

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 573/2011

Dated this the 12th day of April, 2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member

Dr. Aminu Deen Son of Shri Buklaki Khan,
Resident of 4-#-152, Jai Narain Vyas Colony,
Bikaner, last employed on the post of
Principal Scientist in Central Sheep and Wool
Research Institute, Malpura, Avikanagar-304501
Dist. Tonk(Raj).

...Applicant

(Applicant appeared in person)

Vs.

1. Indian Council of Agriculture Research through
Its Secretary, Krishi Bhawan, New Delhi.

2. The Dy. Director General, Animal Science,
ICAR, Krishi Bhawan, New Delhi.

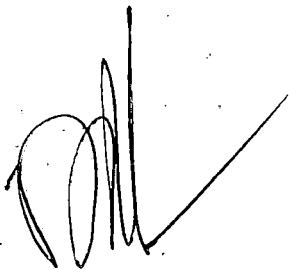
3. The AAO, NRC on Camel, Bikaner.

4. The Director, NRC on Camel, Bikaner.

5. Dr. M.S. Shani, The Ex-Director, NRCC, Bikaner
Resident of Bikaner.

...Respondents

(By Advocate Mr. VS Gurjar for R.1 to 4
None for R5).



ORDER (oral)

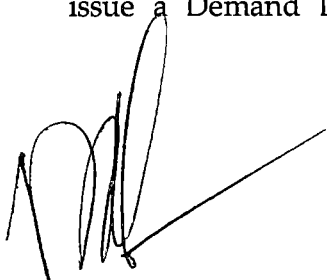
The instant OA has been filed against the order of the Assistant Administrative Officer, National Research Centre on Camel, Jorbeer, Bikaner dated 16.6.2008 directing realisation of a sum of Rs.8,824 from the salary of the applicant [A-1].

2. The applicant has prayed for the following relief in this OA:

- i. *That impugned order no. File no. 1(21) Kharid/08/1515 dated 16.6.2008 may be declared illegal, tainted with malice of respondent No.2 and the same may be quashed. The respondent may be directed to allow all consequential benefits as if the impugned order were never in existence.*
- ii. *That the respondents may be directed to produce all relevant records/file containing noting leading to decision to pass the impugned order at the time of hearing of this case, for perusal by this Hon'ble Tribunal so as to unfold the true facts.*
- iii. *That any other direction or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."*

Facts of the Case

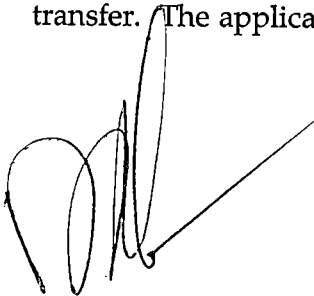
3. Facts of the case in brief is that the applicant is a scientist last employed as Principal Scientist in Central Sheep and Wool Research Institute. Malpura, Avikanagar under the Indian Council of Agricultural Research in Tonk district. The Director, NRC on Camel issued orders on 26.5.2006 directing advance payment of Rs.31,912- to the applicant towards sending advance payment of US \$ 672.25 to Amersham Bio-Sciences Ltd for their proforma invoice for procurement of NaI¹²⁵ Chemical. The Director NRC issued a letter to the Branch Manager, SBBJ to either issue a Demand Draft or wire transfer of the amount to the afore firm and



accordingly the amount involved was transferred. The firm, however, returned the draft on the ground that the chemical in respect of which the order had been placed is no longer being manufactured by them. The money was credited to the account of the respondent institution. The applicant, vide the impugned order [A-1] was directed to refund a sum of Rs. 8824 being the differential between the amount of Rs.34,443 sent and Rs.25,619 refunded. The impugned order specifies that the money had been drawn vide AC Bill and the same amount was required to be refunded. This recovery is being made from the applicant as he had stood surety for the amount. The applicant was asked to submit show cause as to why the amount should not be realised from him failing which it should realised from his salary for the month of June 2008.

Grounds for the OA

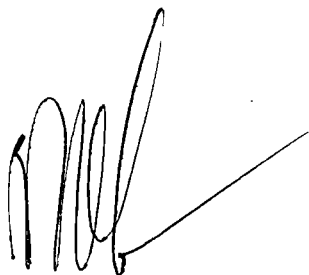
4. The applicant has alleged that he and the present Director NRC Camel DR KML Pathak, who figures as respondent no. 4 in the instant OA, had been applicants for the same post and he had challenged the appointment vide OA No 105/2007. The matter was remanded to the Governing Body of the ACAR which decided in favour of the opposite party. The R4, therefore, bears a malice towards him on this account. In the instant case it was not the responsibility of the applicant to make purchase of chemicals under consideration and yet he was ordered to do so. Subsequent to the refund the Administrative Officer, one Kanwar Pal Sharma submitted a proposal that the amount should be realised from the applicant as he had stood surety for the transfer. The applicant admits that he had stood surety for coverage of risk had the



money been sent through the demand draft but in the case of transfer through wireless no risk was involved. The payment had been sent by the Director NRC, Camel Bikaner and the applicant was not responsible. The applicant also alleges that the R4 had also filed a complaint with the Central Vigilance Commissioner who referred the same to the CVO ICAR who has taken no action over the same.

Argument of the Respondents

5. The respondents, on their part, have argued the OA is barred by limitation as the impugned order for recovery had been made on 16th June 2008 while the OA has been filed on 20th December 2011. The applicant had made the indent and had directly placed orders on the firm. The respondents have strongly contended that the applicant had taken an advance of Rs. 43,443 in form of AC Bill No 52(P) dated 29.8.2006 and 61(P) dated 22.9.2006 and he himself released the advance payment through wire transfer to the firm. [para 4.6 of the CA]. Under normal practice DD is issued in respect of Government firms within India while in such cases it is customary to open LC in favour of the firm. The CA states: *"Later on a query from the Director, NRRC, the applicant resubmitted that Demand Draft would be cheaper than LC and further the applicant stated that the applicant would be responsible for risk coverage in case of sending Demand Draft. The applicant also proposed for sanction of Rs.31,912/- in Indian Currency for the purpose which was endorsed by the In-charge AAO and approved by the Director, National Research Centre on Camel, Bikaner on 25.5.2006, these facts are fortified in view of noting made with*



reference to the purchase of item in dispute, a photocopy of the noting is annexed herewith and marked as Annexure-R/3." [para 4.3 of the CA]. The transaction was against the purchase rules and procedure but was undertaken on the statement of the applicant that "he would cover and stand the risk and the cost". [para 4.12 of the CA]. The losses are on account of bank charge and currency fluctuations. The applicants have resisted the allegations of malafide and have stated that since the Director NRRC has the powers to write off only Rs. 2,500 and in view of the undertaking of the applicant the recovery has been rightly ordered.

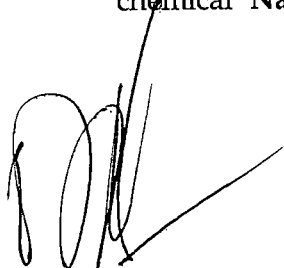
Facts-in-issue

6. Having perused the pleadings of the rival parties, perused the documents filed and having heard the arguments of the parties the following facts-in-issue are framed:

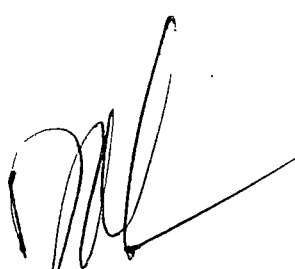
- i. *That whether the applicant had actually given the undertaking to underwrite the losses incurred in the transaction?*
- ii. *That whether the losses incurred have been transactional losses incurred during the course of business or have been driven by mensrea to cause wrongful loss to the respondent organisation or criminal neglect leading to the losses?*
- iv. *What relief could be provided to the applicant, if any at all?*

That whether the applicant had actually given the undertaking to underwrite the losses incurred in the transaction?

7. In so far as the first of the issues is concerned the answer to the riddle is concealed in the record which has been adduced by the respondents attached to their CA. It is an admitted fact that the applicant was the one who made use of the chemical NaI¹²⁵ and would have made use of the same had it been supplied.



Admittedly, the applicant called for a proforma invoice from the firm, GE Healthcare Bio Sciences New Delhi vide his communication dated 27.3.2006 [R-2]. The Proforma Invoice was provided by the firm and the applicant made an endorsement to the Director NRCC [R-4] that the chemical desired was from a proprietary category and since the validity of the Proforma Invoice was only for a period of 60 days hence a DD could be issued in respect of rupee equivalent of US \$ 672.25 vide his note dated 23.5.04. It is followed by a query that whether the payment will be less through the LC route to which the applicant replied that the payment is to be made through Demand Draft in US \$ currency . It will be cheaper than LC. On 25.5.06 the Respondent 4 finally approves the proposal: *"According to rules no advance payment could be made to any firm but Dr Aminuddin, In Charge of the Research has accepted the responsibility of having the draft despatched and has also recorded that this has been a continuing practice. Therefore obtain sanction for $672 \times 46 = 30912 + 1000 = 31912/-$ payment through AC Bill and preparation of draft in US \$ terms and put up for payment to Scientist In-charge Dr Aminuddin"*. This proposal was approved on 25.5.06. [R-3; p.68 of the CA]. The amount was again approved by the Director for Rs. 31912/- through AC Bill on 23.8.06. Subsequently the applicant informs the Director that an expenditure of Rs. 34,443 has been incurred as against a sanction of Rs.31,912 and the differential has been spent by the applicant from his own resources and seeks reimbursement of the same. It is followed by the information that the production of the chemical for which

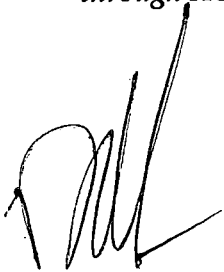


order was placed has been discontinued without replacement and a DD in respect of the full amount US \$ 672.25 is made by the Company. [p.81 of the CA]

8. It was explained by the applicant who appeared in person that the undertaking given was only in respect of despatch of the draft and for none other. The electronic transfer of money has taken place and it is nobody's case that it has not been received. From the language of the noting also it is clear is what is being undertaken is by the applicant has a limited connotation. The amount despatched was US \$ 672.25 and the same amount has been remitted by the Company which failed to undertake the supply. Hence, the loss in Rupee terms has mainly taken face in terms of fluctuation in exchange rate and bank charges, though the precise amount I do not find mentioned anywhere. On the basis of the fore discussions and the documents adduced it would be far fetched to infer that the applicant had undertaken to hedge the possible losses in the transaction. Hedging is an altogether different form of banking transaction which involves its own charges.

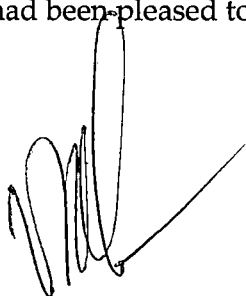
That whether the losses incurred have been transactional losses incurred during the course of business or have been driven by mensrea to cause wrongful loss to the respondent organisation or criminal neglect leading to the losses?

9. I start discussion over this issue by asking the question is that why the differential amount is sought to be realised from the applicant. The answer is provided in the impugned document [A-1]. This document is in form of a show cause to applicant the relevant portion of which is worth quoting: " You had obtained a sum of Rs. 31,912 vide AC Bill No. 52(P) dated 29.6.2006 and Rs. 2531/- through AC Bill No. 62(P) dated 22.9.2006 A total of Rs. 34,443/- for payment of US \$



XG

672.25 vide Supply Order No. 1(21)/Kharid/03/part-7/2831 dated 20.9.2008 to M/s GE HEALTHCARE BIOSCIENCES LTD, HONGKONG, in respect of which in the condition of supplies not being made the said DD was refunded in foreign currency which is Rs. 8824/- less than the amount obtained by you vide AC Bill. The responsibility for refund of the amount was furnished by you to the office. Hence, it is necessary to deposit the amount of Rs. 8824/- by which the shortfall occurs for adjustment of the amount involved in the AC Bill should be deposited by you at your own level to the Drawing and Disbursement Officer of the Centre". Realisation is made from the Government Servant only when there is either mensrea to misappropriate the amount or gross neglect is concerned. The losses involved have been transaction losses mainly because of exchange rate fluctuations. There is nothing on record to indicate the existence of either. In respect of the previous issue it already stands resolved that the undertaking given by the applicant was only limited to the DD reaching which stands fulfilled. It was beyond his control to hedge the exchange rates. It is also apt to mention that not every loss incurred by the Government is subject to recovery from its employees. Had it been so most employees would not be getting their salary. In the present instance there is no case of recovery from the applicant. The fact that the respondents had proceeded post-haste with the recovery without having considered these points be speak of a bias against him. It also lends substance to the allegation of prejudice levelled against R4, as the applicant had earlier challenged his appointment before this very Tribunal which had been pleased to strike it off.



What relief could be provided to the applicant, if any at all?

10. On the basis of the resolution to the above issues it is evident that the recovery from the applicant vide the impugned order [A-1] is misplaced and bad under law. Hence, the following relief is granted to the applicant:

- i. The impugned order vide no. File no. 1(21) Kharid/08/1515 dated 16.6.2008 is quashed;
- ii. The power to write off amount up to Rs. 2,500 rests with the Director, NRRC and rest with the superior authorities. The case is remanded to the authority competent to consider in light of the principles enunciated in this order within a period of 3 months.
- iii. The applicant will file his application for write off to the competent authority within one month and the latter will take a decision within 3 months.
- v. The OA is partly allowed.
- vi. No order to the cost.



(B K SINHA)

ADMINISTRATIVE MEMBER

PPS