

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 480

~~1990~~

1990

DATE OF DECISION 8-4-1990

V.K. Velayudhan _____ Applicant (s)

Shri. P. Sivan Pillai _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
General Manager, Southern Railway, Madras-3 and 2 others

Smt. Sumathi Dandapani _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

N. Dharmadan, M(J)

The applicant who is working as Chief Inspector (Works), Southern Railway, Ernakulam challenges Annexure A-13 proceedings dated 26-3-90 issued by the second respondent for recovering a sum of Rs.4693/- from the salary of the applicant being the value of 60.5 bags of cement found short on SAO's inspection during December 1984.

2. The case of the applicant is that when he was promoted as Inspector of Works Gr.II with effect from 1-8-81 with independent charges (Special Works)

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he handed over to IOW/SW/ERS the entire stock of cement after deducting the cement allotted and delivered to the contractors. He admitted that prior to his promotion he was under the control of Inspector of Works, Ernakulam and was in charge of maintenance and other works. While handing over the stock of cement and other articles in the store on his promotion some discrepancy has crept in the records but, according to the applicant, there was no physical deficiency of the stock. Annexure A-1, inspection report mentions about the irregular accounting. It concludes with the following finding:

"....Based on this irregular and short book balance the accounts stock verification took place on 24-1-83 has not revealed any discrepancy while there was a physical shortage of 60.5 bags, for which staff responsibility to be fixed..."

Annexure R-1 produced along with the counter affidavit is the statement of handing over charges (HOC). According to the applicant a close verification of stock with reference to the statement of HOC would clearly indicate that actually there is no loss of government property. Nevertheless Annexure A-13 was issued to the applicant without any notice, enquiry or fixation of loss of property due to the alleged negligence or oversight of the applicant. The respondents ordered for the summary recovery of the amount from the salary of the applicant. This is illegal and violative of principles of natural

justice. Hence this order is liable to be set aside, by the Tribunal.

3. The amount ordered to be recovered from the salary of the applicant pursuant of Annexure A-13 is Rs.6493/- being the value of 60.5 bags of cement found short when the store was inspected during December 1984. It is calculated at the rate of Rs.77.57 per bag. The deficiency in the stock of cement on inspection was strongly disputed by the applicant. He referred to us Annexure R-1, the statement of H.O.C. It contains the following explanation:

"...II. Details of accounting of the above transactions in the Cement ledger by the IOW/ERS.

Taken the O. Balance as 2174 bags.

The following are the transactions posted in cement ledger:

No. of bags issued as per the H.O. stt. above	
S.No.1 to 18	1788
S.No.19	240½ + } 308½ bags as against
	68 } 252½ bags shown in
	HO stt.

Issue made in 7/81 for repair to GLR roof at IPN 4½

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Balance as on 1-8-81 arrived at as 73 bags.

Note: The quantity of cement issued to the work FOB at ERN shown in H.O. stt. as 252½ bags. But this qty. has been reduced and posted in the cement ledger by IOW/SW/ERS as 240½ bags and added another 68 bags which are not furnished in the H.O. stt. Further, a quantity of 4½ bags in 7/81 has been posted and reduced in the available balance.."

The applicant's case that there is no loss of cement and it was only a mistake in the account, is further supported

by the letter at Annexure A-3 dated 12-4-85 written by the second respondent himself in which it has been stated that "in fact these 68 bags were included in the 133½ bags cement stated to have been handed over by IOW/ERS to IOW/SW/ERS on the formation of the section." It is further stated in the said letter that "it is ascertained that there had not been any misappropriation of cement but only certain minor anomalies in accounting. This might have happened due to the lack of knowledge in accounting procedure to the incumbant, whose first assignment was this as an independent IOW in his service. Moreover, no clerk or assistant IOW was provided to him and he was managing both office and outdoor works with daily rated khalasis, having limited educational qualifications..." In a further communication sent by the second respondent to SAO/W&S/GOC/Vo.7 dated 13-6-86 he has again stated as follows:

"...In as much as the quantity of cement actually received by IOW/ER/ and IOW/SW/ERS has properly been brought to account and no shortage is actually revealed, it is requested to close the paras in question and this office advised.

However, IOW/SW/ERS has since been warned to be more careful in future to maintain clear records with date in future...."

4. The second respondent in his letter dated 2-3-87, Annexure A-6, he has confirmed the above statement by stating the following:

"...As already furnished there was no any shortage of cement in the stock with the IOW, but only wrong accounting by him due to his lack of experience in maintaining accounts. It was his first chance of being an IOW in charge of a section as IOW/SW/ERS and no clerical accountance was provided...."

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5. The second respondent who issued the impugned proceedings, Annexure A-13, himself admits that there is no misappropriation or loss of Govt. property (cement) and it is only a mistake in accounting due to the lack of experience of the applicant. Under these circumstances, it is illegal and inequitable on his part to recover the money from the salary of the applicant as mentioned in the Annexure A-13. After carefully going through the documents produced in this case, we are of the view that admittedly there is no loss of Govt. property so as to enforce Annexure A-13 by resorting to recovery of amounts from the salary of the applicant. Hence we are of the opinion that Annexure A-13 is illegal to the extent of seeking recovery of amounts shown there in from the salary of the applicant. Even if there is some loss of Govt. property, such loss can be recovered from the Govt. servant only after ascertaining and quantifying the same after due notice to the concerned official. The principles of natural justice demand a notice and hearing before recovery/fixing the quantum of liability. Even in cases of recovery of amounts covered by contracts as liquidated damages can be enforced only after due fixation of the liability when the quantum of liability is disputed by the party. The Supreme Court in Union of India v. Raman Iron Foundry, AIR 1974 SC 1265 held

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as follows:

"...The claim is admittedly one for damages for breach of the contract between the parties. Now, it is true that the damages which are claimed are liquidated damages under clause 14, but so far as the law in India is concerned, there is no qualitative difference in the nature of the claim whether it be for liquidated damages or for unliquidated damages. Section 74 of the Indian Contract Act eliminates the somewhat elaborate refinements made under the English common law in distinguishing between liquidated damages and stipulations in the nature of penalty. Under the common law a genuine pre-estimate of damages by mutual agreement is regarded as a stipulation naming liquidated damages and binding between the parties; a stipulation in a contract in *terrorem* is a penalty and the Court refuses to enforce it, awarding to the aggrieved party only reasonable compensation. The Indian Legislature has sought to cut across the web of rules and presumptions under the English common law, by enacting a uniform principle applicable to all stipulations naming amounts to be paid in case of breach, and stipulations by way of liquidated damages, a party complaining of breach of contract can recover only reasonable compensation for the injury sustained by him, the stipulated amount being merely the outside limit. It stands on the same footing as a claim for unliquidated damages. Now, the law is well settled that a claim for unliquidated damages does not give *raize* to a debt until the liability is adjudicated and damages assessed by a decree or order or a Court or other adjudicatory authority. When there is a breach of contract, the party who commits the breach does not *instanti* incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party..."

Following the above decision the Kerala High Court in *Chellappan v. Executive Engineer*, 1979 KLT 53 held :

"...It is clear therefore that what is the the amount due is a matter for adjudication and until such adjudication is made no amount is due..."

Again the Division Bench of Kerala High Court stressed the need of fixing the liability by a competent authority when there is dispute by the party, in *State of Kerala v.*

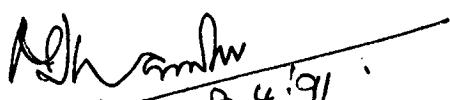
Aly, 1985 KLJ 1, as follows:

"If the claim for reimbursement is not strictly a claim for liquidated damages for breach of contract, but only a statutory liability, the same can be quantified without the intervention of a Court when all that is required is the application of simple arithmetic. The position may probably be different when the basic figures are in dispute..."

6. In the instant case, admittedly, there is no materials to satisfy us that such a prior notice for fixation of the liability of particular quantum of amount due from the applicant by the respondent so as to enable them to recover an ascertained amount or loss as indicated in Annexure A-13, from the salary of the applicant. Hence Annexure A-13 is also violative of principles of natural justice to the extent it applies to the applicant.

7. In view of the matter, this application deserves to be allowed. Accordingly, we quash the impugned order at Annexure A-13 to the extent it applies to the applicant and allow the application.

There will be no order as to costs.


(N. Dharmadan)
Member (Judicial)

8.4.91


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(S.P. Mukerji)
Vice Chairman

8th April 1991