
(1985) 08 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 339 of 1985

Amar Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-08-1985

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 16
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Constitution of India, 1950 — Article 300A

Citation : (1987) ShimLC 145

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : Pradeep Saxena, for the Appellant; P.A. Sharma, Central Government Standing Counsel, for the Respondent

Judgement

P.D. Desai, C.J.—The Petitioner, who was working as the Complaint Inspector in the office of the Senior Superintendent of Post Offices, Simla Division, Simla (second Respondent), has instituted the present petition seeking relief against two orders, one, dated February 12, 1985 (Annexure PC) and the other, dated April 16, 1985 (Annexure PG), both passed by the second Respondent. By Annexure PC, the Petitioner, amongst others, was directed to "voluntarily" -- make good -- the loss in the sum of Rs. 10,000 alleged to have been sustained by the Government on account of damage caused to a Government vehicle (HPS 2200) which had met with an accident. Annexure PG is an order of minor penalty imposed upon the Petitioner under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "the Rules") directing the recovery of a sum of Rs. 500 from him on the ground that in his capacity as Complaint Inspector he had failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Government Servant by violating the provisions of Rule 3(1)(i)(ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964, in connection with the accident involving the vehicle HPS 2200. The charge-sheet, dated March 1/3, 1985, which resulted in the --

imposition of the aforesaid penalty, is at Annexure PE-1 and the imputations of misconduct are at Annexure PE-2. The Petitioner's reply, dated April 4, 1985 to the aforesaid charge-sheet is at Annexure PF.

2. The material part of the impugned order, Annexure PC, reads as follows:

Due to Jeep accident (HPS-2200) the fibre-class body of the vehicle was completely smashed. As a result of which Government had to sustain a loss to the tune of Rs. Ten thousand (Rs. 10,000.00). For this loss the following officials are responsible for -- frustrating the inquiries into the accident case:

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They are directed to make good the above loss sustained by the Government voluntarily within a period of three days positively and report compliance to the undersigned.

The Petitioner is one of the seven persons named in the order who were held responsible for the loss. The order was served upon each of them including the Petitioner. Although the order may seem to be innocuous since it uses the word "voluntarily", the implication as to its due obedience is clear if the true effect of the words "directed" and "report compliance", which occur in conjunction with the said word, is appreciated. In other words, it is in substance a command, though couched in a language that may suggest that its compliance is a valitional act of the person to whom it is addressed. The person called upon to "voluntarily" comply with the direction is in all probability reasonably likely to treat the communication as an order. The question is whether such a direction could be legitimately issued.

3. The point in issue is directly covered by a decision rendered by this Court on July 5, 1985 in Civil Writ Petition No. 315 of 1985 A.S. Mehta v. Union of India and Anr. The question in that case was somewhat similar to the one which has been raised herein, namely whether it competent to cover any amount from the salary of a Government servant on the ground of an alleged pecuniary loss sustained by the Government except in exercise of the powers conferred by Rule 11 of the Rules or by institution of a civil suit. The following observations made by the Court in that decision being relevant are quoted verbatim herein below:

The salary earned by a Government servant, indeed by any employee, is his property of which he cannot be deprived save by authority of law in view of the constitutional provision contained in Article 300-A of the Constitution. It is not in dispute that the only authority of law by virtue of which the aforesaid recoveries could have been ordered departmentally is to be found in Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "the Rules"). The said Rule authorises the imposition of penalties

therein prescribed on a Government servant for good and sufficient reasons. One of the penalties, which falls under the category "Minor Penalties", is "recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders". Rule 16 prescribes the procedure for imposition of minor penalties.

It was found in that case that the procedure prescribed by Rule 16 was not followed and that, therefore, the recoveries ordered to be made were wholly without power, authority and jurisdiction.

4. In the present case, the situation is comparable. The impugned order, Annexure PC, directing the voluntary payment of Rs. 10,000 by the Petitioner and Ors. has been admittedly issued without following even a semblance of the procedure prescribed in Rule 16 and without affording to the Petitioner and persons similarly situate any opportunity whatsoever to show cause against the fixation of the responsibility for the stated default as well as against the so-called "voluntary" reimbursement of the alleged loss caused to the Government. Such an order is wholly devoid of power, authority and jurisdiction and is also contrary to the mandate of Article 300-A. No payment with compliance reported can be directed to be made by a Government servant for the alleged loss sustained by the Government on account of his act (s) of omission or commission, even though the direction may be described as requiring compliance "voluntarily" without satisfying the requirements of law and natural justice. Taking a stock of the practical realities of the situation the impugned order in substance is an order of recovery and it is difficult to comprehend how the order of recovery PC, must, therefore, be held to be devoid compliance. The order, Annexure PC must, therefore, be held to be devoid of any legal force. No recovery could have been or can be effected from the Petitioner on the strength of the said order. Be it stated that in order to avoid prolifer (sic) and hardship and inconvenience to other persons similarly situate, no recovery shall be effected even from them under the impugned order, Annexure PC and, if already effected, the amount recovered shall be refunded to the person (s) concerned.

5. So far as the impugned order, Annexure PG, is concerned, the Court does not consider it just and expedient to grant any relief to the Petitioner at this stage because an alternative remedy by way of appeal is him. The Petitioner may, therefore, prefer an appeal to the Appellate Authority, namely the Director of postal Services. Himachal Pradesh, within a period of fifteen days from today. If and when an appeal is accordingly preferred the same shall be entertained and decided on merits without raising the bar of limitation, if any. Since the Appellate Authority namely, the Director of Postal Services, Himachal Pradesh is shown to have formed an opinion in regard to the subject-matter and to have issued certain directions vide Annexure R-2, dated October 1, 1984 it appears to be just and proper to direct that the appeal preferred by the Petitioner be heard and decided by another officer of the same rank. The learned Central Government Standing Counsel states that the Director of Postal Services Headquarters,

Ambala, is an officer of equivalent rank and that the appeal may be directed to be heard by him. Accordingly, the Director of Postal Services, Headquarters, Ambala, is directed to hear and dispose of the appeal preferred by the Petitioner which shall be transferred to him by the Director of Postal Services, Himachal Pradesh, pursuant to these orders. (sic)ill the appeal is decided, no recovery shall be effected on the strength of he order Annexure PG. Be it stated that these directions are issued with he concurrence of the Petitioner conveyed through his counsel and that the Petitioner has agreed not to raise any objection against of the appeal by the Director of Postal Services, Headquarters, Ambala.

6. Rule made absolute accordingly in the aforesaid terms with no order as to costs.

7. Dasti order on usual terms.