

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.
* * *

Date of Decision: 16.4.2001

1. TA 4/2000 (CS 380/94), with
 2. TA 5/2000 (CS 93/92)
- Smt. Saroj Yadav w/o Shri R.K. Yadav r/o T-2, Central School, Tonk Phatak, Jaipur.

... Applicant

Versus

1. Kendriya Vidyalaya Sangathan through Assistant Commissioner, Jhalana Doongri, Jaipur.
2. The Principal, Central School No.1, Bajaj Nagar, Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Miss Pradeeplata Mathur

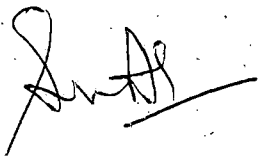
For the Respondents ... Mr.V.S.Gurjar

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

Applicant filed a Civil Suit No.132/92 (380/94) before the court of Additional Munsif and Judicial Magistrate No.2, Jaipur City, which was transferred to this Tribunal u/s 29 of the Administrative Tribunals Act.

2. In brief, the case of the applicant is that she was initially appointed as Yoga Teacher in Central School No.2, Faridabad and was transferred to Central School No.1, Jaipur, in the year 1987. It is stated that applicant worked as Librarian from 4.2.89 to 7.11.89 due to maternity leave of Smt. Indu Agarwal, Librarian. It is stated that in the audit report of 1988-89 and 1991-92 a report was made that 744 books not found in the Library and recommendation was made to recover Rs.11037/- from the concerned Librarian. It is stated that vide order dated 15.2.91, order was issued to recover Rs.11037/- from the applicant, for which no notice/opportunity of hearing was provided to the



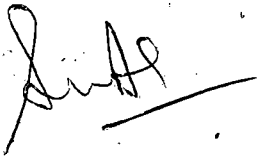
applicant. Therefore, the order of recovery of Rs.11037/- from the applicant is arbitrary and illegal. Therefore, the Civil Suit was filed by the applicant for the relief as above.

3. The defendant/respondents filed reply. In the reply it is stated that the applicant was held responsible for 776 books, out of which 32 books were deposited by her. Therefore, recovery was ordered from the applicant for Rs.11037/- vide impugned order at Ann.A/1, which is perfectly legal and valid and the applicant has no case for interference by this Tribunal.

4. This Civil Suit has come before this Tribunal by way of transfer u/s 29 of the Administrative Tribunals Act, as the Civil Court was having no jurisdiction.

5. Heard the learned counsel for the parties and also perused the whole record.

6. On the perusal of averments made by the parties it is abundantly clear that no preliminary inquiry appears to have been conducted in this case before casting a liability of 744 books on the applicant. No opportunity of hearing/show-cause appears to have been provided to the applicant before passing the impugned order of recovery of Rs.11037/- from the applicant. In Menaka Gandhi v. Union of India (1978) 1 SCC 248, it was held that before any punitive action is taken which deprives the employee of the benefits he is enjoying, an opportunity has to be given. In Delhi Transport Corporation v. D.T.C. Mazdoor Congress, 1991 Supp(1) SCC 600, it was held that the rules of natural justice also requires that the applicant should be given an opportunity to be heard before subjecting him to any punitive action. In Laxmi Chand v. Union of India and Others, 1998 ATC 599, it was held that if any order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order cannot be




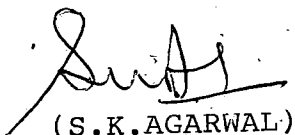
passed without complying with Audi Alteram Partem. Party should be given an opportunity to meet his case before an adverse decision is taken.

7. In view of the settled legal position and facts and circumstances of this case, we are of the considered opinion that it will be just and proper by the respondent department to make a preliminary inquiry first and thereafter if the department is of the opinion that the action must be taken against the person concerned, a reasonable opportunity of hearing must be provided to the employee concerned and thereafter only appropriate orders should have been passed but in this case the same is lacking and the action appears to have been taken on the basis of audit report without any application of mind. Therefore, the impugned order of recovery of Rs.11037/- from the applicant is altogether illegal and liable to be quashed.

8. We, therefore, allow this TA and quash and set aside the order dated 5.2.92 in so far as the applicant is concerned. The respondent department will be at liberty to pass an appropriate order after making inquiry in the matter and after affording an opportunity of hearing to the applicant. No order as to costs.

9. As we have quashed the order dated 5.2.92, therefore, TA 5/2000 stands disposed of as having become infructuous.


(N.P.NAWANI)
MEMBER (A)


(S.K.AGARWAL)
MEMBER (J)