

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.38/2000

Date of order: 9/1/2002

S.K.Tandon, S/o Sh.D.R.Tandon, R/o C/o Mrs
K.K.Tandon, 433-B, New Railway Colony, Kota, working
as Section Engineer(M&P), DRM Office, W.Rly, Kota.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly, Churchgate, Mumbai.
2. Central Organisation for Rly.Electrification (HQ), Nawab Yusuf Road, Civil Lines, Allahabad.
3. Dy.Cnief Electrical Engineer, Railway Electrification, Lucknow.
4. Divisional Railway Officer, W.Rly, Kota Divn, Kota.

...Respondents.

Mr.R.R.Singh, proxy of Mr.S.K.Jain, Counsel for applicant
Mr. Mr.U.D.Sharma : Counsel for respondents.

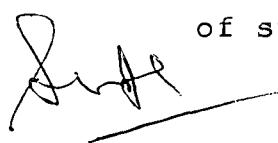
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

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

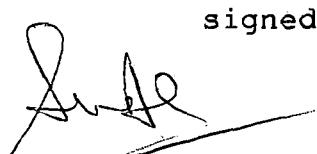
In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer (i) to quash and set aside the order dated 12.11.99 (Annx.A1); (ii) to quash and set aside the order dated 12.11.99 (Annx.A2) and (iii) to direct the respondents not to make any recovery from the applicant in pursuance of these orders.

2. Facts of the case as stated by the applicant are that in the year 1987 the applicant was working as F.O (Steel) at Railway Electrification Office, Kota. The Chargemen and Fitters were working under him and the charge of stock was directly with the Chargemen. It is stated that



in the letter dated 12.11.99 (Annex.A1) that shortage of 40 items costing to Rs.19,925/- and in the order at Annex.A2, shortages of 57 items costing to Rs.12,31,155/- were found against the applicant) but no attempt was made to finalise the long pending issue inspite of prolonged correspondence. It is stated that no memo was ever issued to the applicant regarding the alleged shortages nor any showcause notice was given to the applicant before passing the impugned orders. No charge-sheet was ever given and no enquiry was held to determine the liability regarding the alleged shortages. Thus, the impugned orders are illegal, without jurisdiction and in violation of Articles 14 & 16 of the Constitution of India. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. It is stated in the reply that the applicant was the custodian of the stores at the time of functioning as Foreman (Steels) Railway Electrification, Kota and at the time of verification of stores by Inspector of Stores & Accounts, shortages were noticed on 8.10.87 and 9.8.95 and the applicant signed the stock sheet. It is stated that in respect of these shortages, repeated correspondence was made with the controlling officer of the applicant as mentioned in para 5 of the reply but no attempt was made by the applicant to clarify his position. It is stated that the shortages was pertaining to the applicant but he failed to clarify his position, therefore, the applicant being the custodian of stores was liable to compensate the loss. Hence, the impugned orders are perfectly legal and valid. It is stated that there was no need to conduct any enquiry as the applicant himself has signed the verification sheet. Thus, the applicant has no

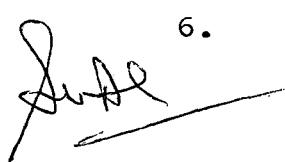


case and he is not entitled to any relief sought for.

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

5. Admittedly, there is no evidence on record to establish the fact that the applicant was the custodian/incharge of the stores in Railway Electrification, Kota. The counsel for the applicant has vehemently urged that the direct incharge of the stock/stores is Chargeman/Fitter which is not controverted in so many words by the respondents in connection with establishing the fact that the applicant is only the incharge/custodian of stores of Railway Electrification, Kota. No preliminary enquiry has been conducted in this case to fix the responsibility/liability on a person who is said to be responsible for the alleged shortages. Neither any charge-sheet was given to the applicant nor any enquiry was conducted so as to punish the person who is guilty of the lapses. It appears that the applicant has been made responsible only on account of the fact that he signed on the verification sheet but signing on the verification sheet is not sufficient to hold him responsible for the shortages/loss caused to the Railways. It was the duty of the controlling office to conduct at least a preliminary/fact finding enquiry so as to fix liability on a person who is responsible for the shortages and thereafter a show cause notice should have been given to him and after considering his reply to the show cause notice any order could have been passed. But in this case, admittedly, no show cause notice/opportunity of hearing was provided to the applicant before passing of the impugned orders.

6. It is settled principle of law that there can be no



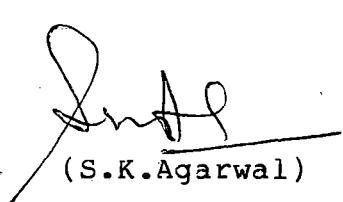
deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving him an opportunity of being heard. In Laxmi Chand Vs. UOI & Ors, 1998 ATC 599, it has been held that if the order involves civil consequences 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 the instant case, the impugned orders appear to have issued without following the principles of audi alteram partem, therefore, on this count also the impugned orders are not sustainable in law.

8. In view of above, I am of the considered opinion that the impugned orders are not sustainable in law and no recovery can be made in pursuance of such orders.

9. I, therefore, allow this O.A and quash the impugned orders dated 12.11.99 (Annex.A1) and 12.11.99 (Annex.A2) and direct the respondents not to make any recovery from the applicant in pursuance of these orders. This order shall not preclude the respondents' department to pass appropriate orders for recovery against a person who is found responsible after making necessary fact finding enquiry and following the principles of natural justice.

10. No order as to costs.



(S.K. Agarwal)

Member (J).