



CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A.NO.102/2003 IN
O.A.NO.3297/2002
M.A.No.1616/03

Monday, this the 15th day of September, 2003

Hon'ble Shri Shanker Raju, Member (J)

Shri R.K. Namdeo

(By Advocate: Shri B.S.Maine)

..Applicant (Review Respondent)

Versus

Union of India & Others

(By Advocate: Shri R.L.Dhawan)

..Respondents (Review Petitioners)

O R D E R (ORAL)

By an order passed on 19.12.2002 placing reliance on a decision of the High Court in CWP-2868/2001 in Union of India & others v. Sukhbir Saran Aggarwal & others decided on 16.3.2002, claim of the applicant was allowed and the withheld amount of gratuity was ordered to be released with interest.

2. Review applicants in the present RA, i.e., respondents in the OA, have filed the present RA alleging the error apparent on the face of the record.

3. Before deliberating upon the merits of the case, it is relevant to highlight the brief facts. Applicant (Shri R.K. Namdeo) retired on superannuation on 31.7.2000. The gratuity of the applicant was withheld and out of which substantial amount held for recovery. While the applicant in service, a stock verification sheet was served upon him on 14.5.1994 for which he had given a reply on 27.5.1995. Again, the verification sheet was issued on 14.7.1997 which was responded to on 25.4.1998. Another verification sheet issued on

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25.6.1999 was responded to on 29.11.1999. The Department, on 9.5.2000, again issued a sheet which was responded to on 12.7.2000 and on 5.4.2001, without issuing any charge-sheet or show cause notice, the applicant has been held responsible for loss to the Railways and an amount of Rs.191010/- was ordered to be recovered.

4. In the OA while placing reliance on a decision of a co-ordinate Bench in Shri Ram Jeswani v. Union of India & others (A-1057/97) decided on 10.10.2000, where despite retirement on 30.11.1994 retiral benefits were withheld on account of shortage of stock verification sheet, holding that an event which allegedly amounts to misconduct resulting loss to the Government and if it had taken place more than four years before the retirement, the recoveries cannot be initiated.

5. Against the aforesaid order, the Railway authorities approached the High Court by filing CWP-3477/2001 which was dismissed by the High Court on 18.1.2002.

6. It is further stated that in the OA that in a similar case of Sukhbir Saran Agarwal v. Union of India & another, OA-1947/99 decided on 5.3.2001, for want of show cause notice and not holding any disciplinary proceedings, recovery for a misconduct and loss beyond four years from the date of superannuation has been set

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aside. The aforesaid decision was approved by the High Court of Delhi in CWP-2868/2001 by an order dated 16.3.2002.

7. Learned counsel for the review applicants Shri R.L. Dhawan, by resorting to Rule 15 of the Railway Services (Pension) Rules, 1993, contends that from retiral dues, which include gratuity, recovery can be effected from Railway servant. For substantiating his plea, a reliance has been placed on a decision of a Division Bench of this Tribunal in Shaukat Ali v. Union of India & others (OA-732/96) decided on 31.1.2000.

8. Shri Dhawan contends that the Tribunal in its order holds that no show cause notice was issued whereas this ground is factually incorrect, as the applicant was issued a show cause notice on 12.5.2000, which was responded to by him on 12.7.2000. Accordingly, the OA is to be reviewed.

9. Insofar as the decisions of the High Court in Sukhbir Saran Agarwal (supra) and Shri Ram Jaswani (supra) are concerned, it is stated that reliance has been placed on Rule 9 of C.C.S. (Pension) Rules, which is not applicable and moreover the decisions are per incuriam of statutory rules, i.e., 15 of the Pension Rules. As such the decisions are distinguishable and would have no application in the present case.

10. On the other hand, respondent's counsel in RA Shri B.S. Mainee vehemently opposed the contentions. According to him, the show cause notice, referred to above, is not a show cause notice but a stock verification sheet to which the applicant had responded.

11. Moreover, it is contended that in view of the decision of the Apex Court in Chandra Kant & others v. Sheikh Habib, AIR 1975 SC 1500, in the absence of any error apparent on the face of record and discovery of new material, the review is beyond the ambit of Section 17 of Administrative Tribunals Act, 1985 and is an attempt on the part of the Railways to re-agitate the issue as if an appeal.

12. Further placing reliance on a decision of the Apex Court in Associate Tubewell Limited v. Gujarat Medical, AIR 1957 SC 742, it is contended that even if a view taken is erroneous would not be amenable in review.

13. Referring to the decision of High Court in CWP-2868/2001 in Sukhbir Saran Agarwal's case (supra), it is stated that in all fours it covers the case of the applicant as well. In Sukhbir Saran Agarwal's case (supra), the High Court of Delhi has taken note of Rule 15 of Railway Services (Pension) Rules. After consideration of the same, placing reliance on a decision of High Court in CWP-3477/2001 decided on 18.1.2002 in Ram Jeswani's case (supra), the contention was repelled.

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14. As no proceedings had been initiated and a right to such a course is lost on expiry of four years from the date on which an event took place, withholding of pensionary benefits has been ruled out. It was also taken cognizance that no show cause notice had been served upon the petitioner therein. In the above conspectus, Shri Mainee contends that by resorting to the decision of the Supreme Court in Shreedharan Kallat v. The Union of India & others, 1995 (2) SC SLJ 83 when interpretation of a rule has attained finality by the Court, the Department is precluded from challenging the interpretation given by the Court. As such, it is stated that the issue attained finality on the approval of the decision of the Tribunal by the High Court as such does not open for further interpretation and review preferred is liable to be dismissed.

15. I have carefully considered the rival contentions of the parties and perused the material placed on record.

16. In my considered view, the provision of review cannot be allowed to re-agitate the matter as if an appeal. It has to be shown that there is an error apparent on the face of record and which is apparent from reading of the order that no long-drawn process or contentious considerations are required to find out the error. The error is one which strikes on the face of it.

17. The plea taken by the review applicants that a show cause notice was served upon the respondents (original applicant) in May, 2000 which was responded to in July, 2000, I find it is not a show cause but a stock

verification sheet which has been served upon the applicant even without 28 annexures referred to in the report. The High Court has clearly laid down that if no show cause notice is issued, the gratuity cannot be withheld. As such in absence of any show cause notice, I do not find any error apparent in my findings recorded on 19.12.2002.

18. Insofar as Rule 15 *ibid* is concerned, the High Court in Sukhbir Saran Agarwal's case (*supra*) has clearly taken into consideration Rule 15 as one of the contentions taken by the petitioners therein, i.e. the review applicants herein. Once the interpretation is given in view of the decision of the Supreme Court, no further interpretation can be gone into.

19. I also find that recovery is one of the punishments described in relevant Discipline and Appeal Rules. The issue regarding shortage pertaining to the year 1994 which is an event beyond four years from the date of retirement of superannuation of the applicant which is 31.7.2000, no recovery can be effected from the applicant.

20. The aforesaid decisions of the High Court in all fours cover the present issue.

21. MA-1616/2003 filed by the respondents pertains to deletion of respondent No.1 and substitution of General Manager, West Central Railway as after creation of new Zones, the relief is to be accorded to the applicant by



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