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Central Administrative Tribunal
Principal Bench
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O.A. No. 785/95

New Delhi, this the 22nd day of Dec., 1995

Hon'ble Shri B.K.Singh, Member (A)

Murari Lal Sharma,
s/o Shri Girdhari Lal Sharma
Chief Inspector of Works (Retired),
N.Rly., Moradabad Division,
Moradabad.

r/o c/o Shri M.C.Shukla,
R-48, Ramesh Park, Laxmi Nagar,
Delhi-92.

...Applicant

(By Shri M.L.Sharma, Advocate)

Versus

Union of India through:

1. General Manager
Northern Railway
Headquarters Office
Baroda House
New Delhi

2. The Chief Administrative Officer (Const.),
Northern Railway,
Kashmiri Gate,
Delhi.

3. Divisional Railway Manager,
Northern Railway,
Moradabad.

...Respondents

(By none)

O R D E R

By Hon'ble Shri B.K.Singh, Member (A):

This O.A. No. 785/95 has been filed for the
following reliefs:

- (i) To quash the impugned letter dated 6.2.1995; &
- (ii) To direct the respondents to pay the gratuity
and the leave encashment in full with interest at
market rate but not lower than 18% per annum from the
date of retirement to the date of actual payment.

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The admitted facts of the case are that the applicant has not been paid gratuity and the leave encashment on the ground that the respondents have found a shortage of 19.131 M.T. of steel worth Rs. 1,54,222.15 and leave encashment and gratuity taken together come to Rs. 1,06,458/- and the balance amount of Rs. 47,764/- is yet to be recovered for which the respondents issued Annexure A-1 which is under challenge before the Tribunal in this O.A.

The applicant filed his reply but that reply was not satisfactory and as such the D.C.R.G. and leave encashment have been withheld for adjustment of the shortages of steel detected in the Stores.

On notice, respondents filed their reply contesting the applicant and the grant of reliefs prayed for.

Heard the learned counsel for the applicant and none appeared on behalf of the respondents.

The matter has been on Board for a pretty long time and I have been left with no option but to decide the matter on the basis of pleadings on record and the submissions made by the learned counsel for the applicant. Learned counsel argued that the total amount of steel in the Stores and shortage detected therein is less than 2% which is the permissible shortage as per the instructions of the Railway Board. The applicant has filed a chart to show the specifications of the steel ^{bars} of the various dia-meters received by him and the verification done by the respondents (Annexure A-2 & A-3, of the paper book). It is further argued that the reply has already been

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sent but the respondents further served a notice vide Annexure A-3/A dated 5.2.1993 and the reply of that letter is at Annexure A-4. In his reply, the applicant has stated that the permissible shortage, as per the Stock, comes to 25.728 M.T. whereas the shortage during the verification was 19.131 MT and thus it falls within the permissible shortage as per the Code. The applicant has also annexed the statement showing the last verification done and further receipt of the steel and other materials of various specifications and subsequent verification done by the respondent and the shortages detected. The applicant has tried to cover himself by the provisions of Indian Railway Code for the Stores Department permitting shortage of 2% in the present case it is less than the permissible limit of 2%. The permissible shortage comes to 25.728 M.T. whereas it is only 19.131 M.T.

The learned counsel for the applicant has produced the Indian Railway Code for the Stores Department, Vol.II (revised edition 1990) to substantiate his arguments.

In 3263 of the Indian Railway Code for Stores Department, Vol.II, it is mentioned that adjustments may be passed upto 2% of the transactions since the last date of verification and if there are bigger differences a person incharge of the Stores will have to account for it and will have to explain the same. The learned counsel for the applicant has taken shelter of this provision in the Code. He has also relied upon Railway Services (Pension) Rules, 1993 which also militates against the action of the respondents. He also relied on rule 15 of the Pension Rules, 1993 which in clause (b) of sub-rule 4 mentions as follows:-

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"Dues mentioned in clause (i) about loss/shortage in stores caused to the Govt. as a result of negligence or fraud on the part of the railway servant while he was in service, it lays down that such loss should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned."

The applicant retired on 30.4.1993 and no charge-sheet was served on him for the shortages and no enquiry was initiated against him. It has also ^{not} been specifically stated whether it is within the permissible shortage and if so, can there be any justification for withholding the gratuity and leave encashment for adjustment of the dues within the permissible shortage limit. It has also not been shown whether there is any loss to the Govt. on account of negligence ^{any} or fraudulent action on the part of the applicant.

The learned counsel for the applicant has relied on a judgement in case of S.K. Khanna V/s. Union of India given in O.A. No. 1223/92 on 23.5.1994, where the applicant was similarly situated and the facts and legal issues in that case are similar.

It is admitted that no proceedings were initiated to recover the alleged shortages detected in the Stores against the applicant when he was in service and even after his retirement no recovery can be made if no disciplinary proceedings had ^{before} not been initiated/retirement. No disciplinary proceedings has been initiated by the respondents even after retirement.

This case is squarely covered by the judgement of the Division Bench in the aforesaid O.A. No. 1223/92 and the facts and legal issues are similar to the facts and issues involved in the present O.A. and therefore, the judgement of the Division Bench will hold good in the case of the present applicant also. The respondents

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are directed to release the amount of D.C.R.G. and leave encashment due to the applicant without making any deduction therefrom on account of any shortage detected in the stores as a result of Stock verification between October 1988 and December, 1991. There is, however, no justification for grant of 18% compounded rate of interest as decreed by the Hon'ble Supreme Court in case of R. Kapur Vs. Director of Inspection (Paint and Public tion) Income Tax and another reported in 1995 SCC(L&S) Page 13.

The applicant will get 12% per annum interest as allowed by the Division Bench in the aforesaid O.A.No.1223/92 from the date of retirement to the actual date of payment of the D.C.R.G. and leave encashment due to him. The application thus partly succeeds and is allowed but without any order as costs.


(B.K. SINGH)
MEMBER (A)

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