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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1947 of 1999

New Delhi, this the 5th day of <sup>March</sup> ~~February~~, 2001

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

Shri Sukhbir Saran Agarwal  
S/o late Shri Ram Kishan Dass  
Retired Permanent Way Inspector  
Northern Railway  
Bijnore  
presently R/o 8, Gian Kunj,  
Laxmi Nagar, Delhi-92.

.....APPLICANT

(By Advocate: Shri B.S. Mainee)

Versus

Union of India: Through

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway,  
Moradabad.

... Respondents

(By Advocate: Shri B.S. Jain)

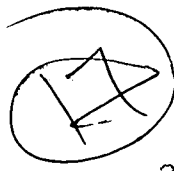
O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant who is a retired employee of the respondents is aggrieved by the wrongful action on the part of the respondents in not releasing his terminal benefits though 8 years has passed since his superannuation, which was 31.7.1991.

2. Facts in brief are that the applicant while in service was working as Permanent Way Inspector (hereinafter referred to as PWI) and superannuated on 31.7.1991 and on his retirement, he was only paid his Provident Fund and provisional pension but other retiral benefits like Gratuity, leave encashment, insurance,

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commutation etc. has not been paid to him. For the first time on 7.8.91, a stock sheet (showing shortage of stock while applicant was incharge of stock) was given to the applicant and remarks of the applicant were called for. The applicant gave his remarks on 22.5.1992 but it appears that the respondents were not satisfied so they had asked for further information and the applicant gave a reply vide his representation dated 10.4.1995 vide Annexure A-1. But again on 20.12.1996, Divisional Superintending Engineer, Moradabad sent a photocopy of Divisional Accounts Officer Moradabad of the stock sheet for the comments of the applicant and applicant again submitted his comments on 18.2.1997 vide Annexure A-3 and despite the fact that the applicant had submitted complete information about the discrepancy of stock, the retiral benefits of the applicant has not been released. Applicant made a representation also but to no effect. Thus the applicant has prayed for a direction to the respondents to release the payment of DCRG, Leave Encashment, Commutation of pension along with interest.

3. To support his case the applicant has also submitted that till date no disciplinary proceedings have been initiated against him or pending against him, so the respondents have no ground to withhold the retiral benefits, as such he has prayed that the OA be allowed.

4. The respondents are contesting the OA and stated that the OA is not within the territorial jurisdiction of the Principal Bench. The respondents submitted that a sum of Rs.32,47,591/- is recoverable from the applicant towards losses on account of shortages

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in the stores as stated in stock sheets which are dated (i) 7.8.91 (ii) 7.8.92 (iii) 31.10.1994 (iv) 24.11.94 and (v) 9.5.95 and for these reasons the gratuity, leave encashment and commutation of pension is not being paid to the applicant and the same would be paid to him only after he pays to the Government the outstanding dues which are pending against him. It is also stated that the applicant had been given proper opportunity to explain the shortages and the applicant had also replied to the same but since he has to pay a sum of Rs.32,47,591/- to the respondents, so his retiral dues cannot be released.

5. I have heard the learned counsel for the parties and have gone through the records of the case.

6. The learned counsel appearing for the applicant submitted that it is a well settled law that alleged losses, if any, as claimed by the respondents, can be recovered from the Government employee only after initiating the disciplinary proceedings by way of penalty etc., but in this case no departmental proceedings has ever been initiated, so the respondents cannot recover any losses from the applicant as the only procedure provided under the rules is to recover the same through disciplinary proceedings and no penalty has been imposed on the applicant till date.

7. Besides this the counsel for the applicant has also submitted that the disciplinary proceedings against the applicant could be initiated only within a period of 4 years of the retirement of the applicant. Now since

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that period has already lapsed and so far respondents have not initiated any disciplinary proceedings nor imposed any penalty, so the respondents cannot recover any losses from him as per law.

8. Besides that Shri Mainee also submitted that each and every item has been explained by the applicant in reply to the stock sheets issued to him and the same has been accepted, so the withholding of the dues by the department is altogether unjustified hence the respondents should be directed to release the amount.

9. In support of his arguments, the learned counsel for the applicant referred to a judgment in the case in OA 1223/92 - S.K. Khanna Vs. U.O.I. & Others. The relevant portion of which is reproduced for ready reference:-

"11. We have considered the matter. The learned counsel for the applicant is on firm grounds in his submissions. Recovery for making good the loss incurred by the Government as a result of the acts of omissions and commissions of a Government servant is a penalty under the disciplinary rules. Admittedly, no such penalty has been imposed on the applicant.

12. That leaves the question about the action that may be taken after retirement. The learned counsel for the applicant has produced for our perusal the Volume-2 of the Indian Railway Establishment Code (5th Reprint) published in 1974. Chapter-23 contains the Railway Pensions Rules. Rule 2308 corresponds to Rule 9 of the Central Civil Services Pension Rules, 1972. The rule makes it clear that the President alone is competent to withhold or withdraw a pension if in a departmental proceeding the pensionary is found guilty of grave misconduct or negligence. Clause (b) of the proviso to this rule stipulates that no such departmental proceedings not initiated before retirement shall be instituted except with the sanction of the

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President and that it shall not be in respect of any event which took place more than 4 years before such institution. As on date, the alleged loss sustained in 1986 and 1987 cannot be recovered even if the proceedings are initiated against the applicant. It is surprising that the matter was raked up for the first time on 22.2.1991 by the respondents when they asked the applicant to attend the office of the Senior Divisional Accounts Officer to explain the S.V. sheets. In the circumstance, we find that even if the respondents decide to institute proceedings against the applicant such proceeding will be illegal in the light of the above provision.

13. We are, therefore, satisfied that the applicant is entitled to the payment of gratuity, which has been withheld for no fault of his, with interest".

10. Thereafter the applicant has also referred to another judgment given by a co-ordinate Bench of this Tribunal in OA 1257/97 dated 10.11.2000. In that case also this Tribunal had relied upon the judgment in the case of Shri S.K. Khanna (Supra) and the legal position with regard to withholding of pension, gratuity, leave encashment etc. was reiterated and it was stated that the same can be withheld only by way of penalty imposed after holding the disciplinary proceedings. It was also held that the disciplinary proceedings could be initiated within a period of 4 years from the date of retirement, that too by the orders of the President. In the said OA also the only legitimate dues regarding recoveries of house rent allowance were allowed to be deducted and the respondents were directed to release the entire payment to the applicant in the said OA along with interest at the rate of 12% from the date of one year prior to the filing of the OA. In this case also I find that the department is claiming Rs.32,47,591/- towards the losses on account of shortages in stores and not under any other

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head for which the applicant may have some personal liability etc. This amount could be recovered only by way of penalty after the department had initiated a departmental proceeding against the applicant which has not been done till date. Issuing of stock sheets is only to ask explanation for shortage in stock, to which applicant has been sending his comments.

11. It is also quite surprising that the department had been asking explanation after explanation by issuing stock sheets to the applicant but had never initiated any action for holding disciplinary proceedings or for imposing penalty on the applicant and since the proceedings could have been held within a period of 4 years and that period of 4 years have lapsed as the applicant had superannuated on 31.7.91 so I am satisfied that the respondents cannot withhold any of the retiral benefits of the applicant now on the alleged shortages. I am, therefore, satisfied that the applicant is entitled to the payment of all the retiral benefits as claimed by the applicant. I, therefore, dispose of the OA with the following directions:-

(1) The respondents are directed to pay DCRG, Leave Encashment, computation of pension to the applicant within a period of 3 months from the date of receipt of a copy of this order. The applicant is further entitled to the interest at the rate of 12% per annum w.e.f. 1.9.1998, i.e., one year prior to the filing of the OA.

(2) No costs.

  
( KULDIP SINGH )  
MEMBER(JUDL)

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