

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 1123 of 2004

Jabalpur, this the 22nd day of August, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Ashok Kumar Dixit, S/o. Shri Ram
Lal Dixit, Date of Birth 8.5.1965,
Conservator Assistant Gr. I,
Archeological Survey of India,
R/o. 51, Dwarikapuri Colony,
Near P&T Chouraha, Bhopal. Applicant

(By Advocate – Shri S. Paul)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Tourism and Culture,
New Delhi.
2. The Director General, Archeological
Survey of India, Janpath, New Delhi.
3. The Director (Administration),
Archeological Survey of India,
Janpath, New Delhi.
4. The Superintendent,
Archeological Survey of India,
Bhopal Circle, Bhopal. Respondents

(By Advocate – Shri K.N. Pethia)

O R D E R (Oral)

By M.P. Singh, Vice Chairman –

By filing this Original Application the applicant has claimed the following main reliefs :

- (ii) set aside the impugned order dated 29.4.2004 Annexure A-1 and order dated 4.11.2004 Annexure A-2,

(iii) direct the respondents to pay all consequential benefits to the applicant as if the impugned order dated 29.4.2004 Annexure A-1 and 4.11.2004 Annexure A-2 has never been passed.”

2. The brief facts of the case are that the applicant is presently working as Conservator Assistant Grade-I. He has been issued a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 wherein certain charges have been leveled against him. The applicant was also issued with an order dated 29th April, 2004, whereby the respondent No. 4 has ordered to recover Rs. 2,00,000/- from the applicant in 32 installments at the rate of Rs. 7,500/- per month. This order was challenged by the applicant by way of filing OA No. 745/2004. The Tribunal at the admission stage itself disposed of the OA by order dated 8th October, 2004 with a direction to the respondents to consider and decide the appeal of the applicant by passing a speaking, detailed and reasoned order within a period of 4 weeks from the date of receipt of a copy of this order. Thereafter, the applicant has filed the appeal dated 27.7.2004. The respondents after considering the appeal of the applicant has passed the order dated 4th November, 2004 with the following observations :

“Whereas the disciplinary proceedings initiated by the Disciplinary authority i.e. S.A., Bhopal Circle against Shri A.K. Dixit vide his memo No. DE/AKD/REWA/2003/CF-645 dated 16.9.2003 have nothing to do with the recovery of the unspent Government money which has deliberately been retained by Shri A.K. Dixit. The disciplinary proceedings initiated against Shri A.K. Dixit are connected with his misconducts for the violation of the provisions of CCS (Conduct) Rules. One of the misconducts (vide Article-7) concerns the deliberate retention of the unspent Government money by Shri A.K. Dixit.”

It is against this order the applicant has filed the present Original Application.

3. The respondents have filed their reply and in their reply they have stated that during the said conservation work of Surwaya Garhi, the applicant asked for an advance of Rs. 2,50,000/- only on 9.7.2003 to pay



the wages to the labourers engaged in the conservation work of Surwaya Garhi. An advance of Rs. 2,00,000/- had been sanctioned on 11.7.2003 by the respondents and it was sent to the applicant vide DD No. 180788 dated 11.7.2003 for the purpose. The applicant was directed to make the labour payment in presence of Shri G. Ramchandani, Assistant Superintendent, Archaeologist Engineer. Due to some other occupations Shri G. Ramchandani could not proceed for witnessing the labour payment and then the respondents directed Shri D.S. Sood ASAE to witness the labour payment on 26.7.2003, which was duly informed to the applicant. For this purpose the advance was already given to the applicant and not to Shri D.S. Sood. According to the respondents the applicant showed his reluctance in making payment on 26.7.2003 and asked for secured jeep etc. for bringing the cash at site. Then another letter dated 25.7.2003 was issued whereby the applicant was informed to return the advance alongwith the relevant register, measurement books, vouchers etc. by 28.7.2003 so that the office can make necessary arrangements for making the labour payment. Pursuant to the instructions of the respondents, Shri Sood went to the site for witnessing the labour payment which was scheduled to be made on 26.7.2003 by the applicant. At this occasion the then Superintending Archaeologist, Shri S.B. Ota was also present at the site for surprise check of the said labour payment as he received a complaint about the less payments to the labourers by the applicant. They all waited at site till 7.15 pm, but no labourer came and asked for payment. Then as per the instructions of Superintending Archaeologist, who was present at the site, the unpaid muster rolls were seized from the applicant himself for which the receipt was given by Shri Sanjay Angarey as is also admitted by the applicant himself. After returning back from the site Shri D.S. Sood wrote a letter to the Superintendent Archaeologist vide letter dated 29.7.2003 that though the applicant was present at the site but he failed to make payment in his presence.



4. Heard the learned counsel for both the parties and carefully perused the pleadings and records.

5. During the course of argument the learned counsel for the applicant has submitted that the applicant has been issued a charge sheet. He has drawn our attention to one of the article i.e. Article – 7 wherein it has been mentioned that “the applicant had been asked to return the amount of advance taken by him by 28th July, 2003. But he has deliberately kept the said amount with him and not returned the same in this office till date and is misusing that amount. This clearly shows that he is an employee who should not be trusted to be given the Government revenue in future. Thus found him punishable under CCS (Conduct) Rules, 1964, and (Rule 3, Sub rule (1), Clause-(I), (II) and (III)) of CCS (CCA) Rules, 1965, Rule 11 (IX).” The learned counsel for the applicant has submitted that since a charge sheet has already been issued to the applicant and disciplinary proceedings are continuing, the order passed by the respondents dated 4th November, 2004 should not be implemented and no recovery should be made unless he is given an opportunity of hearing. The learned counsel for the applicant has relied upon the judgment of the Hon’ble Madhya Pradesh High Court in the case of Shanti Dev Vs. M.P. Road Transport Corporation, 2005(2) MPHT 7 (NOC). In this case the Hon’ble High Court has held that “when the corporation decided to hold a departmental enquiry, then the corporation can not impose a punishment of recovery. Hence, it is directed that till the departmental enquiry is concluded and final orders are passed, the recovery order be not implemented.”

6. On the other hand the learned counsel for the respondents has submitted that the applicant has been given an advance of Rs. 2,00,000/- for doing certain conservation work at Surwaya Garhi. He also submitted that the applicant has not paid the money to the labourers before Shri D.S. Sood, who was witnessing the labour payment. Thereafter, the unpaid muster rolls were seized from the applicant and a receipt was given by



Shri Sanjay Angarey and the applicant was asked to return back the money which he has taken. The applicant has earlier approached this Tribunal and the Tribunal has given direction to them to decide the appeal of the applicant and the appeal was decided vide order dated 4th November, 2004. The learned counsel for the respondents also submitted that the enquiry has already been completed and the disciplinary authority has imposed the penalty of compulsory retirement on the applicant. He has also submitted that the applicant has submitted his appeal to the appellate authority against the order of the disciplinary authority and the same is pending before the appellate authority. The respondents further submitted that the amount of Rs. 2,00,000/- which has been paid to the applicant has been defalcated by the applicant. Hence, they have rightly passed the order of recovery on the applicant. The Collector, Shivpuri has also made complaint against the applicant. In view of the above the OA is bereft of merits and is liable to be dismissed.

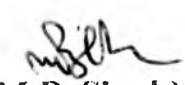
7. We have given careful consideration to the rival contentions made on behalf of the parties and we find that an order dated 29th April, 2004 has been passed by the respondents for making recovery of Rs. 2,00,000/- alongwith interest from the applicant in 32 installments at the rate of Rs. 7,500/- per month. Against this the applicant had filed the OA No. 745/2004 and the Tribunal vide order dated 8.10.2004 directed the respondents to decide the appeal of the applicant against the recovery. The respondents have passed the order dated 4th November, 2004 rejecting the appeal of the applicant. With regard to the disciplinary proceedings although Mr. Pethia has made a categorical statement across the bar that the disciplinary proceedings are complete, in any case these are not before us. We find that it is an admitted fact that the applicant has been paid an advance of Rs. 2,00,000/- for making payment to the labourers but as per the allegation of the respondents the same has not been paid to the labourers. Hence, keeping ~~the~~ utilized Government money with the Government servant is a serious matter.



8. Considering all the facts and circumstances of the case at this stage we feel that ends of justice would be met if we dispose of this Original Application giving the same directions as is given by the Hon'ble High Court in the case of Shanti Devi (supra). Accordingly, we direct the respondents not to implement the orders dated 29.4.2004 and 4.11.2004 till the departmental enquiry is concluded and final orders are passed if not already passed.

9. In view of the aforesaid, the Original Application stands disposed of. No costs.


(Madan Mohan)
 Judicial Member


(M.P. Singh)
 Vice Chairman

प्रधानकर्ता सं. ओ/न्या.....जबलपुर, दि.....
 पत्रिलिपि दानो डित:-

"SA"

(1) सचिव, उच्च व्यायालय दार एवं अधिकारी, जबलपुर
 (2) आवेदन दानो डित,के काउंसल *S. Paw RN 031*
 (3) प्रत्यक्षी श्री/महिला/पुरुषके काउंसल *K. K. K. Singh*,
 (4) वांगमता, दोषाता, दोषाता वांगमता, दोषाता वांगमता एवं अधिकारी, काउंसल *M. M. 6-7-05* *RN 031*
 अप. रजिस्ट्रार

Haged
6-7-05