

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 273/2005

Tuesday this the 13th day of December, 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K. Thankamma
Senior Store Keeper (Retd)
38/209, Raj Bhavan, Karshaka Road
Kochi-682 016. **Applicant**

By Advocate Mr. K.M.V. Pandalai

Vs.

- 1 Union of India represented by
the Secretary to Government
Ministry of Agriculture
New Delhi.
- 2 The Director
Central Institute of Fisheries
Nautical & Engineering Training
Dewan's Road, Kochi-16
- 3 Store Officer
Central Institute of Fisheries
Nautical & Engineering Training
Dewan's Road, Kochi-16. **Respondents**

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O R D E R

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

The applicant is a Senior Store Keeper who retired from the office of the Director of the Central Institute of Fisheries Nautical and Engineering Training, Kochi-16 on superannuation on 31.8.1997. The grievance of the applicant is that a sum of Rs. 35,145/- which was recovered from her gratuity by Annexure A-8 order dated 9.10.1997 has not so far been returned to her. The facts as submitted by the applicant are that while working as Senior Store Keeper she was holding charge of the Stores and as she applied for long leave on medical grounds she was directed to hand over the charge of the Stores to one Sri Lakshmanan Store Keeper, by order dated 26.2.1997. Though the applicant

prepared the papers for handing over the charges to Shri Lakshmanan, he was delaying the process by raising unnecessary hurdles and objections to cause inconvenience to her. Though this was brought to the notice of the second respondent no action was taken. On 29.4.1997 the applicant handed over the stores to Sri Lakshmanan who took over charge of the stores on 30.4.1997. In the said handing over note (Annexure A5) against two numbers namely Sl. Nos. 25 and 26 there is a variation in the quantity as per the Stock Register and the availability. The quantity of 'G Link assembly of 3/4" as per Stock Register and available quantity were shown as 27 Nos. and 26 Nos. Similarly 1" G Link assembly is shown as 31 Nos and 21 Nos without G. The applicant retired on superannuation on 29.8.1997 and when she made a representation for determination of her DCRG, the recovery order dated 9.10.1997 was issued. Though the applicant filed a petition seeking an opportunity of being heard it was rejected. The applicant then filed O.A. 243 of 1998 before this Tribunal which was disposed of directing the respondents to consider the representation and pass a speaking order and also to afford a personal hearing to the applicant. In compliance with this order the second respondent considered the representation and has now rejected the representation by order dated 7.11.2000 (Annexure A-18) which has now been impugned in this O.A.

2 In the reply statement the respondents have admitted the facts of the case as recounted by the applicant. They contended that it is evident from the handing over and taking over note of the stores between the applicant and Sri K. Lakshamanan that there was a shortage which has been with the full knowledge of the applicant. Therefore before releasing the retiral benefits to the applicant it was the duty of the Head of the Department to assess the Government dues which remain outstanding till the date of retirement of the Government servant and adjust the dues against the gratuity. The recovery order was therefore issued. All the submissions of the applicant have been duly considered at all stages and personal hearing was also allowed. None of the grounds raised by the applicant are tenable or sustainable and there is nothing illegal or violative of the provisions of Article 300-A of the Constitution of India as

alleged by the applicant.

3 In the rejoinder filed the applicant has contended that she was compelled to sign the handing over note prepared by the Senior Store Keeper and that the respondents have not made any enquiry about the alleged loss. She also contended that monetary loss cannot be recovered from the applicant under Rule 71(2) of the CCS Pension Rules or any decisions thereunder.

4 During the hearing the learned counsel for the applicant also contended that the recovery order under Rule 71 of the Pension Rules cannot stand as there is no independent investigation done by the authority as the rule stipulates that the dues should be assessed first and then only the recovery made. It was also contended that the alleged loss of certain stores cannot come under the definition of "Government dues" which has been defined under sub rule 3 of Rule 71. The SCGSC on behalf of the respondents contended that any dues payable to the Government are included in the expression "Government dues" and the action of the respondents is definitely within the ambit of the Rules and there is nothing illegal or violative of the Articles of the Constitution.

5 We have considered the arguments of the learned counsel of both sides and perused the pleadings and records. Rule 71 of the Pension Rules which is relied upon by the respondents is extracted below:

"71. Recovery and adjustment of Government dues-

(1)It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2)The Government dues as ascertained and assess by the Head of Office which remain outstanding till the date of retirement of the government servant, shall be adjusted against the amount of the (retirement gratuity) becoming payable.

(3)The expression 'Government dues includes-

(a)dues pertaining to Government accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to Government accommodation, namely balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary

and arrears of income-tax deductible at source under the Income Tax Act, 1961(43 of 1961)"

6 The first contention of the applicant is that the dues payable have not been properly assessed and quantified. First of all on the face of the records itself (Annexure A-5) it is evident that with reference to Sl. Nos. 25 and 26, there is a shortage. Annexure A-5 is signed by the applicant and Shri Lakshamanan who took over the stores from her. Therefore the applicant was well aware of the deficiency and if she had any sufficient reason for explaining the shortfall she should have pointed out that at the time of handing over itself which she failed to do till the department initiated action to recover the same. From the records it is also seen that she had approached the Tribunal on the very same ground that the recovery was not assessed properly, through OA 243/1998 and the Tribunal had directed the respondents to consider the representation with reference to all the points raised by the applicant and also to grant a personal hearing and pass a speaking order on the representation. We find that the respondents have carried out precisely this instruction by issuing the Annexure A-18 order. They have also after reassessing the cost, reduced some amount on account of sales tax. She was also given a personal hearing. She did not have any credible explanation to account for the loss except complaining about Shri Lakshamanan that he did not cooperate with her during the handing over. This is a frivolous statement and cannot be an excuse for the applicant's negligence in her work in safe guarding the stores. When she had signed the handing over and taking over statements without any objection she cannot now make baseless allegations against the concerned official. It is also seen that the applicant has challenged the same order before the Hon'ble High Court by filing Writ Petition (C) NO.13295/2001 which was dismissed by the Hon'ble High Court on the ground of jurisdiction and therefore she has approached this Tribunal. Since Annexure A-18 order has been passed taking into account all her contentions about the alleged mistakes in typing, non-cooperation of Shri Lakshamanan, etc. and after according a personal hearing to her, we do not find any ground to interfere with the impugned order.

7 The next point raised by the learned counsel of the applicant was that the amount recovered constituted loss to the Government arising from shortages and hence it is not Government dues as defined in Rule 71. We do not find this contention also tenable as sub rule 3 of Rule 71(1) is not an all inclusive provision, it only defines Government dues to the extent it includes arrears of licence fee and dues pertaining to Govt. accommodation, over-payment of pay and allowances, balance op HBA and conveyance, but does not exclude other amounts which become payable to Government. Rule 73 is the relevant rule in this regard. Sub Rule 3 of Rule 73 provides:

"(3) The dues as assessed under sub-rule (2) including dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of retirement gratuity becoming payable to the Government servant on his retirement."

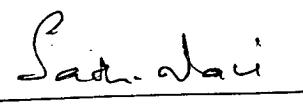
8 The wording of this sub rule certainly include all dues which came to notice and which remains outstanding till the date of retirement of the Government servant and empowers the employer to adjust these amounts becoming payable to the Government against retirement gratuity. This contention of the applicant that amounts due on account of shortage of stores cannot be recovered from gratuity also does not hold good.

9 In the result, we do not find any merit in the Application. The OA is accordingly dismissed. No costs.

Dated....13th.....December, 2005


GEORGE PARACKEN
JUDICIAL MEMBER

kmn


SATHI NAIR
VICE CHAIRMAN