

Central Administrative Tribunal
Jabalpur Bench

OA No.1071/04

Jabalpur, this the 5th day of July, 2005.

C O R A M

Hon'ble Mr.Madan Mohan, Judicial Member

Prakash Chand Sen
S/o Shri Mangal Sen
R/o Jageshwari Mohalla
Near Hanuman Garhi
Chanderi
District Ashoknagar (MP).

Applicant

(By advocate Shri V.Tripathi)

Versus

1. Union of India through the
Secretary
Department of Tourism & Culture
New Delhi.
2. The Director
Archaeological Survey of India
Janpath, New Delhi.
3. Superintendent Archaeologist
Archaeological Survey of India
T.T.Nagar, Bhopal.

(By advocate None)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) To set aside the order dated 27.8.2004 (Annexure A1) to the extent it imposes recovery of Rs.17,067/- on the applicant.



CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH.
JABALPUR

OA No. 1071/2004 :

Shri V. Tripathi for the applicant on behalf of Shri S. Paul.

Shri K.N. Pethia for the respondents.

Heard the learned counsel for the applicant and the respondents.

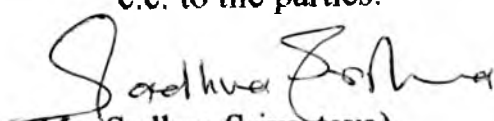
The learned counsel for the applicant stated that the respondents vide order dated 27th August, 2004 has ordered to recover an amount of Rs. 17,067/- from the applicant. In fact, the applicant is working as Monument Attendant and is not at all responsible for the theft committed in the premises of that Monument but recovery from salary is being made by the respondents regularly after the order dated 27-8-04 has been passed by them. He submitted that the remaining amount of recovery be made from him after the OA is disposed of finally.

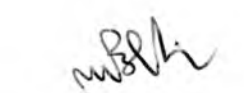
On the other hand, the learned counsel for the respondents states that the applicant is not held responsible for committing the theft. Regarding recovery of Rs. 17,067/- it is stated by him that this amount is equally distributed among three persons including the applicant for their negligence in duty hours. He further submitted that only $\frac{1}{3}$ part of the salary is being recovered from the applicant. He therefore submitted that the recovery be not stayed by the Tribunal.

In the facts and circumstances of the case we are of the considered opinion that the respondents be restrained from making any further recovery from the salary of the applicant and the remaining amount shall be recovered only after the final outcome of this OA. We do so accordingly.

List the matter for hearing on 4.5.2005.

c.c. to the parties.


(Ms. Sadhna Srivastava)
Judicial Member


(M.P. Singh)
Vice Chairman

cc issued
2-5-05

- (ii) To direct the respondents to refund the recovered amount to the applicant.

2. The brief facts of the case are that the applicant is working as Monument Attendant at Kadwaya , District Ashoknagar. On 10.7.2004, an incident of theft of two solar panel and batteries took place at Kadwaya site. It is alleged in the application that at the time of the incident of theft, the applicant was deployed at Group No.6 Khinnamad, whereas the said solar panel and batteries were installed at Group No.3 Chiandramath and Group No.5 Pachli Marghat respectively. One V.K.Suman was working in Group No.3 and one R.K.Jain was working in Group No.5. Since V.K.Suman was on leave on 10.7.2004, in his place, one Sukhlal was performing duty at Group No.3 in the night of 10.7.04. Respondent No.3 found the applicant as well as the aforesaid two persons responsible for the loss of two solar panel and batteries. The value of the government property was assessed to be Rs.51,200/- which was equally divided for the purpose of recovery at the rate of Rs.17,067/- (Annexure A1). In pursuance to the Annexure A1 order dated 27.8.2004, the respondents started recovering Rs.1000/- from the salary of the applicant from the month of September 2004. Against the recovery, the applicant preferred a representation dated 14.9.2004 followed by another one dated 14.10.2004. But no action has been taken by respondents to stop the recovery. Aggrieved by the action of the respondents, the applicant has filed this OA.

3. Learned counsel for the applicant is present. None is present on behalf of respondents. Hence, the provision of Rule 16 of CAT (Procedure) Rules, 1987 is invoked.

4. Heard learned counsel for the applicant. The learned counsel argued that the applicant had not received any charge sheet before receiving the order-dated 27.8.2004. No notice of enquiry was served on the applicant. The order dated 27.8.2004 had been issued without complying with the provisions of CCS (CCA) Rules. Respondents



No.3 failed to see that the solar panels and batteries were not stolen from Group No.6 where the applicant was working. The alleged theft had taken place in Group Nos.3 & 5 and the respondents had ignored this very fact and the action of the respondents in imposing the illegal recovery on the applicant is arbitrary, unjust and unfair.

5. Learned counsel of the applicant has filed a rejoinder also reiterating the contentions raised in the OA.

6. The respondents in their reply contend that the recovery order has been issued after holding inquiry and investigation into the matter. The applicant was a habitual absconder and irresponsible person and cannot be relied upon and the applicant was also responsible for the theft. The applicant had changed the duty of Pramod Kumar, part time labour, in the morning of 11.7.2004. This clearly indicated the applicant's involvement and connivance in the theft. Hence the OA is liable to be dismissed.

6. I have considered the rival contentions and perused the material on record. I find that the respondents have not followed the mandatory procedure prescribed under Rule 16 of the CCS(CCA) Rules, before imposing the penalty of recovery. No charge sheet has been issued to the applicant before the impugned order was passed. Rule 16 (a) of CCS (CCA) Rules stipulates that a Government servant shall be informed in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and he shall be given reasonable opportunity of making such representation as he may wish to make against the proposal. Hence the impugned order passed by the respondents is against rules and is liable to be quashed and set aside. I therefore set aside the impugned order (Annexure A1) and direct the respondents to refund the amount recovered from the applicant within a period of two months from the date of receipt of a copy of this order. However, the



respondents are at liberty to take action against the applicant in accordance with rules. The OA is allowed. No costs.

(Madan Mohan)
Judicial Member

aa.

पुस्तक सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अवधि:-

- (1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के काउंसल
- (4) महापात्र, वं.प्र.अ., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

✓ V. Tripathi AN 208
K. M. Pethega 208

10/11/08
जि.सि.सदर

Received
6.7.08