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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 18.07.2024***

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W.P.(C) 9329/2024 & CM APPL. 38224/2024 –Stay.

COMMANDANT JAWAHAR SINGH NEGI

.....Petitioner

Through: Mr.Abhay Kr. Bhargava with
Mr.Satyarth Sinha, Ms.Niharika Punna, Advs.

versus

UNION OF INDIA THROUGH SECRETARY & ORS.

.....Respondents

Through: Mr.Ankur Yadav, Adv. with
Mr.Rohan Gupta, G.P.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J (ORAL)**

1. The petitioner, who is presently serving as a Commandant in the Border Security Force (BSF) has approached this Court assailing the remarks dated 19.01.2023 made by the Inspector General (IG), BSF, South Bengal Frontier wherein the IG has noted a deficiency of store of the Kendriya Police Kalyan Bhandar (Subsidiary Bhandar of 153 Battalion BSF) amounting to Rs. 31,91,215/- and found the petitioner, along with two others, responsible for the same. The petitioner also seeks to assail the order dated 31.05.2024, issued by the Deputy Inspector General (DIG), SHQ BSF Rajouri (J&K) whereby the respondents have sought to recover from the salary of the petitioner 25% of the deficient store, i.e., Rs. 7,97,804/-.

2. The petitioner's grievance, therefore, is two-fold; the first being



against the findings of the IG regarding the petitioner being responsible and blameworthy for the deficiency of store of Rs.31,91,215/- at Kendriya Police Kalyan Bhandar. His second grievance is directed against the order dated 31.05.2024 issued by the DIG, directing recovery of Rs.7,97,804/- from him towards 25% of the deficiency found in aforesaid store.

3. On the last date, taking into account that disciplinary action based on the findings of a Staff Court of Inquiry (SCoI) had already been initiated against the petitioner in respect to the loss to the store, we had observed that no interference with the remarks of the IG was called for at this stage. However, we found *prima facie* merit in the petitioner's second grievance and had, therefore, granted time to the learned counsel for the respondents to obtain instructions regarding the petitioner's challenge to the order dated 31.05.2024, directing recovery of a sum of Rs.7,97,804/- from his salary.

4. Today, by placing reliance on Rules 3 (d) & 12 of the BSF (Deductions from Pay and Allowances) Rules, 1978 (the Rules), learned counsel for the respondents submits that the proceedings for recoveries to be made from pay and allowances of a Force personnel/Officer are independent of disciplinary proceedings which may be initiated against them. Once the SCoI had opined that the petitioner was the supervisory authority for the Kendriya Police Kalyan Bhandar to which the loss was caused, the IG was, as per Rules 3(d) & 12, entitled to direct deductions from the petitioner's pay. Furthermore, based on the findings of the SCoI, the petitioner will be shortly tried by a General Security Force Court (GSFC). He, therefore, contends that the petitioner's plea that no recoveries can be made from him till he is found guilty by the GSFC is liable to be rejected and prays that the writ petition be dismissed.



5. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting Rules 3(d) and 12 of the Rules, on which reliance is sought to be made by the respondents to justify their action of ordering recoveries from the petitioner:-

“3.Deduction from pay and allowances of Officers:-

The following deductions may be made from the pay and allowances of an officer, that is to say-

(d) any sum required to make good any loss, damage or destruction of public property or property belonging to the Force which, after due investigation, appears to the Inspector General under whom the officer is for time being serving, to have been occasioned by wrongful act or negligence on the part of the officer.

12. Authority competent to order deductions:-

The following shall be the authorities competent to order deductions from pay and allowances under these rules namely:-

- (1) Commandants, in the case of subordinate officers and enrolled persons;*
- (2) Director General, in the case of officers.”*

6. As it is clear that none of the aforesaid two provisions either provide for the procedure to be followed or stipulate the circumstances under which deductions can be ordered from the pay and allowances of a Force personnel or an Officer, we have examined these Rules in entirety. We, however, find that there is no provision in these Rules which entitle the respondents to make recoveries from any Force personnel/Officer when it is yet to be determined in disciplinary proceedings/administrative proceedings as to whether he/she was, in fact, responsible of having caused loss to the property of the Force.



7. In these circumstances, we are of the considered view that the respondents cannot, by presuming at this stage itself that the petitioner is guilty of having caused loss to the property of the Force i.e., the property of the Kendriya Police Kalyan Bhandar seek to make recoveries to make good the said loss. In our considered view, unless it is conclusively determined as to whether the petitioner was, in any manner, responsible for the loss to the store, the order directing recoveries from him would be premature and amount to holding him guilty without a trial. It is only after a final decision is arrived at by the respondents regarding the misconduct/responsibility, if any, of the petitioner, can the respondents invoke their power under the Rules to make any recoveries from him.

8. In the light of the aforesaid, we have no hesitation in holding that the order dated 31.05.2024 directing recovery of a sum of Rs.7,97,804/- from the petitioner's salary is unsustainable and is liable to be quashed. We, accordingly, allow the writ petition partly by setting aside the order dated 31.05.2024, making it clear that it will be open for the respondents to pass a fresh order of recovery after conclusion of the disciplinary proceedings against the petitioner, if the need so arises.

9. The writ petition, along with pending application, stands disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 18, 2024/sr