CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 370/2000

DATE OF DECISION: 18/10/2000

Shri Dr.Shashikant Gajanan Joshi
---Applicant.

Shri S.P.Saxena
---Advocate for Applicant.

Versus

Union of India & 3 Ors.
---Respondents.

Shri Anil Kumar
---Advocate for Respondents.

CORAM:

Hon'ble Smt. Shanta Shastry, Member(A)

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

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(SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:370/2000
DATED THE 18th DAY OF OCT. 2000

CORAM:HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Dr.Shashikant Gajanan Joshi,
(Scientist 'E'-II Rtd, NCL, Pune)
R/at:12,Grijashankar Co-op.Hsg.
Society, Dhankawadi (Off Chavan Nagar)
Pune - 411 043. ... Applicant

By Advocate Shri S.P.Saxena

V/s.

1. Union of India
Through the Secretary,
Ministry of Science & Technology,
New Delhi-110 011.

2. The Director General,
C.S.I.R, Rafi Marg,
New Delhi- 110 011.

3. The Director,
National Chemical Laboratory,
Pashan, Pune - 411 008.

4. The Manager (Admin & Accounts),
Indo-French Centre for Promotion
of Advance Research, Core A,
Ground Floor, Indiat Habitat Centre,
Lodhi Road, New Delhi - 110 003. ... Respondents

By Advocate Shri Anil Kumar

(O R D E R)

Per Smt.Shanta Shastri, Member(A).

In this OA the applicant has challenged the action of the Respondent No.3 in with holding an amount of Rs.1,66,754/- from the applicant's leave encashment amount and has prayed to release the same with 12% interest from the date the applicant was entitled to get the same till the actual payment of the amount. The applicant had also prayed for interim relief, restraining the

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Respondents Nos.1 to 3 from remitting the said amount to the Office of the Respondent No.4 during the pendency of the application. Though no stay orders were passed, the respondents had orally assured that the amount would not be remitted in the office of Respondent No.4 till the next hearing date.

2. The applicant was an employee of Respondent No.3, i.e. The Director, National Chemical Laboratory, Pune, during the relevant period He was working as Scientist E-I at the time of his superannuation on 31/10/99. Before his retirement he was deputed to visit UNIVERSITE DE FRANCHE-COMTE BELFORT, FRANCE & INSTITUT NATIONAL DES SCIENCE APPLIQUE 'ESDE TOULOUSE, FRANCE for carrying out research work on IFCPAR Project No.1815-1 on FOULING STUDIES OF SUGARCANE CLARIFICATION BY MEMBRANES starting from 1/5/99 or the actual date of his arrival at Belfort/Toulouse, whichever is later for a period of 38 days. He was paid advance TA/DA. In the end the applicant failed to abide by the schedule and departed from the schedule without consulting Respondent No.4. Therefore, on his return, after obtaining the tour report, the R-4 ordered recovery of the amount which was not spent on that portion of the tour which was in the schedule but which was utilised elsewhere. This was done after giving an opportunity to the applicant to explain his departure from the schedule laid down. Since the applicant did not pay back the excess amount, R-4 ordered recovery through R-3, the employer of the applicant.

3. It is the contention of the applicant that he was sanctioned the allowances by R-4. The agreement was between him and R-4, which is a private body. R-3 has nothing to do with R-4. Therefore if the R-4 could not realise the recovery from

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the applicant, it was for R-4 to initiate appropriate legal proceedings to recover the same from the Applicant. R-4 cannot ask R-3 to recover the dues and nor does R-4 have any right to recover it for or on behalf of R-4.

4. The Learned Counsel for the Applicant has also cited the case of one Dr.Ganguly, which is similar to that of the applicant and which is still pending without any recovery. While admitting that R-4 is receiving grants from the Government of India i.e. R-1, the learned counsel for applicant contends that still it is an autonomous body with its own Governing Council to manage its affairs. Therefore respondent 1 to 3 cannot have any say in regard to the terms provided by the private a society and hence R-3 cannot recover the amount due to R-4. This is the point stressed by the applicant.

5. The Respondents claim that there is no doubt that the applicant failed to adhere to the schedule given by the R-4, instead of visiting the scheduled place, the applicant visited Paris with his family members. He also could not satisfy or convince R-4 as to why there was a departure from the already prescribed programme as per the sanction order. He should have abided by the agreed schedule. If he needed a change, he should have consulted R-4. Also the applicant has admitted the wrong done by him. In these circumstances, the recovery of the excess amount mis appropriated is a must. R-3 has demonstrated through a Memorandum of Association, Rules and by laws of R-4 that R-4 is a Centre funded partly by Government of India and partly by

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French Government. It is also seen that the budget of this centre (IFCPAR) is approved by the Government of India. The Accounts are audited by Auditors nominated by the Government. Also the annual report of the proceedings of R-4 and of all the work undertaken during the year by R-4 is tobe prepared by the Governing Body for the information of the Government of India as well as the French Government. Thus, there is expenditure control by the Government of India. Moreover, it is not that the applicant was sponsored by R-4 for visit to France, in an independent capacity. He was sponsored in terms of his being an employee of R-3, Both R-2 and R-3 are closely associated with R-4. The applicant's visit to France was part of the Project between the R-3 and R-4. Further, the employees of both R-3 and R-4 are Governed by the CCS,(CCA) Rules as well as CCS Conduct rules. The R-4 has therefore every right to recover the mis appropriated amount from the Applicant for R-4. It is expected of the employees of R-3 not to indulge in any misconduct. The respondents have further stated that any indulgence shown to the false grievance of the Applicant would not only tantamount to encouraging such misappropriation but also in view of the fact that the Government of France is also associated with R-4, it would send wrong signals about the scientific community of India and further may ultimately lead to damage to the reputation of the country as well. R-3 is a highly reputed scientific institution which has steady and congenial relation with the R-4 and by the misdeed of the applicant, the reputation of the R-3 as well as the career prospects of other scientists are at stake and therefore this is not a fit case to show any leniency.

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6. I have heard the learned counsel for the applicant as well as Respondents at length and have perused the Memorandum of Association of both R-3 and R-4. It is a fact that R-4 sent the applicant on a visit to France in connection with research project and funded the visit. The visit was subject to certain terms and conditions. According to clause 7 of the sanction order dated 30/3/99,"in case due to any reason whatsoever, the period of stay in Belfort/Toulouse France on the project work is less than that shown in paras-2 and 6 of the sanction, this fact should be brought to the notice of the IFCPAR and any excess payment of DA already received (cost of Foreign Exchange towards the excess DA together with proportionate expenses incurred obtaining foreign exchange) shall be refunded to IFCPAR immediately." Thus, it was binding on the applicant to refund the excess amount for the days when he was supposed to be in Places other than in Paris. The applicant also has not denied that he deviated from the schedule. He failed to utilise the money for the purpose for which it was sanctioned. The applicant being a responsible officer should have himself voluntarily refunded the said excess amount of Rs.1,66,754/- but he failed to do so. The money spent by him is not private money, it is public money. Being an employee of R-3, where the employees are governed by CCS (CCA) Rules and the CCS Conduct rules, the applicant should have refrained from indulging in misappropriation of money. The applicant's refusal to refund the mis appropriated money amounts to misconduct and therefore R-3 being the employer has a right to compel him to refund the same by witholding the leave encashment to that extent.

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7. In my considered view, therefore, the R-3 is justified in with holding the amount of the leave encashment of the applicant to adjust the same against the recovery due from the applicant. I do not find any merit in this application, therefore the OA is dismissed. I however do not order any costs.

(SHANTA SHASTRY)
MEMBER(A)

abp.