

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 472/99

24 April
DATE OF DECISION: / /2000

_____Shri Manadar Lal Garg_____Applicant.

_____Shri R.P.Saxena_____Advocate for
__________Applicant.

Versus

_____Union of India & Ors._____Respondents.

_____Shri R.R.Shetty for
_____Shri R.K.Shetty_____Advocate for
__________Respondents.

CORAM:

Hon'ble Shri S.L.Jain, Member(J).

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to No other Benches of the Tribunal? NO
3. Library. YES

S.L.Jain
(S.L.JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:472/99
DATED THE 7th DAY OF APRIL, 2000.

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)

Shri Madan Lal Garg,
H-3, Pallabpuram,
Phase-I, Roorkee Road,
Meerut - 280 110. ... Applicant

By Advocate Shri R.P.Saxena

v/s

1. Union of India, through
The GeneralManager,
Canteen Stores Department,
Adelphi 119, M.K.Road,
Mumbai - 400 020.
2. Assistant General Manager(MS),
Canteen Stores Department,
Adelphi 119, M.K.Road,
Mumbai - 400 020. ... Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty.

(ORDER)

Per Shri S.L.Jain, Member(J).

This is an application under section 19 of the Administrative Tribunals Act 1985 to quash and set aside order dated 21/5/98 and a direction to the respondent No.1 to refund Rs.27,780/- with interest @ 18%, being the retiral benefit alongwith cost.

The applicant retired on 31/7/97 on superannuation as Assistant Manager Group 'B' Officer from the Head office of Canteen Stores Department Mumbai. The respondent No.2 issued a show cause letter dated 1/10/97 observing the stock discrepancies for the quarter ending March,95 of Agra Depot while the applicant was the Manager of Canteen Stores Department, Agra pointing out lapses as noted below which relates to not implementation of

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department's instructions.

- a. Timely issuance of internal transfer orders at least in respect of the Storekeepers.
- b. Allowing late Shri H.S.Gupta to handle Group I, IV, V and VII simultaneously with effect from 1/1/95.

Due to the said non action of the applicant it is alleged that depot had incurred loss by 49,199.37 due to, shortage occurred in Group I during the quarter ending March,95. The shortage occurred due to lapses of late Shri H.S.Gupta, Shri K.D.Kaushal, Shri R.C.Sharma, Shri Murthy and Shri Basdev Prasad apart from that of the applicant for which competent authority ordered recovery of Rs.14,948.05 from the applicant and Rs.12,831.84 from late Shri H.S.Gupta. The applicant submitted the reply vide letter dated 2/1/98 Annexure A-2. The respondent No.2 vide order dated 21/5/98 ordered recovery of Rs.27,780/- from the retiral benefits of the applicant on account of the following lapses:-

- i) The refusal of Shri K.D.Kaushal to take charge of Gp.I was not intimated to Head Office immediately for remedial steps.
- ii) Even inspite of Shri K.D.Kaushal's refusal and in the absence of any documentary evidence of official handing/taking over, you have allowed him to look after Gp.I during quarter ending March,1995.
- iii) Despite having known of the recoveries against shortages of stores to be effected from late Shri H.S. Gupta, Storekeeper Grade-I, you have issued "No Demand Certificate" based on which Head Office has settled all his terminal benefits.

The grievance of the applicant is that the said recovery is being made from retiral benefits on the basis of the report of fact finding authority without allowing the procedure laid down by law i.e. Rule-11(iii) of CCS (CCA) Rules 1965 or Rule 9 of CCS(Pension) rules 1972. The order passed is non-speaking and

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without jurisdiction as it is not passed by the Disciplinary Authority.

The respondents have resisted the claim of the applicant ^{on account of h} and alleged that, the negligence of the applicant that he has issued 'No Demand Certificate' to Shri H.S.Gupta without specifying the amount of Rs,12,831.48 due from him, based on which all dues were released to his wife instead of realisation before hand. It is further stated that amount of Rs.27,779.89 has been recovered to compensate the loss suffered by the Government due to his negligence.

The learned counsel for the respondents relied on Policy circular No,2/MS/92 dated 30th October,92 which states that "However, it is reiterated that Depot Managers must ensure their personal attention to this important activity of stores accounting of the depot. It has been decided that hereafter the responsibility for shorts/surpluses will rest squarely on the Depot Managers.

(h) Depot Managers must also ensure that storekeepers are rotated every six months as per the instructions of Admn. Branch."

On the basis of the said instructions, he contented that as the applicant failed in his duties, the Government is competent to recover the said amount. He further relied on an order passed by the Principal Bench New Delhi in OA No.976/98 decided on 10/12/99 and argued that the respondents were entitled to withhold and adjust the same in view of Rule 73 of CCS CCA (Pension) Rules. I have carefully gone through the said order and is of the opinion that it was in respect of Government dues which the applicant himself has requested to adjust from his 'Gratuity' which is not the case before me.

The learned counsel for the applicant relied on (1994) 28

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ATC 209 Baran Choudhari Vs. Union of India and others decided by Central Administrative Tribunal Calcutta, (1991) 15 ATC 83 Barindra Kumar Ghosh V/s. Union of India and Others decided by Central Administrative Tribunal, Calcutta, (1997) 35 ATC 254 decided by Central Administrative Tribunal, Delhi which lays down the proposition that on the basis of fact finding report without holding a regular departmental enquiry against the applicant, the recovery is not valid.

In the present case, the charge against the applicant is inaction and negligence towards his duties which resulted in loss. The said facts are in dispute, and not a case of ascertained Government dues, hence Rule 73 of CCS CCA(Pension) Rules do not apply. In addition to it the order Annexure A-1 is not speakingone.

In the result, the order Annexure A-1 dated 21/5/98 deserves to be quashed and set aside. OA deserves to be allowed and is allowed. Annexure A-1 order dated 21/5/98 is quashed and set aside with a direction to the respondents to refund Rs.27,779.89 to the applicant within a period of one month with interest @ Rs.11% p.a. from 1/11/97 till the actual payment along with costs amounting to Rs.650/- (legal practitioner's fee and other charges Rs.150/-).

S.L.JAIN
(S.L.JAIN)
MEMBER(J)