

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3075 of 2009

Chandan Singh Kathya S/o Shri Jagat Ram Khairwar, aged about 61 years, retired Assistant Grade -II, R/o Sarkanda Bilaspur District – Bilaspur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh through the Secretary, Department of Water Resources, DKS Bhavan, Raipur CG.
2. Executive Engineer Canal Construction, Water Resources Department, Bhatapara, Khapridih, Bhatapara, Distt.-Raipur (Cg)
3. Executive Engineer Mini Mata Bango Canal Division No. 5, Water Resources Department, Kharsiya, Distt.-Raigarh (Cg)
4. Executive Engineer Hasdeo Nahar, Water Resources Department, Janjgir, Distt.-Janjgir-Champa (Cg)
5. Joint Director Treasury, Accounts & Pension, Bilaspur, Distt.-Bilaspur (Cg)

---- Respondents

Shri Pallav Mishra, counsel for the petitioner/s.
Shri S.P.Kale, Dy.A.G. for the State / respondents.

Order On Board

09/10/2015

The petitioner is aggrieved by order dated 22/08/85 (Annexure P/1) as also order dated 25/08/08 (Annexure P/7) for recovery of Rs.2,51,354.30.

2. During the period, the petitioner was posted as Clerk at Bhatapara Canal Construction, Sub Division No.1, Raipur, holding the petitioner jointly responsible with the then Assistant Engineer, B.M. Gupta, recovery was proposed by Executive Engineer vide his letter dated 22/08/85. Under this proposed recovery, the petitioner was liable to pay 30% i.e. Rs.1,07,723.30 and Assistant Engineer was liable to pay 70% i.e. Rs.2,51,354.30. The petitioner suffered recovery as directed by the Executive Engineer as proposed by the Executive Engineer, by way of monthly deduction from salary during his service.

3. The petitioner has filed this petition because just before his retirement, an internal correspondence was made on 16/11/07 by the Executive Engineer of Division No.3 to the Executive Engineer of Division No.5 that recovery is to be made against the petitioner which was followed by another internal correspondence dated 25/08/08 (Annexure P/7), copy of which was marked to the petitioner also. As late as in the year 2007-08, respondents diverted the liability of Mr. B.M.Gupta on the petitioner. It is this action of the respondents which is under challenge before this Court.

4. At the outset, learned counsel for the petitioner submits that in so far as recovery as proposed vide letter dated 22/08/85 is concerned, the petitioner does not wish to press the same because the petitioner accepted his liability to the extent of 30% and deposited that amount also. In that view of the matter and taking into consideration that ever since 1985, the petitioner never challenged the said recovery to the extent of 30%, challenge to order dated 22/08/85 must fall to the ground.

5. In so far as recovery of amount to be paid by B.M.Gupta, the then Assistant Engineer, it is apparent that the action is illegal and arbitrary. Learned counsel for respondents have not placed on record any document to show that under any order passed by the competent authority or Court of law, the liability of B.M.Gupta was imposed on the petitioner. There is no material on record to show that at any point of time after 1985, any proceedings were drawn by any competent authority to hold that it is the petitioner and the petitioner alone, who is liable to make good the loss to the public exchequer. Infact, neither the petitioner nor the said Engineer, B.M.Gupta ever challenged validity of recovery order wherein, B.M.Gupta was held liable for 70% and the petitioner was liable for 30% of the losses.

At the fag end of petitioner's service, all of a sudden, the respondents have diverted the liability of B.M.Gupta, the then Assistant Engineer, on the petitioner, without any reason whatsoever.

6. Curiously enough, the return of the respondents discloses that the department, taking shelter of the order passed in Lok Adalat, is holding B.M.Gupta liable for payment of only 5%. Even if that is accepted, that, by itself, does not mean that the remaining liability will have to be discharged by the petitioner. Once the earlier recovery order, holding the petitioner liable only to the extent of 30% of the amount to be recovered attained finality, it could not be allowed to be disturbed

at the fag end of the career of the petitioner, that too without affording opportunity of hearing to him.

7. In the result, the petition is allowed.

Recovery, as ordered vide 25/08/08 (Annexure P/7), shall not be given effect to. The respondents shall treat the liability of the petitioner towards recovery as discharged and pensionary benefits which are pending only for this reason, shall be finalized forthwith without unnecessary delay and all the dues shall be paid to the petitioner at the earliest.

Sd/-

(Manindra Mohan Shrivastava)

Judge