

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.335/2013
with MA No.152/2013

RESERVED ON: 26.04.2016

Jodhpur, this the 28th day of April, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Anna Ram s/o Shri Pratap Ram, aged 63 years, Resident of 21-E, 388, Chopasani Housing Board, Jodhpur (Raj.) applicant retired from office of Sub Divisional Engineer, respondent No.4

.....Applicant

By Advocate: Mr. B.S.Sandhu

Versus

1. Bharat Sanchar Nigam Limited, through Chief General Manager, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur.
2. General Manager (NWO-CFA), Office of Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur
3. The Divisional Engineer (Plg.& Admn.), Office of the Telecom District Manager, Bharat Sanchar Nigam Limited, Jaisalmer.
4. The General Manager Telecom District, Bharat Sanchar Nigam Limited, Jodhpur, Subhash Nagar, Pal road, Jodhpur

.....Respondents

By Advocate : Mr. Mukesh Dave

ORDER

Heard both the counsels. Considered the Misc. Application

No. 152/2013 for condonation of delay and it is allowed.

2. The issue in brief concerns the recovery of Rs. 32,400/- from the gratuity of the applicant without holding an inquiry.

3. The applicant was posted as Sub Divisional Engineer, Jaisalmer where he joined on 08.09.2005. The applicant was given charge of HRD, CMTS and CSC by an order dated 17.09.2005. The present controversy relates to the charge of Commercial Section handed over to the applicant on 18.09.2005 by which charge of two CCMS Server with all equipments were given to the applicant. Subsequently, the charge was taken back from the applicant on 29.09.2005 due to his being over burdened. The applicant states that the CCMS server along with all its equipments which included bar code scanners were initially given and subsequently taken back from the applicant on 29.09.2005 and there was no specific mention of the three bar code scanners in the charge report. The applicant was then transferred to Poonch (Jammu and Kashmir) from 26.04.2006 till 23.10.2008. It was only in December, 2008 when he received a letter dated 17.12.2008, he learnt that three bar code scanners which were specifically given to the applicant were not available in the Customer Service Centre. To this, he replied on 05.01.2009, explaining that all equipments had been handed back by him on 29.09.2005. Again, the applicant was given a notice on 06.05.2009, along with a charge report. He was

am there was no mention of bar code scanners in

the charge report, the value of the same will be recovered from him. Reply to this notice, on lines of the earlier one was given by the applicant on 14.07.2009. Subsequently, on 18.08.2009, the Department ordered to deduct the value of 3 bar code scanners of Rs. 32,400/- from the salary of the applicant. Thereafter the applicant submitted representation dated 09.09.2009 stating that proper investigation should be carried out and responsibility should be fixed regarding missing equipments before the recovery is made from him. The respondents, however, deducted the amount from the gratuity of the applicant after his superannuation in June, 2010. The applicant filed an appeal against this deduction and also filed various applications under the RTI Act seeking information regarding action taken on his appeal. After protracted correspondence with the respondents, a communication dated 29.05.2012 was received by the applicant justifying recovery made from him.

4. It is also averred by the applicant that it is the General Manager who after inquiry can take any action against the applicant. In the instant case, the order of recovery has been passed by the Divisional Engineer, who is not the Disciplinary Authority and has no jurisdiction to pass an order of recovery.

5. The respondents in their reply have justified the recovery of

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missing from the charge of the applicant. Respondents have stated that as per Ann.R/3 it is apparent that the bar code scanners were not only handed over but also installed in the presence of the applicant by one Shri Gajendra, Service Engineer (ITI). The respondents have relied upon Ann.R/3 which is hardware installation report dated 19.08.2004 showing installation of 3 bar code scanners in the presence of Shri Anna Ram, SDE, BSNL. It is submitted that bar code scanners are separate from CCMS and its equipment, as alleged by the applicant. Since these were installed during the tenure of the applicant, hence these do not find place in the charge report.

6. The learned counsel for the applicant stated that even if it is assumed that bar code scanners are hardware and were installed in the presence of Shri Anna Ram (applicant), it does not in any way prove that these were also removed by the applicant. Also, it does not indicate the time, or the date, when the bar code scanners went missing. He drew my attention to the letter dated 05.01.2009 (Ann.A/9) and letter dated 14.07.2009 (Ann.A/12) wherein the applicant has categorically stated that the PCs of CMTS/CSC branch were handed over to his reliever including the bar code scanners which are computer peripherals. The learned counsel stated that the rejection order dated 28.05.2012 (Ann.a/2)

is is not sustainable since it shows non-application of mind and is not

a speaking order. Assuming but not admitting that the bar code scanners are peripherals of computer system, the learned counsel stated that installation reports on which the respondents are relying primarily, merely suggest that the scanners were installed. They do not prove or establish that these were removed at the point of time when the applicant was incharge. To establish the fact that the scanners went missing, an inquiry has to be held which must show the exact time and date when it was noticed that the scanners are not available. A period of 5 years lapsed before the Department pointed out the fact of missing scanners to the applicant. During this period, the applicant was posted in Jammu and Kashmir. There might have been other officers who handled the charge of the Commercial Section during this period. To justify the recovery, the respondents must prove, by way of an inquiry that the scanners went missing only at the time when the applicant was incharge.

7. The learned counsel for the respondents reiterated the submissions made in his reply dated 05.02.2014. The hardware installation report of 19.08.2004 confirms that these were installed in the presence of the applicant. Since these were installed during the tenure of the applicant, hence the same does not find place in charge report of the reliever Shri Vyas to the applicant.

8. I have heard the contentions of both sides and gone through the facts of the case, carefully. I find that – i) the record available does not bring out any exact time when it was noticed by the Department that the bar code scanners are missing, ii) it does not categorically establish that these went missing only when the applicant was incharge. Unless and until, it is specifically proved that three scanners were removed during the period when the charge was with the applicant, merely to assume that it happened at the time when he was there, certainly looks like an assumption on part of the Department. The respondents, before making recovery from the retired employee were required to categorically establish complicity or negligence of the applicant, which does not seem to have been done in this case.

9. I, therefore, direct the respondents to hold a proper investigation in the matter pin-pointing as to when the three bar code scanners went missing and proceed in the matter accordingly. The outcome of the investigation will suggest further cause of action.

9. The OA and MA stand disposed of accordingly with no order as to costs.


(PRAVEEN MAHAJAN)
Administrative Member

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