

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

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**Date of Order: 22.09.2014**

OA No. 521/2013

Mr. P.N. Jatti, counsel for applicant.  
Mr. Mukesh 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)  
ADMINISTRATIVE MEMBER

Kumawat

OA No. 521/2013

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION No. 521/2013**

**DATE OF ORDER : 22.09.2014**

CORAM :

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Kishan Singh Bhati son of Late Shri Bodu Singh Bhati, aged about 66 years, resident of Behind Dhobi Shamshan, Badi Naagfani, Boraaz Road, Ajmer.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent Post Offices, Ajmer Dn., Ajmer.
4. Post Master, Ajmer Head Post Office, Ajmer.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

**ORDER**

**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed this OA praying for the following reliefs:-

- (i) That by a suitable writ/order or the directions the impugned order dated 29.05.2013 be quashed and set aside.
- (ii) That by a suitable writ/order or the directions the respondents be directed to pay the full amount of pension with relief and refund the amount which has been deducted arbitrarily as per the order dated 29.05.2013.
- (iii) Any other relief which the Hon'ble Bench deems fit."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant while working

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as Sub Postmaster, GLO, Ajmer, retired on superannuation on 31.08.2007. That after six years of his retirement, the respondents issued an order dated 29.05.2013 (Annexure A/1) for the recovery of Rs.1,30,157.61 from the Dearness Allowance of the applicant, which is getting on his pension. The claim of the respondents is that the Department had suffered a loss of Rs.1,30,157.61 because of the negligence of the applicant but the applicant was never served a charge sheet nor any order of recovery has been made against him as per the CCS (CCA) Rules, 1965. Therefore, the action of the respondents in recovering the amount from the Dearness Allowance of the applicant is illegal, arbitrary and unjustified. Hence the letter dated 29.05.2013 (Annexure A/1) be quashed and set aside and any amount which has been recovered from him be refunded.

3. The respondents have filed their reply. In the reply, the respondents have stated that the applicant while working as SPM, GLO, Post Office, Ajmer during the period from 08.05.2004 to 31.08.2007 allowed payment in 18 various SB Accounts without verifying/checking balance (Ledger Copy) (Annexure R/2) and paid the amount excess to the deposit amount. Resultantly, these Accounts became in minus balance in contravention of departmental rules and procedure.

4. Thus because of the negligence of the applicant, the Department suffered a loss of Rs.1,30,157.61, the applicant was directed several times by the respondent no. 3 to make

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good the loss sustained by the Department due to his negligence and violation of the Departmental rules but he did not deposit the said amount and instead filed a representation dated 24.05.2013 (Annexure A/2). The representation of the applicant was duly considered and after due consideration of his representation, the respondents issued a letter dated 29.05.2013 (Annexure A/1) for the recovery of the loss caused to the Department from the Dearness Allowance being paid to the applicant on his pension, which is according to the rules. Therefore, the OA has no merit and it should be dismissed with costs.

5. The applicant has filed the rejoinder.

6. Heard the learned counsel for the parties, perused the documents on record and the case law, referred to by the learned counsel for the parties.

7. The learned counsel for the applicant argued that the applicant retired on superannuation on 31.08.2007. There was no departmental proceeding pending against him. The respondents did not issue any show cause notice to the applicant at the time of superannuation to the effect that due to the negligence of the applicant, the Department has suffered a financial loss. Suddenly after six years, the respondents issued a letter dated 29.05.2013 informing the applicant that he is responsible for the loss of Rs.1,30,157.61. Hence the same is to be recovered from the Dearness

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Allowance being paid to the applicant. The learned counsel for the applicant submitted that no amount can be recovered from the pension of the applicant. He drew my attention to Rule 73 of the Central Civil Services (Pension) Rules, 1972. Rule 73 provide for adjustment and recovery of due other than dues pertaining to Government accommodation. The learned counsel for the applicant submitted that according to these rules, no recovery can be made from the Dearness Allowance of the pension of the applicant. Moreover before issuing the order of recovery from the Dearness Allowance paid to the applicant on his pension, no show cause notice was given to the applicant. Hence the principles of natural justice were violated. In support of his averments, the learned counsel for the applicant referred to the following case law:-

- (i) G. Elphage Fernando vs. Director, Office of the Examiner of Local Funds Accounts  
2007 (4) SLR 827  
Of Hon'ble Madras High Court
- (ii) Shri C.K.Razdan vs. Municipal Corporation of Delhi  
SLJ 1997 (2) 192  
Of Hon'ble Delhi High court.

8. On the other hand, the learned counsel for the respondents argued that the applicant has not stated that he was not responsible for the loss caused to the Government. His objection is that the loss caused to the Government cannot be recovered after his retirement. He submitted that the law is well settled that if any loss is caused to the Government because of negligence of an employee, the employer can recover the loss from the employee even after his

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superannuation. In the present case, the Department has suffered loss due to the negligence and violation of the departmental rules by the applicant. The applicant was issued show cause notice by the Department on 14.03.2013 and 22.03.2013 (Annexure R/3). Therefore, the contention of the learned counsel for the applicant that no show cause notice was issued to the applicant prior to the issuance of the letter dated 29.05.2013 (Annexure A/1) is not correct. Thus it cannot be said that the principles of natural justice were violated. In fact the applicant has submitted a representation dated 24.05.2013 against the show cause which was duly considered by the respondents and after consideration of his representation, the letter dated 29.05.2013 (Annexure A/1) was issued. Thus there is no illegality in the action of the respondents to recover the loss from the Dearness Allowance being paid to the applicant on his pension. The learned counsel for the respondents referred to an order of this Tribunal in OA No. 404/2013 decided on 27.01.2014 (**Jai Narayan Chaudhary vs. Union of India & Others**) in which the similar controversy has been decided by this Tribunal.

9. Having heard the rival submissions of the parties, after careful perusal of documents on record and the case law referred to by the learned counsel for the parties, I am of the opinion that the applicant has failed to make out any case for the interference by this Tribunal in the present OA. I have carefully perused the OA. In the OA, the applicant has not categorically stated that he had followed the rules of the

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Department and there was no loss caused to the Government because of his negligence or for the violation of the Government's instructions on the subject issued from time to time. His main contention in the OA is that no recovery can be made as per CCS (CCA) Rules, 1965. That no charge memo was served to the applicant for the loss or negligence. Further that no order of excess payment had been issued while the applicant was in service. He relied on Rule 73 of the CCS (Pension) Rules, 1972. However, I am inclined to agree with the learned counsel for the respondents that since the Department has suffered a loss due to the negligence of the applicant, therefore, the respondents can recover the amount of loss from the Dearness Allowance being paid to the applicant on his pension. The applicant was issued show cause notice by the respondents vide letters dated 14.03.2013 and 22.03.2014 (Annexure R/3) and the applicant has also submitted his representation dated 24.05.2013 (Annexure A/2). Therefore, it cannot be said that the principles of natural justice were violated and that the letter dated 29.05.2013 (Annexure A/1) was issued to the applicant without giving any opportunity to the applicant to submit his representation. Thus I am of the view that the principles of natural justice have not been violated in the present case.

10. I have carefully perused Rule 73 of the CCS (Pension) Rules, 1972. I am of the opinion that the provisions of Rule 73 do not apply under the facts & circumstances of the present case. The Rule 73 provides for adjustment and recovery of

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dues other than the dues pertaining to Government accommodation. The present case is not of a recovery of Government dues but the recovery of loss caused to the Government because of the negligence of the applicant. Therefore, the provisions of Rule 73 of CCS (Pension) Rules, 1972 would not apply.

11. I have carefully perused the judgment of the Hon'ble Madras High Court in the case of G. Elphage Fernando vs. Director, Office of the Examiner of Local Funds Accounts (Supra) and I am of the opinion that under the facts & circumstances of the present case, the ratio decided by the Hon'ble Madras High Court would not be applicable. In the case before the Hon'ble Madras High, the pension of the petitioner was fixed without any misrepresentation on the part of the petitioner. However, subsequently on an audit objection an amount of Rs.14,429/- was ordered to be recovered from his pension due to the re-fixation of the pension. The Hon'ble High Court held that the fixation of pension to the petitioner was without any misrepresentation on the part of the petitioner and also that the impugned orders have not been passed without issuing any notice, based on the alleged audit objection is not sustainable. However, in the present OA, recovery is being made of loss caused to the Government due to the negligence of the applicant. Moreover, in this case letters have been issued by the respondents for depositing the amount of loss caused to the Government and the applicant has represented against such notice. Therefore, the ratio decided by the Hon'ble

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Madras High Court in the case of G. Elphage Fernando vs. Director, Office of the Examiner of Local Funds Accounts (Supra) will not be applicable in the present case.

12. I have carefully perused the judgment of the Hon'ble High Court in the case of Shri C.K. Razdan vs. Municipal Corporation of Delhi (supra). In the case of Shri C.K. Razdan (Supra), the Labour Court allowed the payment of two years wages to the petitioner considering the retirement age of the petitioner as 60 years. However, this order of the Labour Court was quashed and set aside by the Delhi High Court stating that the retirement age of the petitioner was 58 years. Therefore, Municipal Corporation of Delhi started recovery of the excess amount paid to the petitioner from 58 years upto 60 years and this amount was to be deducted from the pension. The Hon'ble High Court held that this amount cannot be recovered from the pension. The case before the Hon'ble High Court related to the Pension Act, 1871 whereas in the present OA, CCS (Pension) Rules, 1972 apply. The respondents are recovering the loss caused to the Government from the Dearness Allowance being paid to the applicant on his pension. There is no recovery from the pension amount of the applicant. Therefore, I am of the opinion that under the facts & circumstances of the present case, the ratio decided by the Hon'ble Delhi High Court in the case of C.K. Razdan vs. Municipal Corporation of Delhi (supra) is not applicable in the present OA.

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13. I have carefully perused the order of this Tribunal in OA No. 404/2013 decided on 27.01.2014 (Jai Narayan Chaudhary vs. Union of India & Others), which was referred to by the learned counsel for the respondents. This was also the case of recovery from the applicant for the loss caused to the department due to his negligent action. In that OA also, the respondents have issued show cause notice and this Tribunal held that the applicant was not entitled for any relief and he should deposit the amount of loss caused to the department. In the present OA also, the department has suffered loss due to the negligence of the applicant. Therefore, the respondents can recover the loss caused to the Government from the applicant. Hence, the ratio decided by this Tribunal in OA No. 404/2013 decided on 27.01.2014 (Jai Narayan Chaudhary vs. Union of India & Others) is squarely applicable under the facts & circumstances of the present OA.

14. Thus on the basis of above discussion, I find no merit in the OA. Hence it is dismissed being devoid of merit with no order as to costs.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

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