

0.A.350/344/2018



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

PARTICULARS OF THE APPLICANT:

Subhas Chandra Bhattacharya, son of late Ratanti Ranjan Bhattacharya, aged about 61 years, worded as S.E.E./Electrical H.T.& Pump/KGP under Sr. DEE(G)/KGP, residing at Datta Bari Kaushallya, (Kharagpur), Post Office – Kharagpur, District – Paschim Medinipore, Pin 721301, West Bengal

..... APPLICANT

V E R S U S -

- I. Union of India, through the General Manager, South Eastern Railway, Garden Reach Road, Kolkata 700 043
- II. Senior Divisional Electrical Engineer (Genl), South Eastern Railway, Kharagpur 721301
- III. The Sr. AFA(WS&SV), South Eastern Railway, Garden Reach, Kolkata 700043

..... RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/344/2018

Date of order : 27.2.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member,

SUBHAS CHANDRA BHATTACHARYA
VS.
UNION OF INDIA & OTHERS
(S.E. Railway)

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mrs. G. Roy, counsel

ORDER

Bidisha Banerjee, Judicial Member



This is the 2nd journey of the applicant to this Tribunal. In an earlier round he had preferred O.A.No.350/885/2017 challenging an office order dated 29.05.2017 issued by Senior DEE whereby and whereunder the applicant was intimated that due to discrepancy in stock sheet concerning an amount of Rs.11,66009/- a high level departmental enquiry committee was constituted to enquire into the matter and, therefore, it was not possible to release BN-135 in his favour. The O.A. was disposed of with a direction upon the applicant to prefer a comprehensive representation enclosing all relevant documents as well as order passed by Hon'ble High Court in WPCT No. 157/2015 within 4 weeks and in the event the applicant's case was squarely covered by the judgment rendered in WPCT, a direction upon the respondents to take expeditious steps to extend the benefits to the applicants within a further period of 6 weeks from the date of such

consideration. Pursuant thereto a speaking order was issued on 14.02.2018 on the representation dated 27.07.2017 which reads as under:-

SOUTH EASTERN RAILWAY

Office of the
General Manager
11, Garden Reach Road
Kolkata-700043.

No:169 Elect.(G)/CC/WP/350/OA/0885/2017/SCB

Dated: 14/02/2018

To
Sri Subhas Chandra Bhattacharya,
Ex:SEE(HT & Pump)/S.E. Railway, Kharagpur
Address: Datta Bari Kaushallya, (Kharagpur),
Post Office: Kharagpur,
District: Paschim Medinipur,
PIN - 721301, West Bengal.

Sub: Compliance of Order passed by Hon'ble CAT/Kol
in OA No.885 of 2017 - Subhash Chandra
Bhattacharya -vs- Union of India and Ors.



You have filed the instant OA seeking for the following relief :-

- (a) Office order dated 29.05.2017 issued by Sr.DEE(G)/S.E.Railway/KGP cannot be sustained in the eye of law and the same may be quashed.
- (b) Issue an order directing the respondents to release DCRG in favour of the applicant at an early date with the interest as admissible under the rules.

The Hon'ble Court at the stage of Admission were pleased to dispose the Matter inter-alia.

"granting liberty to the applicant to make comprehensive representation within a period of 4 weeks enclosing all relevant documents as well as the order passed by the Hon'ble High Court in WPCT No.157 of 2015, and if any such representation is filed within a period of 4 weeks from today then the respondent No.1 will do well to consider the same keeping in mind the judgement of the Hon'ble High Court as well as relevant Railway rules and pass a speaking order within a period of 6 weeks from the date of receipt of a copy of this order",

In obedience to the directives passed by the Hon'ble CAT/Kolkata on 19.07.2017, I being the General Manager/S.E. Railway and respondent No.1, herein had considered your representation dated 27.07.2017, vis-a-vis the rules in force and the records, meticulously and upon consideration, I have come to the following conclusion:-

There were two accounts notes pending at the time of your Superannuation i.e. on 31.05.2017 to the tune of Rs.10,39,075/- to be recovered from the DCRG. You have signed the stock sheet without raising any objection.

Discrepancies were known to you as brought out in your letter dated 07.08.2014 addressed to Sr. DEE/G/KGP. The matter is well known to you as intimated prior to your Superannuation vide letter dated 23.05.2017 & 29.05.2017.

A Departmental Enquiry Committee was formed and their views were informed to you vide letter No.9Elect/1/SV/GRC/SSE/HT&PUMP/ KGP/17/2 dated 27.06.2017 by giving you 15 days time for clarification about the debit raised against you. From the records, it is seen that you have not co-operated with the nominated DEC and moved to the Hon'ble court of law.

When the matter is well known to you about the pending of two accounts notes regarding debit of Rs.10,39,075/- prior to your superannuation, framing of any D&A action is not mandatory. Rather recovery of Railway dues for DCRG is permissible under the pension rules MOPR-93 para 15, sub para 3(b) for which sufficient notice was given to you. Instead of availing the opportunity or co-operating with the administration, you had chosen to move the Hon'ble Court. Further, you have relied upon the judgement of the Hon'ble High Court/Kolkata in WPCT No.157/15 thereby claiming parity with the respondent, Sri Simon Kuzur therein. The case of Sri Simon Kuzur is not identical to that of yours. Sri Simon Kuzur was subsequently found responsible after retirement, while in your case the dispute arose well before your retirement and it could not be finalised before your retirement owing to your intentional non-appearance before the committee appointed to ascertain your responsibility towards the pecuniary loss caused to the Railways. Therefore, you are not similarly circumstanced to that of Sri Simon Kuzur in WPCT 157/15 as awarded.

Recovery in the case of Sri Simon Kuzur was contemplated under Rule 2374 of Commercial Manual whereas the recovery of you is per Rule S 3263 and 153(b) of Pension Rule 1993. There you are not similarly placed and the case is not identical to that covered by order in WPCT 157/15.

Recovery in your case is not contemplated under Rule 9 of Pension Rule 1993 which requires DAR Enquiry. Hence, there is no merit in your prayer for conducting DAR Enquiry.

The Department Enquiry Committee was formed with a view to settle the dispute amicably. However, as you had not co-operated, the recovery as per Accounts Notes attained finality. As per normal rules DCRG cannot be released until and unless no dues clearance obtained in the name of retiring Employee. Due to pendency of two accounts notes for the debit of Rs.10,39,075/- is kept pending from the DCRG and rest of the amount Rs.5,56,805/- has been released from the admissible amount of DCRG of Rs.15,95,880/-, and thus the same cannot be given for the reason narrated above.

In view of what has been stated above, I am of the explicit opinion that the prayer for DCRG payment as alleged has no merit and therefore regretted.

This disposes your representation, please acknowledge receipt.

(Signature)
(S. N. AGRAWAL)
GENERAL MANAGER

2. Ld. counsel for the applicant at hearing would draw my attention to an order dated 27.06.2017 with regard to enquiry against the applicant asking him to reply within 15 days failing which a committee will proceed to take decision on the basis of materials available on

record. Ld. counsel would also refer to a communication dated 29.05.2017 issued by the Senior DEE(G)/KGP stating that *"The high-level Departmental Enquiry Committee will be constituted for thorough enquiry of the said matter. BN-135, could not be issued in your favour until and unless the finalise of the said matter by the high-level Departmental Enquiry Committee."*

Ld. counsel would vociferously submit that in absence of any enquiry or finding or a decision by a committee, the Senior DEE was not empowered to straightway deduct the amount from the payable retiral benefits on the basis of one sided notice initiated by the respondent authorities. In support of his contention the applicant would cite a decision of Hon'ble High Court at Calcutta in WPCT 157 of 2015.



3. Ld. counsel for the respondents when directed to take instructions about initiation of proceedings and finalisation of the enquiry by a committee failed to bring on record any order demonstrating that the applicant was proceeded against and that a committee enquired and recommended or decided that he should be penalised or visited with a recovery of an amount of Rs.11 lakhs and odds.

4. The rival contentions were considered and records were perused. In the decision, cited by the applicant, as rendered in W.P.C.T. No.157/2015, the following order was passed by the Hon'ble High Court:-

"This petition has been preferred by the Railways against the decision of the Central Administrative Tribunal, Calcutta Bench, dated 1st May, 2015.

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The Respondent was working as Chief Goods Clerk and retired as Commercial Supervisor with effect from 30th September, 2013. All his retiral benefits were not released to him on the ground that the Railways had incurred a loss of 58,10,732/- between 2006 and 2009 because of him.

Admittedly, no departmental enquiry has been held against the Respondent. The Railways have sought to apply Rule 2734 of the Indian Railway Commercial Manual in order to withhold the D.C.R.G. benefits. There is no dispute also that the Respondent objected to the Railways recovering any amounts from his retiral benefits.

In our opinion, the Tribunal has not committed any error of law by allowing the application. This is because the Railways have sought to act against the Respondent without holding a departmental enquiry and without following the rules of natural justice. Furthermore, there is neither any finding of misconduct having been committed by the Respondent nor that any amount is "due" from the Respondent as required under Rule 2734 of the Indian Railway Commercial Manual.

Hence, the petition is dismissed with no order as to costs.

Photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all necessary formalities."



In the recent case, irrefutably and inarguably the respondents have deducted a whopping amount of Rs.11,66009/- without enquiry, proceeding, finding of guilt, fixation of responsibility and in absolute violation of rules of natural justice, whereas it was assured to be enquired into by a high level departmental enquiry committee.

5. In view of such, I am of the considered opinion that recovery of such huge amount from the payable retiral benefits of the applicant without any enquiry or proceeding was bad and therefore, direct the authorities to refund the recovered amount with interest at the rate of 8% from the date of filing of this application with liberty to act in accordance with law in terms of their orders supra.

6. The O.A. stands disposed of. No order as to costs.

(Bidisha Banerjee)
Judicial Member