

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

23.4.2009

OA 158/2007

Mr.C.B.Sharma, counsel for applicant.
Ms.Sonal Singh, proxy counsel for
Mr.Alok Garg, counsel for respondents.

Heard learned counsel for the parties. The OA stands disposed of by a separate order.


(B.L. KHATRI)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 23rd day of April, 2009

ORIGINAL APPLICATION No.158/2007

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Mahaveer Prasad Gupta
S/o Shri Ram Charan Lal Gupta,
R/o 16/46-A, Adarsh Mohalla Bumba Gali,
Purani Mandi,
Ajmer.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through
General Manager,
North Western Zone,
North Western Railway,
Jaipur.
2. Chief Works Manager (Carriage),
North Western Railway,
Ajmer Division,
Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage),
North Western Railway,
Ajmer Division,
Ajmer.
4. Assistant Financial Advisor (Carriage & Store),
North Western Railway,
Ajmer Division,
Ajmer.

... Respondents

(By Advocate : Ms.Sonal Singh, proxy counsel for Shri Alok
Garg)

ORDER (ORAL)**PER HON'BLE MR.B.L.KHATRI**

The applicant has filed this OA against the order dated 5.7.2006 (Ann.A/1), by which he was informed that Rs.16639/- has been deducted from the amount of Rs.1,00,000/-, withheld at the time of retirement on 31.3.2004 and after deduction of Rs.16639/- balance amount of Rs.83361/- had been refunded. Through this OA, the applicant has prayed for the following relief.:

- “i) That the respondents be directed to refund Rs.16639/- alongwith interest @ 12% p.a. from 1.4.2004 to till payment by quashing any orders passed by the respondents with the letter dated 5.7.2006 (Ann.A/1) declaring withholding the amount and recovery as illegal.
- ii) That by an appropriate order and direction respondents be further directed to pay interest @ 12% p.a. on Rs.83361/- from 1.4.2004 to 31.5.2006.”

2. Brief facts of the case are that applicant was holding the post of Chief Office Superintendent. The allegation against the applicant is that after physical verification the stock taken over by him was found short of Rs.16639/-. The plea of the applicant is that as per duty list (Ann.A/3) he was not responsible for holding any stock. In this connection, it is considered necessary to reproduce the order-sheets of this Tribunal dated 22.1.2009 and 26.3.2009, which read as under:

“22.1.2009

OA No.158/2007

Mr.C.B.Sharma, counsel for applicant.
Mr.R.L.Agarwal, proxy counsel for
Mr.Alok Garg, counsel for respondents.

Heard in part.

The whole controversy in this case revolves around the fact that respondents have recovered a sum of Rs.16,639/- from the DCRG of the applicant as per the details given at page No.17 of the OA alongwith Annexure A/1. The applicant has filed Annexure A/3 and contended that it was not within his duty to keep these items in his custody, whereas the respondents have contended that these items were handed over to the applicant.

The respondents are hereby directed to submit specific record or evidence showing that items had ever been handed over to the applicant.

CC to the counsel of the respondents.

List it on 30.1.2009.”

Order-sheet dated 26.3.2009 also reads as under :

“26.3.2009

OA 158/2007

Mr.C.B.Sharma, counsel for applicant.

Ms.Sonal Singh, proxy counsel for

Mr.Alok Garg, counsel for respondents.

Vide order dated 22.1.2009, passed by this Tribunal, the respondents were directed to submit specific record or evidence showing that items of stock had never been handed over to the applicant. In response to the same, the respondents have filed MA 22/2009 annexing therewith stock verification report as Ann.R/8. On the first page of the said report, signature of the applicant appears.

Learned counsel for the applicant has invited attention of the Bench to para 4(2) of the reply, wherein it was admitted that the applicant has not taken the charge and thus he is guilty of negligence and carelessness. It is certain that on transfer of the post, the person who joins the post has to take charge of the post and if he ignores to take the charge, he himself is responsible for all consequences. From the reply it is evident that the applicant had taken over the charge of the post on 14.2.98. However, he had not taken charge of the stock, which was earlier held by Shri Fateh Singh, who was relieved on 13.2.1998. So, it is not specifically evident from the stock verification report filed by the respondents that stock had in fact been taken over by the applicant from Shri Fateh Singh on his transfer.

Respondents may submit reply to the same on 13.4.2009.”

3. The respondents have filed an MA [No.22/2009], enclosing thereby Ann.R/8, i.e. Stock verification sheet dated 25.6.2003, and it was submitted that since the applicant had signed the physical verification of the stock, therefore, it is evident that he had taken over the charge of the stock. In this connection, it is considered necessary to reproduce para-4(2) of the reply, which reads as under :

“4(2) That the contents of para no.4(2) of the original application are not admitted as stated. As admittedly the Applicant has not taken the charge and thus he is guilty of negligence and carelessness. It is certain that on the transfer of the post, the person who join the post, has to take the charge of the post and if ignores to take the charge, he himself is responsible for all consequences. As per the duty list (Ann.A/3) Shri MP Gupta is responsible for the general supervision of all the tables of CG section and officiating arrangement for staff on leave. Sorting of all

dak and preparation of posts for officer and Shri RC Avasthi and Shri Dhan Singh was to look after the duty of OS CG. In this regard all the contentions are wrong. It is also not correct and not admitted as stated that as per duty list all the stock registers as well as stock items were in the possession of Shri RC Avasthi to maintain the same and on that basis in the year 2000 verification of stock items take place by the respective authorities and found correct taking into account all the items available in various section."

4. From perusal of this para, it is evident that the applicant had taken over the charge of the post. However, he had not taken over the charge of the stock, which was earlier held by Shri Fateh Singh, who was relieved on 13.2.98. Thus, it is not evident from the stock verification report, filed by the respondents, that the stock had in fact been taken over by the applicant from Shri Fateh Singh on his transfer. The respondents have not brought any material on record to show that the applicant was ever asked to take over possession of the stock or whether the earlier incumbent had handed over the stock, because Shri Fateh Singh, the earlier incumbent, had already been relieved before joining duty of the applicant.

5. In this connection, it is also considered necessary to refer to para-4(2) of the OA, wherein it has been stated that in the year 1998 the applicant was transferred to Carriage and joined duty on 14.2.98 and one Shri Fateh Singh, holding the post in Carriage, stood relieved on 13.2.1998 prior to joining of the applicant without handing over the charge etc. In this connection, it is considered necessary to observe that there is a distinction between physical verification and handing over the actual charge of the stock. It is evident that annual physical verification of the stock was carried out and on which the applicant had signed with the remark that he had received the stock sheets. As such, it is not proved by the respondents that at any stage the applicant was in possession of the stock. No doubt, the applicant could have been proceeded against for negligence and carelessness of duty but he cannot be held responsible for shortage of the stock.

6. Accordingly, the OA is allowed and the impugned order dated 5.7.2006 (Ann.A/1) is quashed. The respondents are directed to refund the amount of Rs.16639/- to the applicant.

within a period of two months from the date of receipt of a copy of this order. No order as to costs.


(B.L.KHATRI)
MEMBER (A)

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