

(2015) 02 NCDRC CK 0123

In the National Consumer Disputes Redressal Commission

ANITA AGGARWAL

APPELLANT

Vs

DEEPESH KUMAR

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Citation : 2015 2 CPJ 184

Hon'ble Judges : K.S.CHAUDHARI J.

Final Decision : Petition allowed

Judgement

1. THESE revision petitions arise out of single order of State Commission; hence, decided by common order.

2. R .P. No. 4272 of 2007 has been filed by OP NO. 2 / Petitioner, R.P. No. 632 of 2008 has been filed by OP NO. 1/petitioner and R.P. No. 656 of 2008 has been filed by OP NO. 3/petitioner against the order dated 07.11.2007 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission") in Appeal No. 07/562 Ms. Anita Agarwal Vs. Shri Deepesh Kumar and Ors., in Appeal No. 7/617 The Post Master Vs. Shri Deepesh Kumar and Ors. and in Appeal No. 7/684 The Regional Director, National Savings Organization Vs. Shri Deepesh Kumar and Ors. by which, while dismissing appeals, order of District Forum allowing complaint was upheld.

3. BRIEF facts of the case are that Complainant/respondent no. 1 through his father and natural guardian Shri Sohan Lal intended to deposit Rs.1,00,000/- in the MIS Scheme. Father of complainant handed over Rs.1,00,000/- to OP No. 2 being lawful agent of OP NO. 3. OP NO. 2 issued 20 cash receipts of Rs.5,000/- each in the name of complainant and asked complainant to collect passbook shortly. Passbook was never supplied inspite of repeated requests. It was further submitted that OP NO. 2 was appointed as agent by OP No. 3, Regional Director, National Savings. Complainant neither received passbook nor money was refunded to him. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP NO. 1 resisted complaint and submitted that agents of MIS Scheme works under supervision and control of OP NO. 3 and OP NO. 2 did

not deposit amount with OP No. 1 and there is no deficiency on the part of OP NO. 1 and prayed for dismissal of complaint. OP No. 2 also resisted complaint and denied receipt of Rs.1,00,000/- and issuance of receipts in favor of the complainant and prayed for dismissal of complaint. OP No. 3 resisted complaint, but admitted that OP NO. 2 was lawful agent of OP No. 3. It was further submitted that FIR has been registered against OP No. 2 and prayed for dismissal of complaint. Learned District Forum after hearing some of the parties allowed complaint and directed OPs to refund Rs.1,00,000/- with all available benefits jointly and severally and to pay Rs.8,000/- as compensation and Rs.2,000/- as cost of litigation. Appeals filed by OPs were dismissed by learned State Commission vide impugned order against which, these revision petitions have been filed. None appeared for Respondent No. 3 though on earlier date counsel was appearing.

4. HEARD complainant in person and learned Counsel for the OP No. 1& 2 and perused record.

5. LEARNED Counsel for OP NO. 1 submitted that as no amount was deposited by the complainant with OP NO. 1, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal. Learned Counsel for OP No. 2 submitted that learned District Forum committed error in allowing complaint without giving an opportunity of being heard to her and learned State Commission further committed error in dismissing appeal; hence, revision petitions be allowed. On the other hand, complainant submitted that District Forum rightly allowed complaint on merits and learned State Commission rightly dismissed appeal on merits and impugned order does not call for any interference; hence, revision petitions be dismissed.

6. PERUSAL of order sheets of District Forum clearly reveals that District Forum II received complaint by transfer and by order dated 2.1.2007 it was directed that notice may be issued to the parties for 5.6.2007. On 5.6.2007, none appeared for complainant, one Mr. Mansa Ram appeared for OP No. 1, none appeared for OP NO. 2 Anita Aggarwal and Mr. Satish Arora appeared on behalf of OP NO. 3 and case was adjourned to 25.6.2007 for final arguments. On 25.6.2007, neither complainant nor anyone for OP No. 2 appeared and same persons Mr. Mansa Ram and Mr. Satish Arora appeared on behalf of OP NO. 1 and 3, respectively and matter was kept reserved for orders and District Forum delivered order on 3.7.2007.

7. NEITHER order dated 5.6.2007 nor order sheet dated 25.6.2007 of the District Forum reveals that notice was issued to OP No. 2 by District Forum II after receiving complaint case by transfer. Thus, it becomes clear that learned District Forum decided complaint without giving an opportunity of being heard to OP No. 2 Anita Aggarwal, who denied receipt of payment and issuance of 20 cash receipts of Rs.5,000/- each.

8. LEARNED Counsel for the Anita Aggarwal has drawn my attention towards

memo of appeal filed before State Commission in which it was specifically pleaded that District Forum committed error in not issuing notice of transfer of complaint and deciding the matter in absence of petitioner Anita Aggarwal. Learned State Commission in impugned order observed that District Forum order is to be tested on the validity of reasons and justification for passing order and has not dealt objection of Anita Agarwal that order by District Forum was passed without giving opportunity of hearing to Anital Aggarwal.

9. PRINCIPLES of natural justice require opportunity of hearing to all the parties and learned District Forum committed error in deciding complaint against Anita Aggarwal without giving her an opportunity of being heard. State Commission has also not considered this objection and instead of remanding the matter to District Forum proceeded further to examine validity of District Forum order and committed illegality in dismissing appeal filed by Anita Aggarwal.

10. COMPLAINANT in person submitted that as District Forum rightly decided complaint on the basis of record and learned State Commission on the basis of record rightly dismissed appeal, revision petition should be dismissed; even though, no notice of transfer of case was given to the OP No. 2 Anita Aggarwal.

11. HE has placed reliance on Section 13 (3) of C.P. Act which provides that no proceedings for not complying with the procedure laid down in sub -Section (1) and (2) shall be called in question in any court on the ground that principles of natural justice have not been complied with. He has placed reliance on the judgment of the Apex Court in Civil Appeal No. 4222/08 - Haryana Financial Corporation and Vs. Kailash Chandra Ahuja in which it was observed as under: "47. From the aforesaid decisions, it is clear that though supply of report of Inquiry Officer is part and parcel of natural justice and must be furnished to the delinquent - employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that non -supply of report of the Inquiry Officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent - employee depends upon the facts and 32circumstances of each case and no rule of universal application can be laid down".

12. IN Kailash Chandra Ahuja's case there was challenge to dismissal order on the ground that report of Inquiry Officer was not supplied to delinquent - employee. Hon"ble Apex Court observed that unless employee is able to show prejudice or miscarriage of justice on account of non -supply of report of Inquiry Officer, order of punishment cannot be held to be vitiated. In the case in hand, OP NO. 2 Anita Aggarwal has denied receipt of payment of Rs.1,00,000/- from complainant's father and also denied issuance of 20 cash receipts and has denied all the allegations of the complaint. In such circumstances, without giving an opportunity of being heard to Anita Aggarwal, order passed by learned District Forum cannot be sustained as no person can be condemned without hearing and

liability cannot be fastened on any person without giving opportunity of being heard.

13. IN the light of aforesaid discussion, Revision Petition No. 4277/07 Anita Aggarwal Vs. Deepesh Kumar and Ors. is to be allowed and impugned order and order of District Forum are liable to set aside. As this revision petition is to be allowed, other two Revision Petition Nos. 632 of 2008 and Revision Petition No.656 of 2008 become infructuous.

14. CONSEQUENTLY , R.P. No. 4272 of 2007 Anita Aggarwal Vs. Deepesh Kumar and Ors. filed by the petitioner is allowed and impugned order dated 7.11.2007 passed by learned State Commission in Appeal No. 07/562 Ms. Anita Agarwal Vs. Deepesh Kumar and Ors., Appeal No. 7/617 The Post Master, Indraprastha Head Post Office Vs. Deepesh Kumar and Ors. and Appeal NO. 07/684 The Regional Director, National Savings Organization Vs. Shri Deepesh Kumar and Ors. and order of District Forum dated 3.7.07 in Case No. 908/06 Sh. Deepesh Kumar Vs. The Post Master, Indraprastha Head Post Office and Ors. is set aside and matter is remanded back to District Forum to decide matter afresh after giving an opportunity of being heard to all the parties. R.P. No. 632/08 and R.P. No. 656/08 stands disposed of as hearing become infructuous.

15. PARTIES are directed to appear before District Forum on 16.03.2015. District Forum is directed to decide the complaint within 3 months from the date of appearance of the parties before District Forum.