



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, NIZAM PALACE

ORIGINAL APPLICATION NO. 350/966 OF 2015.

SRI SUSANTA KUMAR JANA son of
Late Jaminikanta Jana, aged 62
years, a retired Head Commercial
Clerk (Goods) NKKH Goods Complex
under the Senior Divisional
Commercial Manager, South Eastern
Railway, Kharagpur residing at C/o A.
Mukherjee, Rajagram, Municipality
Ward No. 8, P.O. Kharagpur, P.S.
Kharagpur (Town), District- Paschim
Medinipur, Pin-721 301.

... APPLICANT

VERSUS

1. THE UNION OF INDIA service
through the General Manager, South
Eastern Railway, 11, Garden Reach
Road, Kolkata - 700043.

2. THE GENERAL MANAGER, South Eastern Railway, 11, Garden Reach Road, Kolkata - 700043.

3. THE ASSISTANT PERSONNEL OFFICER (Settlement), South Eastern Railway, 11, Garden Reach Road, Kolkata - 700043.

4. THE DIVISIONAL RAILWAY MANAGER, South Eastern Railway, Kharagpur, P.O. Kharagpur, District Paschim Medinipur, Pin-721301.

5. THE ADDITIONAL DIVISIONAL RAILWAY MANAGER, South Eastern Railway, Kharagpur, P.O. Kharagpur, District- Paschim Medinipur, Pin-721301.

6. THE DIVISIONAL PERSONNEL OFFICER-II, South Eastern Railway, Kharagpur, P.O. Kharagpur, District- Paschim Medinipur, Pin-721301.

... RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/966/2015

Date of order : 6.1.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

SUSANTA KUMAR JANA
VS.
UNION OF INDIA & OTHERS

For the applicant : Mr. P.K. Nag, counsel

For the respondents : Mrs. G. Roy, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant, a retired employee has preferred this O.A. to seek the following reliefs:-

- "a) An order be passed directing the respondents No.4 and 6 to set aside the impugned Office Order vide Letter No.SER/P-KGP/Sett/657/Griev/CA/370/375 dated 30.09.2014(Annexure A-4) and to pay Rs.485066/-(Rupees four lac. eighty five thousand sixty six) only which has illegally been deducted from the entire DCRG amount for realization of commercial debit;
- b) An order be passed directing the respondents authorities to pay 12% interest accrued upon the entire DCRG amount of Rs.504306/- for the period from 30.06.2013 to till the date of payment of the same;
- c) An order be passed directing the respondent authority to produce all records in connection with the present case before the Hon'ble Tribunal so that this Tribunal may certify the same and conscionable justice to this case be done;
- d) An order be passed directing the respondents authorities to pay entire costs and incidentals of this application to the applicant."

2. The facts in a nutshell would run thus:-

The applicant retired on superannuation from his service on 30.06.2013 as Head Commercial Clerk (Goods), South Eastern Railway, Kharagpur. All his retiral benefits except DCRG amounting to Rs.504306/- has been paid to him. He preferred a representation dated 14.10.2013 for release of the said withheld amount of DCRG but to no avail. However, Respondent No.6 informed the Respondent No.3 that the payment was kept pending due to non-receipt of commercial debit from his department and on receipt of the commercial debit the DCRG Bill dated 14.08.2014 amounting to Rs.19240/-(Rs.504306- Commercial debit of Rs.485066) has been sent to Associate Accounts for audit and payment.

3. Id. counsel for the applicant would submit that such recovery from DCRG is not permissible since the DCRG payable to a pensioner can only be touched in terms of Rule 9 of the Pension Rules which empowers only the President to withhold pension or gratuity either temporarily or permanently if such pensioner has been found guilty of grave misconduct etc.

4. Repelling the arguments advanced by the Id. counsel for the applicant, Id. counsel for the respondents would submit that such recovery was permissible even after the retirement of a railway servant, in terms of Rule 15 of the Pension Rules which is extracted hereunder:-

"15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression "railway or Government dues" includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period after the date of retirement of allottee) if any; -- (Authority: Railway Board letter No. F(E)III/2010/PNI/4 dated 28.03.12)

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

(4) (i) A claim against the railway servant may be on account of all or any of the following:-

(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -

(a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule- (1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bond in Form 2.

(2) If the retiring railway servant is unable or nor willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3) The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) In respect of the dues as mentioned in sub-clause (c) of clause (i) The Quasi-Government and non-Government dues, such as amounts payable by a railway servant to Consumer Cooperative Societies, Consumer Credit Societies or the dues payable to an autonomous organisation by a railway servant while on deputation may be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he gives his consent for doing so in writing to the administration.

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amount are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer."

Drawing our attention to Para 4(ii) of Rule 15 of Railway Services(Pension) Rules, 1993, Id. counsel for the respondents would submit that such recovery was permissible even without obtaining his consent and, therefore, there was no infirmity in the action of the respondent authorities. Id. counsel would also place an order dated 13.08.2014 issued by the office of the Divisional Railway Manager[D.R.M.(Commercial)], Kharagpur stating as under:-

"He is found liable for the debits indicated vide debit Memo No.FA2CAO GR No.TA/GOS/Sett/KGP/June/1/13/963 dated 03.02.2014.

Rs.485066/-(Four lack Eighty five Thousand and sixty six only)"

Ld. counsel would also place an extract of outstanding register which shows a debit raised by a Joint team of Kharagpur. The debit is raised to the tune of Rs.4,85,066/-.

5. At that juncture Id. counsel for the applicant would vociferously plead that it was not an admitted debit since the debit was not raised with the consent of the applicant or in his presence. Further, after retirement of a Railway employee such debit could not be raised and no amount could be recovered in view of the law laid down **State of**

Punjab and Others vs. Rafiq Masih(White Washer) and Others[(2015)4 SCC 334]. Ld. counsel for the applicant would further place a decision of this Tribunal in O.A.248/1987 and O.A.249/1987 reported in (1989)11 Administrative Tribunal Cases-699 wherein withheld DCRG for recovering loss of freight without finding the retiree liable for the same in a departmental enquiry and without affording an opportunity, was held violative of Railway Board's letter No.E (D&A)75 RG-6-18, dated 23.05.1975 and principles of natural justice. An extract of the said judgment is as under:-

"9. The point to be decided in these two applications is whether the respondents are justified in withholding the DCRG of the two applicants without holding a proper departmental enquiry under Railway Servants(D&A) Rules, 1968 and without giving them an opportunity to explain their position. Annexure B to the reply of the respondents is quite revealing. It is a document of the railway administration and it shows that in May, 1987 i.e., more than 10 years after the date of despatch of the consignment the railways were still continuing their attempts to realise the under charges from the consignor. In the same breath it is mentioned that if this effort does not succeed the administration may think of other ways for clearance of this outstanding amount and that till this is done the concerned railway staff cannot absolve themselves of their responsibility for loss of railway revenue. In essence, this means that in May, 1987, the department was of the view that if no recovery is possible from the consignor (in fact, it should be consignee, vide Annexure 'I' to the supplementary application), the applicants were to be penalised. This penalty has been the withholding of their DCRG benefits after retirement. We are of the view that this stand of the railways is arbitrary and unreasonable. The respondents should have made up their mind as to who was liable for the loss of revenue to the railways—the consignee or the applicants. In case they felt that the loss of revenue was primarily due to the gross negligence of the applicants they were required to hold a departmental enquiry under Railway Servants (D&A) Rules, 1968 and to give adequate opportunity to the applicants to defend themselves. Railway Board's letter dated 23-5-1975 makes such an enquiry mandatory before passing any order for recovery.

10. We do not find any merit in the contention of the learned counsel for the respondents that such a departmental enquiry was not required, since this was a commercial transaction. Moreover, a copy of the departmental enquiry report(Audit) has also not been furnished to the applicants. Hence, it is established that the applicants have not been given any opportunity to explain their position. This is a complete negation of the principle of natural justice. We, therefore, hold that the withholding of DCRG to the applicants for the loss of revenue without holding a proper departmental enquiry under Rule 9 of the Railway Servants (D&A) Rules, 1968 is arbitrary, unreasonable

and against the principle of natural justice. We direct the respondents to pay the full amount of DCRG dues to the two applicants with 12 per cent interest from the date of superannuation to the date of payment within 60 days from the date of this judgment."

6. We heard the Id. counsels for the parties and perused the materials on record.

7. Rule 9 of the Railway Services Pension Rules is explicit on the *Right of the President to withhold or withdraw pension*. It exemplifies as under:-

"(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem. (Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13).

(2) The departmental proceedings referred to in sub-rule (1) -

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not institute while the railway servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the President;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 10 shall be sanctioned. (Authority: Railway Board's letter No. F(E)III/99/PN 1/38(Modification) dated 23.5.2000)

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.

(5) For the purpose of this rule -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

8. In a recent decision of this Tribunal the implications of Rule 15 of Pension Rules was discussed and it was held that recovery from DCRG on account of loss of freight by the Railways due to commercial debit

was impermissible. In the present case, admittedly and indubitably the withholding/non-release of DCRG amount is a sort of recovery towards alleged commercial debit raised without allowing an opportunity to the applicant to refute any allegation or to have his defence. Hon'ble Apex Court in **State of Punjab and Others vs. Rafiq Masih(White Washer) and Others.** has postulated several situations where any amount of recovery would be impermissible, the situations being classified as under:-

- "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group C and Group D service).*
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would for outweigh the equitable balance of the employer's right to recover."*

9. In view of the enumeration supra, we are of the considered opinion that the manner in which the respondents have resorted to withhold the entire DCRG on account of raising a commercial debit at the back of the applicant, is not proper. We, therefore, allow the O.A. with a direction upon the respondent authorities to refund the entire withheld amount of DCRG with interest @ 8% p.a. from the date the amount fell due with liberty to act in accordance with law. Let

the dues be released within two months from the date of receipt of this order. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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