reply to which no rejoinder has been filed by the applicant. In brief, the contention of the respondents is that the payment of night duty allowance was made to the applicant mistakenly. Subsequently, when the mistake was discovered and the amount was found to have wrongly been paid, the higher authorities ordered for the recovery of the same and in compliance thereof, the applicant was asked to refund the amount of night duty allowance. The applicant has not made any representation against the letter calling upon him to refund the amount. The applicant has not exhausted the departmental remedies available to him before filing the present O.A., therefore, the O.A. deserves to be dismissed.

3. I have heard the learned counsel for the parties .

4. The learned counsel for the applicant has argued that the amount of night duty allowance was not paid to the applicant at his instance or on his representation. Therefore, in view of the judgement of Hon'ble the Supreme Court reported in 1995 SCC (L&S) 248, Sahib Ram vs. State of Haryana & Others and 1997 (1) SLJ (CAT) 383, Nathi Lal vs. Union of India & Others, rendered by the Jaipur Bench of the Tribunal, the department is not entitled to recover the amount from the applicant, neither the applicant is liable to refund the amount to the department. Learned counsel for the applicant has further argued by citing a decision rendered by the Bangalore Bench of the Tribunal on 7th June, 1996 in O.A. No. 1749/95, P. Rangaswamy and Others vs. Comptroller General, Indian Bureau of Mines, Ministry of Mines, Nagpur and Others, that the Government Circular dated 4.10.1989 (Annexure A/5) was widely discussed in the said judgement and it was held that the applicant was entitled to

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night duty allowance. The interpretation of the same circular is involved in the present case, therefore, in view of the above cited judgement the applicant is not liable to refund the amount as he was correctly paid the night duty allowance and the department cannot take any action for recovery of the same after long lapse of time.

5. On the other hand, learned counsel for the respondents has argued that the letter Annexure A/1 only indicates that the applicant was not entitled to night duty allowance, therefore, the amount of night duty allowance was required to be recovered. The applicant was called upon to deposit the amount of night duty allowance. This letter does not bear any clause indicating the steps which the department would prefer to take to recover in case of failure to refund the amount by the applicant. Therefore, this communication amounts to only a notice to the applicant. The applicant should have represented against this communication, but he has failed to do so, therefore, the O.A. should be dismissed or the applicant should be directed to make a representation to the department.

6. I have considered the rival arguments and have gone through the records and also the rulings cited by the learned counsel for the applicant. From the perusal of the letter dated 16.8.1996 (Annex. A/1), I have come to the conclusion that this communication is only a notice asking the applicant to refund the amount. This letter cannot be interpreted as a letter initiating recovery of the night duty allowance from the applicant. In this letter, there is no coercive clause to which the department may have recourse in case of the applicant's failure to deposit the amount. The letter Annexure A/1, therefore, cannot be termed as a recovery order. The applicant could have very well shown to the concerned authorities by making representation that the amount cannot be recovered for the reasons indicated in the representation. But the applicant has not done so. On the contrary, he has approached the Tribunal without exhausting departmental remedies. Thus, the O.A. can be disposed of by directing the applicant to make a representation against

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the order dated 16.8.1996 (Annexure A/1) demanding refund of the night duty allowance. On representation being made by the applicant, the department may dispose of the representation by deciding the same by a speaking order.

7. The rules propounded in the rulings cited by the applicant cannot be disputed. But the facts of these rulings are different than the present controversy.

8. In view of my observations given in the foregoing paragraphs that the communication Annexure A/1 is not a recovery order but only a letter calling upon the applicant to refund the amount which is more or less a show cause notice that the applicant is not entitled to retain the night duty allowance and is liable to refund the same. Therefore, I would not like to decide the case on merits at this stage. Also, there is no need to discuss the applicability of the rules propounded in the rulings in the present case vis-a-vis the facts of the case.

9. It is, therefore, ordered that the applicant may make representation against the communication dated 16.8.1996 (Annexure A/1) to the concerned authorities within one month from the date of receipt of a copy of this order. On representation being made by the applicant, the concerned authorities shall dispose of the same by a speaking order within a period of four months. However, if the applicant is still aggrieved by the decision of the respondents, he will be at liberty to file a fresh O.A.

9. With the above directions, the O.A. is disposed of. No order as to costs.


(A.K. MISRA)
Member (J)

CVR.