

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

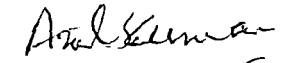
30.04.2014

OA No. 385/2011

Mr. R.D. Sharma, Counsel for applicant.
Mr. Amit Mathur, Proxy counsel for
Mr. R.B. Mathur, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.


(Anil Kumar)
Member (A)

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 385/2011

Date of Order: 30.4.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Prabhu Dayal Bunkar Son of Shri Shankar Lal Bunkar, resident of Jaipur, aged 52 years, resident of Plot No.1-C-6, Sanjay Gandhi Nagar, Kota, at presently working as Enforcement Officer/Accounts Officer in the office of the Employees' Provident Fund Organisation, Sub-Regional Office, Vigyan Nagar, Kota

.....Applicant

(By Advocate Mr. R.D.Sharma)

VERSUS

1. Union of India, through Labour Secretary, Ministry of Labour and Employment, Government of India, Shram Shakti Bhawan, New Delhi.
2. The Central Provident Fund Commissioner, Employees' Provident Fund Organisation, Head Office, Bhavishyanidhi Bhawan, Bikai ji Cama, Place, New Delhi-110066.
3. The Regional Provident Fund Commissioner, Nidhi Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur-302005.
4. The Regional Provident Fund Commissioner(II) OIC, Sub-Regional Office, Nidhi Bhawan, Vigyan Nagar, Kota.

.....Respondents

(By Advocate Mr. Amit Mathur,
Proxy Counsel for Mr.R.B.Mathur)

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(ORDER (ORAL))

The applicant has filed the present O.A. being aggrieved by the order dated 12.8.2011 vide which recovery of Rs.136628/- has been ordered to be recovered for the loss of Rs.455427/- caused to the respondent department. The amount of Rs.136628/- is 30 percent of the loss of Rs.455427/- caused to the respondents department.

2. The brief facts of the case as stated by the learned counsel for the applicant are that on 29.8.2005 the applicant was served a Memo by the respondent No.3 for conducting an inquiry against him under rule 10 of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971. Subsequently by an order dated 3.12.2009 the respondent No.2 enhanced the penalty of 'Censure' to major penalty of reduction of pay by one stage for a period of one year (Annexure A/5).

3. After imposition of this penalty the respondent No.3 issued a show cause notice on 11.3.2010 calling upon the applicant to explain reason as to why the recovery of 30 per cent of Rs.455427/- causing loss to the Employees' Provident Fund Organisation by negligence may not be made from the applicant's pay. The learned counsel for applicant argued that recovery of pecuniary loss caused to the department is also one of the penalties under rule 7(iii) of the EPF Staff(C.C. & A.) Rules, 1971. Therefore, once the applicant has already been

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imposed the major penalty, now to issue the show cause notice for recovery and subsequently the order of recovery dated 12.8.2011 is prohibited by law on the principle & doctrine of double jeopardy and thus the action of respondents is illegal. In support of his arguments he referred to a judgment of the Hon'ble Rajasthan High Court, Jaipur Bench in the case of Rameshwarlal Meena Vs. State of Rajasthan and Ors. Decided in S.B. Civil Writ Petition No.1801 of 1995 decided on 12.9.2009. (2010(2)RLW 1577(Raj.)

4. The learned counsel for the applicant also submitted that the show cause notice dated 11.3.2010 infringes the fundamental rights granted under article 20(2) of the Constitution of India which is reproduced below:-

"No person shall be prosecuted and punished for the same offence more than once."

Since the applicant was already prosecuted by the department and punished, therefore, any further order with regard to recovery is prohibited by law. Therefore, order of recovery dated 12.8.2011 be quashed and set aside.

5. The respondents have filed the reply. The learned counsel for the respondents submitted that the present case is not barred

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by the doctrine of double jeopardy nor it is in violation to Article 20(2) of the Constitution of India as alleged by the learned counsel for the applicant. In the order passed by the respondents in the disciplinary proceedings there was no charge with regard to loss to the Government of Rs.455427/- nor any punishment was imposed upon the applicant with regard to the recovery of the loss caused to the respondents department. A show cause notice was served upon the applicant wherein explanation was sought that why not recovery of 30 per cent of Rs.455427/- may be imposed upon the applicant as the office of the Provident Fund has suffered huge financial loss because of the act of the applicant. The imposition of the major penalty on the applicant was in consonance with the rules. The applicant was punished by the department for his mis-conduct and now the show cause notice has been issued for the recovery due to illegal act of the applicant.

6. Similarly, there is no violation of Article 20(2) of the Constitution of India as punishment has been imposed upon the applicant because of mis-conduct on his part and by the order of recovery, loss which has been committed by the applicant to the exchequer has been directed to be fulfilled. The learned counsel for the respondents further submitted that

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respondents issued a show cause notice to the applicant prior to imposing recovery and after giving an opportunity of hearing, order of the recovery has been passed. Thus the principle of natural justice has also been followed. The learned counsel for the respondents argued that the respondents department has a right to recover the loss caused to the department by the action of applicant. Therefore, issuance of the show cause notice and the order of recovery is just and proper and is in accordance with the provisions of law. Therefore, the OA has no merit and it should be dismissed with costs.

7. The applicant has filed the rejoinder.

8. Heard the learned counsel for the parties, perused the documents on record and the case law referred to by the learned counsel of the applicant. From the perusal of records it appears that the applicant was issued a charge sheet on 29.8.2005. There was no charge with regard to the recovery of loss caused to the Government of Rs.455427/-. The respondents department imposed the major penalty on the applicant vide order dated 3.12.2009 for the mis-conduct. The applicant being aggrieved by the penalty order challenged it before this Tribunal vide OA No.284/2010. However, subsequently on 11.3.2010 the respondent No.3 issued a show

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cause notice calling upon the applicant to explain the reason as to why the recovery of 30 per cent of Rs.455427/- causing loss to the Employees' Provident Fund Organisation for negligence may not be made from the applicant's pay and subsequently the order of recovery of Rs.136628/- was made by the respondents vide order dated 12.8.2011 (Annexure A/1 (Colly)). I am inclined to agree with the submissions made by the counsel for the respondents that this action of respondents is not barred by the doctrine of double jeopardy nor it is violative of Article 20(2) of the Constitution of India. I have carefully perused the order of major penalty imposed by the respondents (Annexure A/5 dated 3.12.2009). This order does not mention anything about the loss caused to the Government or its recovery from the applicant. Therefore, it can not be said that the applicant is being punished twice for the same offence and hence the ratio decided by the Hon'ble Rajasthan High Court, Jaipur Bench in the case of Rameshwarlal Meena Vs. State of Rajasthan and Ors. (Supra) are not applicable in the facts and circumstances of the present case.

9. The learned counsel for the applicant has submitted that during the inquiry no flaw in following the procedure of Accounting Manual was established, therefore, the applicant can not be held responsible for any loss caused to the Organisation and hence no recovery can be ordered against the

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applicant. This point that "no flaw in following the procedure of Accounting Manual was established" has been considered by the respondents in their order dated 29.12.2009 (Annexure A/5) vide which the major penalty has been imposed on the applicant. The applicant has challenged this order by way of filing the substantive OA. The applicant was issued a show cause notice before the order of recovery was passed. The applicant had an opportunity to raise this plea before respondents at that point of time. Moreover while passing the order dated 12.8.2011 the competent authority has stated that responsibility was cast on the applicant to ensure that payment is going to genuine member. As an S.S. he ought to have noticed relevant dissimilarities and oddities and sought further verification, which he had not done and this resulted in loss to the Organisation for Rs.455427/-. Thus even on this count, applicant is not entitled for any relief.

10. I am inclined to agree with the arguments made by the counsel for respondents that respondents have a right to recover the loss caused to the Organisation. Before issuing the order of recovery the applicant was issued a show cause notice dated 11.3.2010 (Annexure A/1 (Colly)). Thus the applicant was given due opportunity to represent his case before the respondents. Thus the principle of natural justice was also

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followed by the respondents before passing the order dated 12.8.2011 (Annexure A/1 (Colly)).

11. Thus I do not find any illegality or infirmity in issuance of show cause notice dated 11.3.2010 and subsequently the order of recovery dated 12.8.2011. The applicant has failed to make out any case for any inference by this Tribunal in the present OA. Consequently, the present OA is dismissed being devoid of merit with no order of costs.

12. The Interim Relief granted by this Tribunal on 26.8.2011 stands vacated.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

ADM/