

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW**

**Reserved on 28.03.2014.**

**Pronounced on 4<sup>th</sup> April 2014**

**Original Application No.470/2011**

**Hon'ble Ms. Jayati Chandra, Member (A)**

Dukhanti Prasad, aged about 70 years, Son of Shri Buddhi Prasad, Resident of Nanpara Dehat Shivala Bag, District: Bahraich.

**-Applicant.**

**By Advocate: Sri P.K. Srivastava.**

**Versus.**

1. Union of India, Ministry of Communication, through its Secretary, New Delhi.
2. Telecom Divisional Engineer, Bahraich.
3. Telecom District Manager, Bahraich.

**-Respondents**

**By Advocate: Sri G.S. Sikarwar.**

**O R D E R**

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(i) the Hon'ble Tribunal may kindly be pleased to set aside the order impugned dated 03.03.2011, contained in Annexure No.1 to the O.A.

(ii). issue a order or direction directing the opposite parties to refund the recovered amount to the applicant in view of judgment dated 01.12.2009, passed in O.A.No.292 of 2004 alongwith interest.

(iii). issue such order or direction as this Hon'ble Court may deem fit and proper in the interest of justice and award the cost of the Original Application to the applicant."

*J Chandra*

2. The facts of the case which are averred by the applicant are that a sum of Rs.2,67,736/- was ordered to be recovered from the applicant by a series of orders when he was promoted as SDE in the year 2001. He filed O.A.No.292/2004 before this Bench seeking an interim relief as well as quashing of the orders and refund of the recoveries already made from his salary. The Tribunal passed an interim order by which the recovery from his salary was stayed. During the pendency of the OA the applicant was retired from service on 31.01.2005. At the time of retirement the balance amount was recovered from his leave encashment.

3. The O.A.No.292/2004 was finally disposed of with the following directions:-

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

4. The respondents did not hold any enquiry as directed by the Tribunal neither did they refunded the amount recovered from the applicant. The applicant filed second O.A.No.491/2010 in which the respondents admitted all the facts and submitted that no refund has been made to the applicant as there was no specific direction of this Court. The second O.A. was finally disposed of with the direction to the respondents to decide the representation of the applicant. The representation submitted by the applicant has been dismissed by the impugned order. The respondents have

*J. Chandrasekhar*

held on to their original stand and have failed to obey the direction passed in O.A.No.292/2004 in letter and spirit by way of refunding the amount already recovered from the applicant.

5. The respondents have contested the claim of the applicant through their Counter Reply. The case of the respondents is that the applicant had taken an amount of Rs.5 lakhs as advance for executing certain works. Certain amounts were adjusted as having been justified expenditure and the balance of Rs.2,67,736/- was disallowed. Hence this amount required to be refunded. The amount of Rs.1,70,000/- has been recovered from the applicant from December 2001 to September, 2004 prior to the filing of O.A.No.292/2004. No amount were recovered from the salary after the passing of an interim order. At the time of his retirement on 31.1.2005, a balance of Rs.97,736/- of advance was adjusted from the leave encashment payable to the applicant. The applicant never represented against the disallowed portion of the imprest bill. The action taken by the respondents is separate and distinct from a recovery as it is in the nature of adjustment of outstanding advance on account of disallowed part of the imprest bill as clarified in the impugned order.

6. The applicant has filed his Rejoinder Affidavit stating more or less same things as earlier stated by him in his OA particularly stressing on the fact that as O.A.No.292/2004 has not challenged by the respondents and has attain finality. Therefore the respondents were bout to hold an enquiry and also to refund the amount.

*J. Choudhury*

7. I have heard the learned counsel for both the parties and perused the entire material available on record and also seen the files of O.A.No.292/2004 and O.A.No.491/2010. The facts of the case of the applicant are that the applicant had taken an advance of Rs.5 lakhs as imprest amount to execute certain works. Out of which Rs.2,67,736/- was deemed to be unpaid/unjustified expenditure and the applicant was directed to refund that amount failing which the amount would be recovered in monthly installments from his salary. This series of such orders were challenged in O.A.No.292/2004. The operative portion of the order reads as follows:-

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

8. This order of the Tribunal in O.A.No.292/2004 has attained finally as neither of the parties have challenged the same in any court of law.

9. During the currency of the OA the applicant retired on 31.1.2005 and amount not recovered from his salary between the periods from December, 2001 to September, 2004 i.e. prior to obtaining of an interim order was adjusted by the respondents from his leave encashment. However, it is seen from the record that the applicant had not sought to bring this fact by way of an amendment in the OA No.292/2004 which was still pending. He lived with this situation till the final order was passed in O.A.No.292/2004. While, it is true that the orders by



which the recovery/ adjustment were made were quashed but there is no order to refunding of the same. The applicant did not file any review petition seeking any amendment as by his own admission in the O.A. As the respondents failed to refund the adjusted amount, he filed second O.A.No.491/2010. The detailed observations of the facts of the case was recorded by the Tribunal in its order dated 03.12.2010. The relevant portion of both the recording of facts and the conclusion arrived at are reproduced below:-

“ 6. The main relief therefore which has been sought in this OA is for issuance of a direction to the respondents to refund the recovered amount in question. Learned counsel fro respondents rightly says that this being one of the reliefs which where sought in the earlier OA and was not specifically granted, cannot be technically entertained by fresh OA like this.

7. As an alternative relief an order or direction has also been sought to decide the representation made in this regard by passing a reasoned and speaking order within the stipulated period. As far as this relief is concerned, the learned counsel for respondents has nothing to say substantial because, on the face of it appears to be an innocuous prayer. Otherwise also the only inescapable inference which can be drawn from the judgment of this Tribunal, is that it was left open for the respondents to initiate the procedure as laid down in CCS (CCA) Rules for the recovery in question by starting enquiry as permissible under the law as mentioned in the operative portion of the order dated 01.12.2009. That OA was filed in the year 2004 and the applicant superannuated during the pendency of that OA in the year 2005. The final order was rendered in December, 2009 after about 4 years of his superannuation. It is not ascertainable from the record as to whether or not any enquiry was instituted in

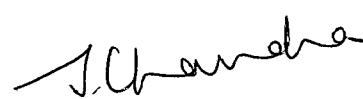
*T. Chandre*

accordance with the relevant rules after passing the order dated 01.12.2009. The learned counsel for the respondents is also aware about it. Be that as it may. But necessary corollary of the above final order of this Tribunal is that if the respondents did not initiate any enquiry as permissible under the relevant law/rules in respect of the amount in question, then this amount has to be refunded to the applicant. After all the respondents are not authorized to keep this amount with them for an indefinite period causing unnecessary loss of interest etc. to the applicant.”

But the operative portion of the order does not grant the relief of refunding the amount in question seeking of the same relief by a second OA.

**10.** By means of the present OA the applicant is seeking the same relief as relief no.(2) as was also sought by him in earlier OA No.491/2010 is barred by the principle of Res-judicata. By the present O.A. the applicant also sought as relief no.(1) the quashing of the order dated 03.03.2011 but he has not said anything regarding illegality of this order beyond stating that this is against the spirit of orders passed in O.A.No.292/2004 and O.A.No.491/2010. This averment is not enough as he has proved any illegality. It lies upon the applicant to establish his case, which he has failed by producing any evidence to conclusively prove his claim.

**11.** In view of what has been stated above, I do not find any merit in the O.A. and the same is accordingly dismissed. Parties to bear their own costs.

  
**(Ms. Jayati Chandra)**  
**Member (A)**

Amit/-