

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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ORDERS OF THE BENCH

Date of Order: 27.09.2012

OA No. 157/2009

Mr. S. Shrivastava, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Heard learned counsel for the parties.

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)

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 157/2009

DATE OF ORDER: 27.09.2012

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

S.K. Tandon S/o Shri D.R. Tandon, aged about 51 years, R/o 317 / Loco Colony Kota, Rajasthan, presently posted as S.S.E. Loco-II under Sr. D.M.E. (Co) Kota Division at Kota.

...Applicant

Mr. S. Shrivastava, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.).
2. Chief Electrical Engineer, Central Organization for Railway Electrification (H.Q.), Nawab Yusuf Road, Civil Lines, Allahabad.
3. Senior Divisional Mechanical Engineer (Coordination) Kota Division of W.C. Railway, Kota.
4. Senior Divisional Personnel Manager, D.R.M. Office, Kota Division of West Central Railway, Kota.

... Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER (ORAL)

Brief facts of the case, as stated by the applicant, are that while the applicant was working as F.O. (Steel) / RE / KTT, he was entrusted to work on the Nagda-Mathura RE Project with other staff working under the subordination of the applicant. The applicant was not direct incharge of the Stock but the 'Chargeman' working under the applicant was direct incharge of the Stock.

2. The applicant further stated that during his service tenure, at the relevant time, one stock sheet was issued on 08.10.1987 whereby some items amounting to Rs. 19,925/- were found short, and some items amounting to Rs. 925/- were found in excess. Another Stock-sheet was issued on 09.08.1995 in which Tools & Plants amounting to Rs. 12,31,155/- was found short, and items amounting to Rs. 9,77,107/- were found in excess. The applicant was forced to sign the stock-sheet, which he signed under protest only to avoid the another charge of disobedience otherwise the applicant was not directly incharge of the stock but was overall incharge of many functions like inspection, dispatches of steel which also include store etc.

3. The applicant also stated that for the shortage, he was asked to submit his explanation vide letter dated 22.11.1995 to which he replied vide letter dated 01.12.1995 (Annexure A/3) on the issue of shortage of material and on various other issues. After receiving the explanation, neither any action was taken against the applicant nor were any instructions given to the applicant by his controlling authorities.

4. He further submits that the SAO, RE, Bilaspur vide letter dated 12.11.1999 (Annexure A/4) passed an order of recovery against the applicant for the items found short for which no notice was given to the applicant and without establishing the fact that who was actually custodian of the stock.

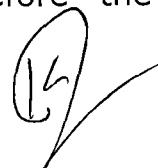


5. Being aggrieved by the said order dated 12.11.1999; the applicant approached this Bench of the Tribunal by way of filing OA No. 38/2000 whereby the impugned order of recovery was quashed and set aside vide order dated 09.01.2002 (Annexure A/5) and observed that signing on the verification sheet is not sufficient to hold him responsible for the shortages/loss caused to the Railways. No efforts were made by the respondents to find out that who is custodian and responsible.

6. It is stated by the applicant that unfortunately, in the year 2000, during the pendency of said OA, applicant met with an accident in which he got severe head injury and gone through brain surgery in which somehow he could survive after living one month in coma but has got adverse affect on his past memories.

7. Further, it is submitted that after an inordinate delay, the respondents have called the applicant for fact finding enquiry vide letter dated 18.07.2005 (Annexure A/7) and the applicant attended the same but was not in a position to recollect all facts and figure due to adverse affect on his past memory and therefore made a request to call the custodian for fact finding enquiry.

8. It is also contended on behalf of the applicant that the respondents have finally drawn the finding against the applicant vide order dated 03.05.2007 (Annexure A/11) precisely has held that the applicant was unable to explain as to why he had signed stock sheet under protest and therefore the applicant is



responsible for shortage. Impugned order has been passed on the basis that reply of the applicant is not convincing that he does not recollect the fact of 20 years back but at the time of signing stock sheet in the year 1987 his health and mental condition was perfect. It is only the base on which penalty of recovery has been imposed.

9. It is submitted on behalf of the applicant that the impugned order of recovery is bad in the eyes of law for the reason that it has been passed after an inordinate delay of about 20 years especially in the circumstances in which applicant is not in a position to recollect the facts and figures of past. Apart from that, no efforts has been made to find out first that who is the custodian of the stock but straightway applicant was called for and held responsible against the spirit of the judgment rendered by the Tribunal and for the reason and grounds, which is hereunder: -

- (a) On account of an inordinate delay.
- (b) Preliminary enquiry has not been conducted to hold first that who is the custodian of the stock.
- (c) Applicant is not in a position to defend his case due to his mental health now so it is difficult to ferret out the truth to award justice.

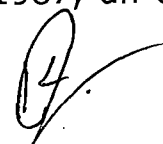
10. In support of his submission, learned counsel appearing for the applicant placed reliance upon the order dated 01.05.2002 passed by C.A.T., Principal Bench, New Delhi in OA No.



1899/2001 (**Ashok Kapoor vs. Union of India & Ors.**), reported in 2002(3) ATJ 138 wherein it has been held that incident was taken place in 1989 and the charge-sheet was issued in 2001 and no reasonable explanation was given for delay in issuing the charge-sheet, thus, charge memo is quashed.

11. After making the above submissions on behalf of the applicant, it is submitted that keeping in view the facts and circumstances of the present case, the impugned order/note of recovery dated 27.03.2009 (Annexure A/1) and order dated 30.03.2009 (Annexure A/2) by which 3 sets of passes has been stopped are bad in the eyes of law, which has been passed after a long delay of more than 20 years and that too in a circumstances in which the applicant has not been in a position to defend his case due to adverse affect on his memory, and prayed that the impugned order/note dated 27.03.2009 (Annexure A/1) and order dated 30.03.2009 (Annexure A/2) may be quashed and set aside.

12. Per contra, the respondents have raised preliminary objections regarding maintainability of the present Original Application on the ground that in the present O.A., the applicant has challenged the order/note dated 27.03.2009 (Annexure A/1) and order dated 30.03.2009 (Annexure A/2) in one and the same petition, which is not permissible as per the Administrative Tribunal Act, 1985. As per Section 10 of the Central Administrative Tribunal (Procedure) Rules, 1987, an application



shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another, whereas in the instant case, the order/note dated 27.03.2009 (Annexure A/1) and order dated 30.03.2009 (Annexure A/2) are outcome of two different proceedings and, therefore, cannot be clubbed together so as to challenge in one original application and, therefore, the present O.A. deserves to be dismissed only on this ground alone.

13. Learned counsel appearing for the respondents further raised objection that the applicant in his oral arguments as well as in written submissions has placed reliance upon the order passed by CAT, Principal Bench, New Delhi in the case of Ashok Kapoor vs. Union of India & Ors. (supra) and prayed for quashing and setting aside the memorandum of charge-sheet on the ground that as in the instant case, the incident was took place in the year 1987 and since no reasonable explanation was given for delay in issuing the charge-sheet dated 25.05.2007 (Annexure A/12), but the respondents' counsel referred to the relief claimed by the applicant and submits that no such relief for quashing and setting aside the charge-sheet, is prayed for in the instant O.A. In view of this, now relief claimed during the course of arguments in the light of order passed by CAT, Principal Bench, New Delhi in the case of Ashok Kapoor vs. Union of India & Ors. (supra) cannot be extended in favour of the applicant as the applicant has only prayed for quashing and setting aside the impugned order / note dated 27.03.2009 (Annexure A/1) and order dated 30.03.2009 (Annexure A/2) by



which the penalty of recovery has been imposed upon the applicant, and 3 sets of passes have been stopped, respectively, thus, the ratio decided by CAT, Principal Bench, New Delhi in the case of Ashok Kapoor vs. Union of India & Ors. (supra) is not applicable to the facts and circumstances of the present case.

14. It is further submitted by the learned counsel appearing for the respondents that admittedly applicant was served with a notice dated 18.07.2005 (Annexure A/7) to appear before the committee so as to hold fact finding enquiry in compliance of the directions given by this Bench of the Tribunal vide order dated 09.01.2002 in OA No. 38/2000, but the applicant is taking lame excuse of delay and brain surgery besides asking to call for custodian of stores to establish the fact.

15. Learned counsel appearing for both the sides referred to the order dated 09.01.2002 passed by this Bench of the Tribunal in OA No. 38/2000 in the case of the applicant, which was filed by him earlier. Relevant para 5 of said order dated 09.01.2002 in OA 38/2000 is reproduced hereunder: -

"5. Admittedly, there is no evidence on record to establish the fact that the applicant was the custodian / incharge of the stores in Railway Electrification, Kota. The counsel for the applicant has vehemently urged that the direct incharge of the stock/stores is Chargeman/Fitter which is not controverted in so many words by the respondents in connection with establishing the fact that the applicant is only the incharge / custodian of stores of Railway Electrification, Kota. No preliminary enquiry has been conducted in this case to fix the responsibility / liability on a person who is said to be responsible for the alleged shortages. Neither any charge-sheet was given to the applicant nor any enquiry was conducted so as to punish the person who is guilty of the lapses. It



appears that the applicant has been made responsible only on account of the fact that he signed on the verification sheet but signing on the verification sheet is not sufficient to hold him responsible for the shortages / loss caused to the Railways. It was the duty of the controlling office to conduct at least a preliminary / fact finding enquiry so as to fix liability on a person who is responsible for the shortages and thereafter a show cause notice should have been given to him and after considering his reply to the show cause notice any order could have been passed. But in this case, admittedly, no show cause notice / opportunity of hearing was provided to the applicant before passing of the impugned orders."

16. We have heard the learned counsels appearing for the respective parties and carefully gone through the pleadings, reply as well as documents available on records.

17. From bare perusal of para 5 of order dated 09.01.2002 in OA No. 38/2000 (supra), it reveals that the Tribunal has observed that there is no evidence on record to establish the fact that the applicant was the custodian / incharge of the stores in Railway Electrification, Kota. No preliminary enquiry has been conducted in this case to fix the responsibility / liability on a person who is said to be responsible for the alleged shortages. Neither any charge-sheet was given to the applicant nor any enquiry was conducted so as to punish the person who is guilty of the lapses. It was the duty of the controlling office to conduct at least a preliminary / fact finding enquiry so as to fix liability on a person who is responsible for the shortages and thereafter a show cause notice should have been given to him and after considering his reply to the show cause notice any order could have been passed.

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18. The respondents have taken care of the said observation and proceeded further. The respondents have issued a letter dated 18.07.2005 (Annexure A/7) by which it reveals that a committee comprising of EEE/D&S/CORE/ALD & SAO/RE/DNR has been appointed by the competent authority of CORE/ALD, to conduct the fact finding enquiry for shortage of material against the applicant. It has also been decided to hold enquiry in the matter on 17.08.2005 & 18.08.2005 at Allahabad in the chamber of EEE/D&S/CORE/ALD, and the DRM (Mechanical, W.C. Railway, Kota was requested to spare the applicant to attend the enquiry on that dates.

19. From bare perusal of the fact finding enquiry for verification of stock-sheet dated 17.08.2005 (Annexure A/8) it reveals that a question no. 3 i.e. 'Had you been incharge of store as mentioned in the above stock sheet at that time?', was asked to the applicant, and the applicant answered that question as 'yes, I was incharge of store but items as mentioned in above sheets have to be checked.' Further fact finding enquiry was conducted on 09.05.2006 (Annexure A/10).

20. Further, it reveals that vide letter dated 14.11.2006 (Annexure A/11), the Chief Electrical Engineer, Core / Allahabad submitted recommendation of fact finding enquiry for verification of stock sheet against the applicant, and the same was sent to the applicant vide letter dated 03.05.2007 to the applicant. From the fact finding enquiry report-A dated 01.09.2006, it reveals that the stock sheet was prepared by Sri Dandvate and



signed by the applicant, further the subject stock sheet was signed and received by the applicant on 12.12.1987. Further, it was concluded that the shortage of 40 items as indicated in the stock sheet valued Rs. 19,995/- stands good and the recovery order for Rs. 19,925/- is in accordance with the codal provision. The applicant failed to produce any documentary evidence which subside his fault for shortage of 40 items involving Rs. 19,925/-. Since the applicant received the copy of the stock sheet on 12.12.1987 and acknowledged the reminder on 02.12.1991, but he did not furnish the reason of shortage of material in 19 years. It shows his default and nothing left except recovery of Rs. 19,925/-.

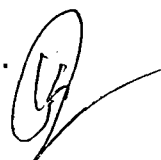
21. From the fact finding report-B dated 01.09.2006 it reveals that the stock sheet consists of 57 items out of which 51 items are shortage and six items are excess. The value of 51 short items had been worked out and come to Rs. 12,31,155/- similarly the value of six excess items had been worked out and comes to Rs. 9,77,107/- and the stock sheet was signed by the applicant 'under protest' during stock verification. The committee observed that the stock sheet was signed by the stock holder as a token of acceptance of excess/shortage of materials as indicated in the stock sheet and he failed to furnish the reasons of signing of 'under protest' even after the lapse of 4 years and despite several letters issued to controlling officer in this regard. The committee also called the ISA, Sri Mohd. Farooq, who prepared the stock sheet and enquired about stock sheet. He admitted that the stock sheet was prepared by him



during the stock verification and the stock sheet was signed by the applicant. The fact finding committee further reported that on scrutiny of available records related to stock sheet and enquiry made with the stock holder / applicant and Shri Mohd. Farooq, the committee confirms that the stock sheet stands good and recovery advice issued regarding shortage of material was proper as no reply of stock sheet was made even after a lapse of 4 years.

The fact finding committee concluded and observed that opportunity was given to the applicant to furnish any clarification regarding signing the stock sheet 'under protest' but the applicant failed to furnish any clarification regarding signing the stock sheet 'under protest' in last 11 years. Being a stock holder, he should be fully aware of the accountal procedure of the material and if shortage during stock verification was detected, he is fully responsible for the lapses. Signing on the stock sheet is an acceptance of the shortage / excess of the material as he is custodian of the stock.


Further, the fact finding committee concluded that the applicant has not produced any evidence / facts for shortage / excess of material reflected in the stock sheet and signing the stock sheet 'under protest'. The applicant was the stock holder and shortage/excess of material was detected during his tenure, so he is fully responsible for receipt, dispatch and accountal of the materials. Being stock holder, the applicant cannot escape himself for such heavy shortage of materials and responsibility for the loss of Govt. property lies upon him.



22. As this Bench of the Tribunal while issuing notice to the respondents on 14.05.2009 directed the respondents to produce the stock sheet dated 12.12.1987 in order to justify whether the stock items which were found short were in fact entrusted to the applicant or not. In compliance to the said direction, the respondents with their reply submitted Annexure R/1 Stock Verification Sheet dated 12.12.1987. From bare perusal of the stock verification sheet dated 12.12.1987, it reveals that the said stock verification sheet bears the signature of the applicant, which of course during the course of enquiry objected stating that the applicant signed on the stock verification sheet 'under protest'. The fact finding committee has also considered this aspect whether the applicant signed on the stock verification sheet under protest or not. The fact finding committee concluded that the applicant has not produced any evidence / facts regarding signing the stock sheet 'under protest'.

23. Therefore, the view expressed by this Bench of the Tribunal in para 5 of order dated 09.01.2002 in OA No. 38/2000 (supra), is verified that who was the custodian / incharge of the store in Railway Electrification, Kota. From the above discussion, it is confirmed that the applicant was the incharge of the store at the relevant point of time.

24. It is also not disputed by the respective parties that the applicant is still in service and he is allowed to serve the respondent-department as he is able to furnish the fitness certificate from the doctor. The direction issued by this Bench of



the Tribunal in earlier OA giving liberty to the respondent-department to pass appropriate orders for recovery against a person who is found responsible after making necessary fact finding enquiry and following the principle of natural justice, has been complied with. Admittedly, the opportunity of being heard has been provided to the applicant and thus the minimum principle of natural justice has been fully complied with and further on the basis of record / recommendation of fact finding enquiry for verification of stock-sheet against the applicant and on the basis of Annexure R/1 stock verification sheet dated 12.12.1987, which bears signatures of the applicant, it is well proved that the applicant was incharge/custodian of the stores at the relevant point of time and he is responsible for shortage of 51 items valued Rs. 12,31,155/- and excess of six items valued Rs. 9,77,107/- and thus the committee has rightly recommended for the recovery of Rs. 12,31,155/- from the salary of the applicant for shortage of materials and further has rightly recommended that D&AR action is required to be taken against the applicant, if not taken yet, for gross negligence on his part and excess items for Rs. 9,77,107/- reflected in the stock sheet and also rightly recommended that the applicant should be isolated from such work where money involves to avoid any loss of Govt. money in future.

25. Further, the benefit of ratio decided by CAT, Principal Bench, New Delhi in the case of **Ashok Kapoor vs. Union of India & Ors.** (supra) cannot be extended in favour of the applicant, as admittedly the applicant has not prayed for any specific relief



regarding quashing and setting aside the memorandum of charge-sheet and in absence of such relief, the Tribunal do not deem it proper to interfere with the memorandum of charge-sheet.

26. In view of the above discussion, we find no illegality in the action of the respondents and no interference whatsoever, in Annexure A/1 order/note dated 27.03.2009 by which recovery has been ordered to be started from the salary of the applicant and impugned order dated 30.03.2009 (Annexure A/2) by which 3 sets of passes as and when due have been stopped, requires by this Tribunal and as such the Original Application deserves to be dismissed being bereft of merit.

27. Consequently, the Original Application being bereft of merit fails and is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)