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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

18.04.2012

OA No. 484/2008

Mr. S. Shrivastava, Counsel for applicant.
Mr. Indresh Sharma, Counsel for respondents.

On the request of the learned counsel for the respondents, list it on 25.04.2012.

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IR to continue till the next date.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S. Rathore)
Member (J)

ahq

25/04/2012

OA No. 484/2008

Mr. S. Shrivastava, counsel for applicant.
Mr. Indresh Sharma, counsel for respondents.

Heard.
O.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
(Justice K.S. Rathore)
Member (J)

25/04/2012

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of April, 2012

ORIGINAL APPLICATION No. 484/2008

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

R.G.Garg
s/o Shri late Chandmal Gupta,
r/o A-130, Mahesh Nagar, Jaipur,
presently posted as S.S.E (W),
S-1, Jaipur Division, Jaipur

... Applicant

(By Advocate: Shri S.Srivastava)

Versus

1. Union of India
General Manager,
H.Q. Office of North Western Railway,
Hasanpura Road,
Jaipur
2. Chief Personal Officer,
H.Q. Office of North Western Railway,
Hasanpura Road,
Jaipur
3. Divisional Railway Manager
(Engineer and Store),
NW Railway, Jaipur
4. F.A. & C.A.O.,
H.Q. Office, North Western Railway,
Jaipur

5. Sr. Disional Personal Oficer,
 Jaipur Division of
 North Western Railway,
 D.R.M. Office, Jaipur

... Respondents

(By Advocate : Shri Indresh Sharma)

ORDER (ORAL)

Brief facts of the case are that at the relevant point of time Shri S.B.Bhattacharya was holding the post of General Manager, North Western Railway, who took voluntary retirement on 25.2.2007, which otherwise due on 28.2.2007. The Bungalow which was allotted to the General Manager was vacated on 8.4.2007. The stock verification of G.M.'s Camp Office was conducted on 23.3.2007 and on checking certain items of engineering department to the tune of Rs. 68176/- were found short and for shortage of such items, Principal Chief Engineer had written a letter to Chief Personal Officer for getting such amount recovered from the then General Manager Shri S.B.Bhattacharya.

2. The applicant was given information by the office of the D.R.M. (Store) on phone on 8.4.2007 that the bungalow has now been vacated by the General Manager and immediately thereafter the applicant went to check the items of his own department of which the applicant was custodian. Having found certain items short during the check, the applicant informed the Head of Department



Sr. DEN (W), Jaipur vide letter 9.4.2007 in this regard and provided list of items found short with the request for initiating recovery proceeding.

3. It is not disputed that recovery in respect of the items found short has not been made from the then General Manager, Shri S.B.Bhattacharya. The applicant was asked to explain vide letter dated 11.6.2008 which has been replied by the applicant vide letter dated 4.7.2008 (Ann.A/4), but without considering reply submitted by the applicant and without recovering the amount from the then General Manager, respondent No.4 written letter to the Principal Chief Engineer on 8.9.2008 regarding recovery of the items found short from the applicant instead of making recovery from the then General Manager. Therefore, against the impugned recovery order dated 29.9.2008 (Ann.A/1), the applicant filed the present OA on the ground that the applicant was informed on phone by the office of DRM (Store) on 8.4.2007 in respect of vacating the bungalow by the then G.M. and immediately thereafter the applicant checked and informed the Sr. DEN about the shortage of items and initiating recovery proceedings against the officer concerned. It is also averred that the applicant was not asked by any concerned authority about the 'No Objection Certificate' (NOC) in respect of releasing settlement dues of the then General Manager.

4. The order impugned is also challenged on the ground that before issuance of the impugned order, no detailed enquiry has been made, which is permissible as per Disciplinary and Appeal



Rules, 1968. The applicant being class-III employee has no authority to step in such type of issues directly but he could only inform his authority about the same, which he did immediately after vacating the bungalow. It is also alleged that the competent authority earlier shown his mind on the issue and asked to recover the said money from the then General Manager and now under duress it has changed his mind to recover the same from the applicant, which quite clearly speaks about the arbitrariness of the impugned order.

5. On the contrary, the learned counsel appearing for the respondents strongly controverted the averments made by the applicant and submitted that though the General Manager took voluntary retirement on 25.2.2007, however, it was well known to the applicant that the General Manager was due to retire on 28.2.2007 and the retirement three days prior to the normal date of retirement does not vest any right in favour of the applicant. As per the practice/procedure any outstanding bills/claims were to be advised well in time i.e. at least two weeks before retirement so that recovery could be effected from the settlement dues, but in the stock sheet the applicant did not advised about the T&P items issued to the G.M.'s Camp Office found short. As such, the applicant failed to advice about 20 items found short amounting to Rs. 68176/- which was the duty and he seriously failed in the same.

6. The learned counsel appearing for the respondents further submitted that letter dated 4.6.2008 is self explanatory and mentions that stock verification was done in very casual manner.



More over, the basis of arriving at shortages has not been elaborated or substantiated and outstanding bills and claims were to be advised well within time i.e. at least two weeks before retirement so that the recovery could have been effected from the settlement dues for which the applicant seriously failed who was custodian/stock holder of the T&P items, hence recovery has been rightly contemplated against the applicant. It is further submitted that the procedural lapse has been committed by not lodging FIR with the RPF and hence the responsibility vests with the applicant.

7. We have heard the rival submissions of the respective parties and carefully perused the order impugned as well as the material available on record. At the time of admission on 8.12.2008, this Tribunal having heard the learned counsel for the applicant, who submitted that instead of effecting recovery from the then General Manager, despite the fact that shortage of store articles has been brought to the notice of the Appropriate Authority before retirement, the respondents have proceeded to recover the same amount from the applicant on the basis of the audit report. The learned counsel submitted that it was incumbent upon the appropriate authority to obtain 'No Objection Certificate' before retirement of the General Manager and he could not have been allowed to retire before obtaining the 'No Objection Certificate' of the store articles, which were issued in the name of the General Manager and in view of above, the Tribunal has stayed operation of the impugned order dated 29.9.2008.



8. Upon careful perusal of the order impugned, it reveals that it is not only lapse on the part of the applicant but also on the part of other authorities. It is not disputed that the then General Manager sought voluntary retirement on 25.2.2007 i.e. three days before the normal age of superannuation. In such circumstances also, we are of the view that the retiring officer required to obtain 'No objection Certificate' (NOC). Admittedly, in this case the then General Manager has not obtained NOC from the concerned department. If the authorities could have been vigilant about this fact and the applicant could have verified the stock well within time, recovery could have been made from the settlement dues of the then General Manager. It appears that looking to the audit report, the respondents have no option except to initiate recovery proceedings and to this effect notice was issued to the applicant as to why recovery is not made effective from the applicant, and the same has been responded by the applicant. We fail to understand as to why the respondents have not conducted detailed enquiry to ascertain the loss caused to the public exchequer to the tune of Rs. 68176/-.

9. In our considered view, not only the applicant but other officers are also responsible for the loss, as without obtaining NOC how the then General Manager was allowed to retire without settling the dues and without making payment of the store articles which were found short at the time of checking.



10. Thus, in the facts and circumstances, we quash and set-aside the impugned order dated 29.9.2008 and remit the matter back to the respondents to initiate enquiry against the officials on whose fault the loss to the tune of Rs. 68176/- has been caused to the public exchequer and after holding the enquiry and establishing the responsibility, the same shall be recovered from the person responsible with interest. It is expected from the respondents to conduct the enquiry expeditiously since Rs. 68176 + interest is to be recovered from the official(s) held responsible, but, in any case, not later than six months from the date of this order.

11. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/