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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00368/2014

Date of Decision : 1.10.2014

Reserved on : 25.09.2014

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER
HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER**

V.K.Godwal, Junior Assistant (Retd.), H.No.861, Sector 47-A, Chandigarh.

Applicant

Versus

1. Union of India, through Home Secretary, U.T. Chandigarh.
2. Government Museum and Art Gallery, Chandigarh through its Director.
3. The Director, Govt. Museum and Art Gallery, Chandigarh.
4. The Accountant General (A&E) U.T., Chandigarh.

Respondents

Present: Mr. Vikram Jeet Singh, counsel for the applicant
Mr. A.L. Nanda, counsel for respondents no.1 to 3
Ms. Moushmi Mittal, proxy for Mr. Barjesh Mittal, counsel for
respondent no.4.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This is second round of litigation regarding the claim for release of DCRG filed by the applicant. Earlier OA No.060/000023/2014 was filed in this regard which was disposed of on 13.01.2014 with the following directions:-

"6. Accordingly, we dispose of the OA, without going into the merits of the case, with a direction to the Competent Authority amongst the respondents to take a view on the representations of the applicant within a period of six weeks

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from the date of receipt of a copy of this order. If the applicant is found entitled to the claimed benefit, the same be released to him along with permissible interest thereon. In case, the claim of the applicant does not find favour with the respondents, a reasoned and speaking order be passed with a copy in advance to the applicant. No costs."

2. Through the present OA, relief has been sought as follows:-

"8 (i) Impugned order dated 04.03.2014 passed by respondent no.3 may be set aside to the extent that Rs.92,000 has been ordered to be withheld from the total Gratuity amount of Rs.1,84,866.

(ii) Direction may be issued to the respondents to release the Gratuity amount to the applicant at the earlier with interest as no interest has been given."

3. It is stated in the OA that the applicant submitted a copy of the order dated 13.01.2014 (Annexure R-9) to the respondents on 28.01.2014. He then received a copy of letter whereby respondent no.3 requested respondent no.4 to withhold a sum of Rs.92,000 from the total Gratuity amount of Rs.1,84,866 and release the balance payment of DCRG to the applicant. Till date, the applicant had not received any amount in this regard. Stating the background of the matter, it is mentioned that the applicant was appointed as Caretaker with the respondent Department on 06.09.1994 and his services were regularized with effect from that date. He was promoted as Junior Assistant in April, 2000 vide order dated 22.03.2011 (Annexure P-1). The applicant was asked to handover the charge of the Storekeeper to one Sh. Ravinder Kumar, Caretaker. Subsequently, on 29.04.2011, in compliance of order dated 22.03.2011, the applicant handed over the charge of Storekeeper to Sh. Ravinder Kumar and also handed over all the keys of the Store. A copy of the

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handing / taking over charge report has been annexed as Annexure P-3. The applicant retired from service on 30.04.2011 on attaining the age of superannuation (Annexure P-4). It was only on 04.07.2011, 2 months and 4 days after retirement, that the applicant was directed to attend the office as it was conveyed that some material was not available in the Store (Annexure P-5). He visited the office of the respondents a number of times to get his pensionary benefits released, but the DCRG was not released to him. He submitted representations to the respondents in this regard and the same were decided only after the Tribunal passed order dated 13.01.2014 (Annexure A-9) and even then amount of Rs.92,000 had been withheld from his DCRG. Hence this OA.

4. In the written statement filed on behalf of respondents no.1 to 3, it has been stated that the applicant while handing over the charge of the store items did not hand over the charge of the following items purchased for an amount of Rs.92,000 during his service as Storekeeper:

Sr.No.	Bill No.	Name of Supplier	Description of Item	Quantity	Rate	Amount.
1.	1123 Dated -----	Ms/. Himalaya Photo Store, Chandigarh	Philips MP3 Players	20 Nos.	3950/- each	79,000/-
2.	-do-	-do-	Sony head phone	20 Nos.	650/- each	13,000/-
					Total :	92,000/-

A copy of invoice of these items is annexed as Annexure R-I and copy of stock register at (Annexure R-II). In spite of repeated letters issued to the applicant and verbal requests made to him he failed to deposit the above

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mentioned missing items with the result that respondent no.3 requested respondent no.4 to withhold the cost of the missing items from gratuity payable to the applicant. In view of the fact that the applicant had failed to handover the complete charge of the items amounting to Rs.92,000, full gratuity cannot be released and as such, the applicant has no cause to approach this Tribunal and the application needs to be dismissed.

5. It is further stated that the applicant handed over a list of items in the Store to the person recommended by respondent no.3. The handing over / taking over took place on a list of items (Annexure R-III) and not on the basis of the stock register with the result that the missing items were not noticed. The applicant has not denied that the items as mentioned in para 1 are still outstanding against the applicant and he has not handed over the charge of these items. Moreover, these items were not included in the list attached to Annexure R-II.

6. In the short reply filed on behalf of respondent no.4, it has been stated that all the retiral benefits except the DCRG had been released to the applicant well in time but the DCRG could not be released in full as an amount of Rs.92,000 had been ordered to be withheld by respondent no.3 as this amount had been found recoverable from the applicant on account of non-handing over of the store items to his successor.

7. In the rejoinder filed on behalf of the applicant, it has been stated that he handed over the charge of the Storekeeper to one Sh. Ravinder Kumar, Caretaker. Sh. Ravinder Kumar, was also working as

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Junior with the applicant for the last 4-5 years before the retirement of the applicant. Therefore, he was very much aware about each and every item lying or missing in the Store. It has also been stated that as per Section 4(6)(a) of the Payment of Gratuity Act, 1972, the recovery of any loss or damage can be made good from the applicant whose services have been terminated but in the present case, the petitioner superannuated from service and no departmental inquiry was pending against him at the time of retirement and hence no part of the DCRG could be retained by the respondents.

8. Arguments advanced by the learned counsel for the parties were heard, when both sides reiterated the content of the OA, rejoinder and written statement filed on behalf of the applicant and respondents no.1 to 3 respectively.

9. We have given our thoughtful consideration to the matter. From the material placed on record, it is evident that No Due Certificate was not issued in respect of the applicant since he was working as Storekeeper with respondents no.2 and 3 and from the handing over / taking over charge report, it was detected that certain items that had been purchased by the Government Museum in 2008 had been entered in the Stock Register but these had not been included in the handing over / taking over report. The purchase value of these items was of Rs.92,000 and hence this amount was held to be recoverable from the applicant. The applicant has not been able to give any satisfactory explanation regarding the 20 MP3 Players and 20 Sony Headphones, which were admittedly

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purchased and entered in the Stock Register, during the period when the applicant was holding charge of Storekeeper. The applicant did not include these items in the list of Store items to be handed over and the shortfall was detected only after his retirement and hence No Due Certificate was withheld by the respondent Department.

10. As per Rule 6.16 (6) of the Punjab Civil Services Rules, Volume II, there is provision for recoveries from gratuity in the same circumstances as recoveries can be effected from ordinary pension under Rule 2.2 (a) of these Rules that reads as follows:-

“(a)

- (1) Recovery as a punitive measure in order to make good loss caused to Government as a result of negligence or fraud on the part of the person concerned while he was in service.
- (2) Recovery of other Government dues such as over-issues of Pay, allowances or leave salary, or admitted and obvious dues such as house rent, postal life insurance premia, outstanding motor car, house building traveling allowance or other advances.
- (3) Recovery of non-Government dues.”

In the present case, the recovery effected from the gratuity of the applicant does not fall within the category of Rule 2.2 (a) (2), (3) referred above and hence it must be concluded that this recovery is of a punitive nature which cannot be effected without disciplinary proceedings having been taken against the applicant and subsequent imposition of penalty. There is also nothing on the record to show that stores verification had been carried out by respondents no.2 / 3 while the applicant was functioning as


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Storekeeper. Such verification was vital before the handing over of the stores to the successor of the applicant.

11. Hence, the present OA is disposed of with the observation that the respondent Department may take a view as to whether they wish to proceed regarding disciplinary action against the applicant for the shortfall in the store items. Decision in this regard may be taken within a period of 45 days' from the date of receipt of a certified copy of this order being served upon the respondents and if it is decided to initiate disciplinary action, the same may be taken to its logical conclusion. Otherwise, the balance amount of gratuity due to the applicant may be released to him.

No costs.


(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.


(SANJEEV KAUSHIK)
JUDICIAL MEMBER

Place: Chandigarh

Dated: 1.10.2014

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