

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 292/2004**

This the <sup>01</sup>th day of December, 2009

**Hon'ble Ms. Sadhna Srivastava, Member (J)**

Dukhanti Prasad aged about 59 years son of late Sri Budhu Prasad, resident of Nanpara Dehat, Shivalaya Bag, Bahraich.

Applicant

By Advocate: Sri P.K. Srivastava

**Versus**

1. Union of India through the Secretary, Ministry of Communication, Department of Communication, New Delhi.
2. Telecom Divisional Engineer, Bahraich.
3. Accounts Officer, Office of Telecom Divisional Engineer, Bahraich.
4. Telecom District Manager, Gorakhpur.

Respondent

By Advocate: Sri G.S. Sikarwar

**ORDER**

**Hon'ble Ms. Sadhna Srivastava, Member (J)**

The applicant is aggrieved by the action of the respondents in making recovery of Rs.2,67,736/- from the salary of the applicant @ 5000/- per month.

2. The facts, in brief, are that the applicant was initially appointed as Repeater Station Assistant in the Department of Telecommunication and thereafter, promoted to the post of J.T.O. in the year 1983. In 1994, he was promoted to the post of Sub Divisional Engineer (SDE) and posted at Gonda Division. While working as such, during the year 2000, the applicant was entrusted with the work of opening of 10 Telephone Exchanges by the then Telephone Divisional Engineer, Bahraich. He was allowed to get the casual nature of work completed by engaging labourers. The payment was to be made to the labourers. Therefore, he requested for temporary advance giving the name of each Telephone Exchange and also the name of the

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labour working in the said exchange. Advance was duly sanctioned/ approved by the Telecom Division Engineer, Bahraich during the period of October, 2000 to August, 2001. Suddenly, the Accounts Officer (Cash) Bahraich objected to the entire payment made during October 2000 to March, 2002 and different orders were issued for recovering the total sum of Rs. 2,67,736/- from the salary of the applicant. Hence this O.A.

3. The respondents have filed the Counter Reply stating therein that the applicant while posted as Sub Divisional Engineer, Telecommunication in Bahraich placed demand for the advance for execution of various kinds of works. The competent authority sanctioned the advance. The objection is that the sanction was never made for payment to casual labour nor the applicant had demanded the advance under the head of payment to casual labourers and daily wagers. There were some labourers engaged by the applicant without taking the approval of the competent authority and the vouchers submitted by the applicant were not in accordance with the heads for which the advance was sanctioned. The Accounts Officer, therefore, requested the applicant to submit reply within 7 days otherwise the relevant amount will be disallowed and will be recovered. It is also mentioned in the Counter Reply that there was complete ban on engagement of casual labourers w.e.f. 22.6.89. It is alleged that the applicant engaged casual labourers without taking prior approval of the competent authority. Therefore, the recovery of above said amount from the salary of the applicant was ordered by the competent authority.

4. Heard the counsel for the parties and perused the pleadings.

5. The main argument raised by the applicant is that the Rule 11 of CCS (CCA) Rules provides byway of penalty of

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recovery from the pay of the whole or part or any pecuniary loss caused by an employee to the Govt. by negligence of breach of orders. However, for imposing the penalty, the procedure laid down has to be adopted, which has not been done in the instant case. Therefore, it is submitted by the applicant that the recovery of Rs., 2,67,736/- has been done against the rules i.e. without following the rules. The case of the applicant is that the casual labourers was engaged with the approval of the competent authority during the period March 2000 to August, 2001 and after August, 2001 engagement on casual labourers were disallowed by the authority. Thereafter, no casual labourer was engaged. Admittedly, the respondents have not adopted the procedure laid down in the CCS (CCA) Rules. They have also not passed any specific order for recovery. The sanction for one head and spent on another head would necessarily amount to misconduct specifically when the respondents allege that the casual labourers were engaged without the approval of the competent authority in violation of the departmental instructions. According to the applicant, the casual labourers were engaged with the approval of the competent authority which has been denied by the respondents. Thus, it was a ~~matter~~ <sup>3 matter</sup> of detailed enquiry. The recovery could be made only after an order was passed for recovery consequent to the enquiry. It is on these very grounds that earlier O.A. No. 182/2002 was allowed in the case of one Anant Kumar which was decided on 10.12.2003. The facts of that case was the same. Still, however, the respondents are seeking to uphold their order without making enquiry.

6. In view of the above facts and circumstances, Annexure No.2 is quashed and set aside. The recovery could not be made without following the procedure laid down in the CCS (CCA)

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Rules. The respondents will be at liberty to institute an enquiry as permissible under the law.

7. With these directions, O.A stands disposed of. No costs.

  
(Ms. Sadhna Srivastava)  
Member (J)

HLS/-