

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

....

O.A. NO. 119/1993

Monday, this the 8th day of November, 1993.

Shri N. Dharmadan, Judicial Member

Shri S. Kasipandian, Administrative Member

K. Sadashivan Applicant
Kunnipura,
NN Railway Station,
Kumbala, Kasargode.

By Advocate Shri M.R. Rajendran Nair

Vs.

1. Union of India, represented by Secretary, Ministry of Communications, N.Delhi.
2. The Supdt. of Post Offices, ... Respondents Kasargode.
3. The Special Deputy Tahsildar, Revenue Recovery, Kasargode.

By Advocate Shri S. Krishnamoorthy & Shri D. Sreekumar.

ORDER

N. Dharmadan, JM

The applicant is aggrieved by the coercive steps taken against him under the Revenue Recovery Act for realisation of the amounts covered by the impugned order Annexure-IV and VI.

2. The applicant, while working in the Postal Department, was dismissed from service as per Annexure-I order for misappropriation of money orders and finding him guilty of the charges. The appeal filed against the said penalty order was also rejected. Pending the disciplinary proceeding, CC-135/86, filed before the Chief Judicial Magistrate, Kasargode under Sections 409 and 465 of the IPC, was registered for prosecuting him. After trial he was acquitted under Section 248 of CPC. Thereafter a demand notice dated 11.5.89 was issued to the

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applicant by the Special Deputy Tahsildar, Revenue Recovery, Kasaragode demanding a sum of Rs 2,093.20. This was objected to by the applicant ~~by the applicant~~ by filing Annexure-III, stating that since he has been acquitted by the Criminal Court he is not liable for any financial loss, alleged to have sustained to the Department. That objection was rejected by Annexure-IV order. Further request was also turned down as per Annexure-VI order. Thereafter Annexure-VII notice under section 36 of the Kerala Revenue Recovery Act was issued to the applicant. In this application, filed under section 19 of the Administrative Tribunals Act, he is challenging Annexures-IV, VI and VII.

2. The only question arising in this case is whether a dismissed employee can be proceeded against under the Revenue Recovery Act for realisation of the loss alleged to have been sustained to the Postal Department on account of the failure of the delinquent employee to disburse the money orders entrusted to him.

3. The case of the respondents is that 55 money orders, covering a sum of Rs 12,264.60 were not delivered to the addressees, out of which the Department settled the claims of payees in respect of 17 money orders covering a sum of Rs 3,693.20. The applicant had remitted only a sum of Rs 400 and hence the revenue recovery proceedings were initiated against the applicant for recovery of the balance amount. It is also stated that the amount can be recovered from the applicant under the provisions of the Kerala Revenue Recovery Act.

4. The applicant, on the other hand, submitted that he is a dismissed postal employee, pursuant to disciplinary

proceedings. There was no charge against the applicant that he caused loss to the Department so as to impose on him a penalty under Rule 11 of the CCS (CCA) Rules. There was no proper quantification of the liability of the applicant based on the alleged loss sustained by the Postal Department. As per charge issued, the allegation was that the applicant has not paid 3 items of money orders which would cover only Rs 820/- but the respondents have chosen to realise a sum of Rs 2,893.20. The applicant is not liable for the same and he does not know how this amount has been arrived at for recovery from him. He further submitted that since he has been acquitted by the Criminal Court, his innocence has been proved and he is not liable for any financial loss, if at all any caused to the Department on account of the default of the applicant.

5. It is a settled proposition of law that the coercive steps under Revenue Recovery Act can be resorted to against a Government servant for the realisation of loss sustained to the Government, only after proper quantification of his liability, after giving him proper notice. A unilateral determination of the liability by the Government will not make such liability as "amount due" from him and it cannot be brought within the purview of the Revenue Recovery Act for recovery and realisation using coercive steps provided therein. An 'amount actually due' from Government employee, either retired or in service, alone can be recovered under the coercive steps provided under the Revenue Recovery Act. An 'amount due' has to be determined either by a civil court or other statutory authority by passing an award in an Arbitration or by a competent authority considering the admission of the party. However, the liability of a government employee is to be quantified in accordance with law by

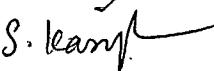
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issuing notice to the concerned employee. No such procedure has been followed in this case. The employee was admittedly dismissed from service and he is without any job. There is a statement in the reply that on account of the settlement of money order claims which ought to have been paid by the applicant while in service, the department sustained a loss of Rs 2,693.20, out of which the applicant has remitted only Rs 600/-, and the balance can be recovered from the applicant. But the applicant is disputing even this amount in ground 8 in the OA. When there is the quantum of liability is disputed, it is obligatory on the part of the department to settle the liability by following legally recognised procedure before resorting to recover the same under the provisions of Revenue Recovery Act.

6. Since no such steps were taken for quantifying the liability, we are of the view that the unilateral decision taken by the Government cannot be enforced under the Revenue Recovery Act from a dismissed government employee without following the procedure mentioned above. Hence the impugned orders cannot be sustained.

7. In this view of the matter, we are satisfied that there is much force in the submission of the applicant. Accordingly, we set aside the impugned order and allow the application. We make it clear that the judgement will not stand in the way of respondents in taking appropriate legal proceedings against the applicant for realising the loss, if any, sustained to the Department on account of the default of the applicant, after properly fixing his liability, in accordance with law.

8. The OA is allowed as above. No costs.


 (S.Kasipandian)
 Member (Administrative)


 (N.Dharmadhan) 8.11.93
 Member (Judicial)