

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 13.04.2004

Original Application No. 426/2000.

1. S. U. Beg (deceased) S/o Shri H. U. Beg, aged about 47 years, resident of C/o Dr. Ramesh Chandra Trivedi, Kalyan Clinic, Gandhi Chowk, Phulera, District Jaipur, presently posted as P.W.I. AJMER.
- 1/1. Smt. Shahin Fatima W/o Late S.U. Beg, aged about 42 years, R/o C/o Dr. Ramesh Chandra Trivedi, Kalyan Clinic, Gandhi Chowk, Phoolera, District, Jaipur.
- 1/2. Mst. Nayla Beg D/o Late S. U. Beg, aged 20 years, R/o C/o Dr. Ramesh Chandra Trivedi, Kalyan Clinic, Gandhi Chowk, Phoolera, District Jaipur.
- 1/3. Mst. Saba Beg D/o Late S. U. Beg, aged 18 years, R/o C/o Dr. Ramesh Chandra Trivedi, Kalyan Clinic, Gandhi Chowk, Phoolera, District Jaipur.
- 1/4. Mst. Khusbu Beg D/o Late S. U. Beg, aged 12 years, through natural Guardian Mother Smt. Shahin Fatima R/o C/o Dr. Ramesh Chandra Trivedi, Kalyan Clinic, Gandhi Chowk, Phoolera, District Jaipur.

... Applicants.

versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Dy. Chief Engineer (Construction), Western Railway, Opposite Railway Hospital, Jaipur.
3. The Executive Engineer (Construction), Mall Road, Western Railway, Ajmer.

... Respondents.

Mr. P. V. Calla counsel for the applicant.
Mr. R. G. Gupta counsel for the respondents.

CORAM

Hon'ble Mr. J. K. Kaushik, Judicial Member.
Hon'ble Mr. M. K. Misra, Administrative Member.

: O R D E R (ORAL) :

The applicant, S. U. Beg (since deceased) who is represented through his Legal Heirs has filed this Original Application under Section 19 of the Administrative Tribunals Act 1985, for seeking the following reliefs :-

"(i) That the respondents be commanded to pay the salary which was deducted from the salary of the applicant for the month of October, 1999 and onwards alongwith interest at the rate of 24% per annum, apart from a heavy cost which in the facts and circumstances of the case is being quantified as Rs.25000/- for the illegal action on the part of the respondents, and the amount mentioned in schedule.

(ii) That the respondents may further be directed to pay the salary to the applicant regularly as is being paid to other employees.

(iii) Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be granted in favour of the applicants."

2. The matter was listed for admission today. Pleadings are complete. Keeping in view the urgency of the matter, we propose to dispose of the same at the stage of admission. We have heard the elaborate arguments advanced on behalf of both the parties and have anxiously considered the pleadings and the records of this case.

3. Filtering out the superfluities, the indubitable facts leading to filing of this case are that Late Shri S. U. Beg was employed on the post of P.W.I. (Construction). He was holding the charge of the Store and there was some stores found short and some stores in excess. The stock verification sheet was prepared and the applicant was asked to clarify the position. The applicant was given a notice for effecting certain recoveries, the same was replied and a notice for demand of justice was also got served on the respondents vide communication dated 24.02.2000 (Annexure A-4). On the same an order came to be passed by the respondents that 50% of his salary is being recovered since October 1999 and for the purpose in question, a charge sheet for major penalty i.e. Annexure A-1 had already been served to him regarding net shortage of Rs. 90,86,430/-.

4. . Shri S. U. Begh has filed this Original Application against the recoveries being made. During the pendency of this case even the recoveries was enhanced from Rs.3750/- to Rs.5000/- and this Bench of the Tribunal was pleased to stop the same vide interim order dated 07.12.2000, which is also filed at Annexure R-8.

5. Unfortunately, Shri S. U. Begh expired on 30.08.2003 and his Legal Heirs had to be brought on record. The Original Application has been filed on diverse grounds and the same have been generally denied by the respondents.

6. Learned counsel for the applicant has reiterated the pleadings and has submitted that the recovery has been started without following the procedure established by law for imposition of the penalty. It was also contended that as per Rule 6 of The Railway Servants (Discipline & Appeal) Rules, 1968, the recovery is one of the minor penalty as envisaged therein and no recovery as such can be made from an employee until one accepts for the debit or losses or the procedure for imposition of penalty has been adhered to, but nothing has been done in the instant case. On a specific querry, learned counsel for the respondents has shown his inability as regards the progress on the charge sheet which is said to be issued to the applicant. It is also contended that since the employee is no more and the charges levelled against him have not at all been proved, no recovery as such can be made against him since he never admitted for any loss and he has not been held guilty of the charges so alleged.

7. Per contra, learned counsel for the respondents has vociferously and straneously countered the contentions raised on behalf of the applicant and has submitted that the applicant was given a notice inasmuch as it was made clear to him that in case he does not reconcile the stock sheets within a period of 15 days, it shall be deemed that he accepts the charges and the recovery would be made from him. He has further contended that on the request of the deceased government servant, even the time was extended to one month but still he did not reconcile the stock

D

sheets with the stores and through a fact finding enquiry the details of the deficiencies were found out. He was confronted with a query as to what was the fate of the charge sheet which is said to have been served on the applicant as per communication dated 4.4.2000 (Annexure A-4). Learned counsel for the respondents has submitted that the enquiry remained in progress and the same could not be finalised during the life time of the applicant. However, he has submitted that the loss was already ascertained during the life time of the deceased government servant and the fact finding enquiry was conducted in his presence. Therefore, there was no need or following the procedure for imposition of the penalty in the instant case and the action of the respondents cannot be faulted with. The Original Application is misconceived and deserves to be dismissed.

8. We have given our anxious thought and consideration to the rival contentions raised on behalf of both the parties. We find that this is a unique case, we have never come across such unusuality earlier. In Railways, in Stores as well as in the various commercial transactions like issuing of tickets everyday we come across certain debits, credits and losses and if the same are admitted, the same can be deposited in the accounts and the only problem starts when one does not admit such debits or losses. In such cases if the recovery is to be made as a measure of penalty. The procedure established by rules for imposition of penalty is required to be followed. Before appreciating the controversy in question we find that the perusal of Rule 6 of The Railway Servants (Discipline & Appeal) Rules, 1968, specifically provides that recovery is one of the penalty which is described in the following terms :-

6....(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders:"

Rule 11 prescribes the procedure for imposition of the minor penalty wherein it has been envisaged that a

charge sheet is required to be given and the statement of defence will be called from the delinquent employee and thereafter the further proceedings are to be followed. In the instant case, even though there is a specific version of the respondents that the deceased government servant was served with a copy of SF-5 i.e. charge sheet of the major penalty but from the records we find that no charge sheet, as such, is available. We are also not aware as to what progress has been made in the matter on the same. There is not even a whisper in the complete pleadings of the parties. We only ~~xxxx~~ inquired from the learned counsel for the respondent who has been very fair to assist us in the matter and has disclosed that the enquiry proceedings were not completed at all as per his information. But there is no document in support of the same.

9. Once having come to the conclusion that the prescribed procedure for imposition of the penalty of recovery on the deceased government servant has not been followed, now we are required to examine the other question as to what could be the fate of the disciplinary proceedings after the death of the delinquent employee. The normal rule is that the crime dies with the criminal and the matter involved a question regarding the verification of the stores, certain invoices are to be reconciled. The stock was to be checked. We would have remanded the matter to the disciplinary authority with a direction to adhere to the procedure prescribed under Rule 9 of the Railway Servants (Pension) Rules or under R.S. (D&A) Rules 1968 had the Govt. Servant retired from service or remained in service. But in the instant case nothing as such can be done. In this view of the matter, we find that the action of the respondents cannot be said to be in consonance with the rules and the inescapable conclusion would be that the complete action of the respondents would be construed as a nullity.

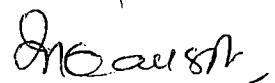
10. The upshot of the aforesaid discussion is that the OA has ample force and substance. The same stands allowed accordingly. The respondents are directed to rerund the

amount which has been deducted from the salary of the deceased government servant from October 1999 and onwards and other dues as indicated in the Schedule at page 17 of the Paper Book as maybe admissible under the Rules to the applicants i.e. Legal heirs of deceased Govt. servant, within a period of three months from the date of receipt of a copy of this order. In the facts and circumstances of this case the prayer for interest is declined. However, the parties are directed to bear their own costs.



(M.K. MISRA)

MEMBER (A)



(J.K. KAUSHIK)

MEMBER (J)