

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 173 of 2003

Jabalpur, this the 27th day of July, 2004

Hon'ble Shri Madan Mohan, Judicial Member

Vinod Kumar Shrivastava,
S/o. Late S.P. Shrivastava,
Date of birth 16.7.1959,
Machinist (Skilled), Token
No. 08 MM 2491, Ordnance Factory,
Katni, R/o. 2017, Shastri Nagar,
Ordnance Factory Estate, Katni.

... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India,
through its Secretary,
Ministry of Defence, Production,
New Delhi.
2. Director General of Ordnance
Factories, 10-A, Shahid S.K. Bose
Marge, Kolkata.
3. General Manager,
Ordnance Factory, Katni.

... Respondents

(By Advocate - Shri K.N. Pethia)

O R D E R

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

"(b) set aside the order dated 24.1.2003 Annexure A-1
whereby the recovery of Rs. 81,432/- is inflicted on
the applicant;

(c) command the respondents to refund the amount
pursuant to aforesaid impugned order with interest on
refunded paid amount to the applicant,

(c-i) set aside the order dated 27.4.2001 Annexure
A-6 in the interest of justice."

2. The brief facts of the case are that the applicant is
presently working on the post of Machinist (Skilled) under
the direct control and supervision of respondent No. 3.
While working as such the applicant was placed under
suspension vide order dated 1.10.1993. Thereafter the



applicant was issued a charge sheet under Rule 14 of CCS (CCA) Rules. Vide order dated 30.11.1996, the applicant's suspension order was revoked. Thereafter, a punishment of reduction of pay for one year with cumulative effect was imposed on the applicant by the disciplinary authority vide order dated 26.2.2001. The disciplinary authority decided the suspension period of the applicant and held that the applicant is entitled for only subsistence allowance which has been paid to him from 1.10.1993 to 30.11.1996 and the suspension period was not treated as duty and it was further decided that during the period of suspension, the applicant shall not get any increments due to him. The impugned order dated 24.1.2003 mentions that the subsistence allowance paid to the applicant from 1.10.1993 to 1.12.1996 which comes to Rs. 81,432/- has to be recovered from the applicant. The applicant further submitted that before passing the order dated 24.1.2003, imposing the recovery, no opportunity of any nature has been given to the applicant. The recovery of the huge amount by the impugned order entails civil consequences and therefore, could not have been passed without following the principles of natural justice, equity and fair play. The applicant preferred a representation, wherein he has submitted that the subsistence allowance can never be recovered from an employee. It has been recovered ^{from the applicant} to the tune of Rs. 2,262/- per month.

The applicant has also challenged the order dated 27.4.2001 in which it is mentioned that there shall be a recovery from subsistence allowance after deducting the leave due to the applicant. This order dated 27.4.2001 runs contrary to the order dated 7.3.2001. The respondent No. 3 has no authority, jurisdiction and competence to review his own order even on the request of the applicant under the



Fundamental Rules. Aggrieved by this the applicant has filed this OA claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that the amount of subsistence allowance cannot be recovered by the respondents. My attention is drawn towards the order passed in OA No. 67/2001 in the case of Mr. Suneel Kumar Mathur Vs. Union of India & Ors., decided on 15.6.2004, wherein this Tribunal quashed and set aside the order to the extent of directing the recovery of subsistence allowance paid to the applicant during the period of suspension and held that any amount if recovered from the salary of the applicant by way of recovery towards subsistence allowance, the same shall be refunded to the applicant.

5. In reply the learned counsel for the respondents argued that Annexure A-1 dated 24.1.2003 is not an order but it is mere a communication which is passed on the report of the audit authority. Subsequently Annexure A-6 dated 27.4.2001 is passed on the request of the applicant as he had requested that the period of suspension may be treated as on leave. He further argued that the order dated 27.4.2001 (Annexure A-6) is challenged by the applicant by filing this OA on 20.3.2003. Hence, the OA is time barred.

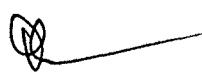
6. In reply to this argument of the respondents the applicant argued that the alleged recovery was done in compliance with the letter dated 24.1.2003 (Annexure A-1) in which it is clearly mentioned that the subsistence allowance of Rs. 81,432/- for the period of suspension from

10

1.10.1993 to 1.12.1996 is to be recovered from the salary of order the applicant. Aggrieved by this, the applicant has filed this OA. He further requested that the order Annexure A-6 dated 27.4.2001 is not passed on the request of the applicant and if any request or consent is given against law, it shall be ignored. Thus, the applicant is entitled for the reliefs sought.

7. After hearing the learned counsel for the parties and on careful perusal of the records, I find that the memo dated 24.1.2003 (Annexure A-1) was issued on the basis of the report of the audit authorities by which an amount of Rs. 81,432/- was ordered to be recovered from the salary of the applicant on account of subsistence allowance paid to the applicant for the period of suspension from 1.10.1993 to 1.12.1996. The present Original Application is filed on 20.3.2003. Hence, this Original Application is not time barred. I also perused the letter of the applicant at Annexure A-7 by which the applicant has not given any consent to recovery the amount of subsistence allowance paid to him. According to the order passed in the case of Mr. Suneel Kumar Mathur (supra), the amount of Rs. 81,432/- to be recovered from the applicant on account subsistence allowance paid to the applicant for the period from 1.10.1993 to 1.12.1996, requires to be quashed and set aside.

8. Accordingly, the Original Application is allowed and the impugned order of recovery dated 24.1.2003 and the order dated 27.4.2001 (Annexure A-6) are quashed and set aside to the extent of directing of recovery of subsistence allowance paid to the applicant during the period of suspension from 1.10.1993 to 1.12.1996. If any amount is



recovered from the salary of the applicant by way of recovery towards subsistence allowance, the same shall be refunded to the applicant within a period of three months from the date of receipt of a copy of this order and if not refunded within this period, the same shall be payable with interest at the rate of 9% per annum from the date of the expiry of three months period. No costs.

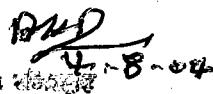

(Madan Mohan)
Judicial Member

"SA"

दूसरी बारे श्री/महाराजा राजकुमार निः
प्रतिलिपि अवृत्तिः—

- (1) रायिद, उत्तर न्यायालय दरबार बाह्यिकाल, जलालाबाद
- (2) अदेशन श्री/महाराजा/महाराजा राजकुमार निः
के अधिकारी श्री/महाराजा/महाराजा राजकुमार निः
- (3) राजकुमार श्री/महाराजा/महाराजा राजकुमार निः
- (4) राजकुमार श्री/महाराजा/महाराजा राजकुमार निः

सूचना एवं आवश्यक लाभान्वित है।


S. P. Acharya
4-8-64

Shri S. P. Acharya

Adu-

*Issued
on 18/8/64*