

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(33)

O.A. No.328 of 1994 decided on 16.05.1997.

Sh. Mahesh Kumar Sharma  
(By Shri S.C. Saxena, Advocate)

....Applicant

Union of India & Ors.  
(By Shri Rajeev Sharma, Advocate)

....Respondents

CORAM

Hon'ble Mr. N. Sahu, Member(A)

1.	To be referred to the Reporter or not?	YES
2.	Whether to be circulated to the other Benches of the Tribunal?	NO

.....  
( N. SAHU )  
Member(A)

Central Administrative Tribunal  
Principal Bench: New Delhi

OA 328/94

New Delhi this the 16th day of May 1997.

(BA)

Hon'ble Mr N. Sahu, Member (A)

Shri Mahesh Kumar Sharma  
S/o Shri Pandit A.C. Sharma  
R/o Shri Sant Yog Ashram  
Chandan Hoola  
Mehrauli  
New Delhi. ....Applicant

(By advocate: Shri S.C. Saxena)

Versus

1. The General Manager (Complaints)  
Northern Railway  
New Delhi.
2. The Divisional Railway Manager  
DRM Office, Delhi Division  
New Delhi. ....Respondents.

(By advocate: Shri Rajeev Sharma)

O R D E R (oral)

Hon'ble Mr N. Sahu, Member (A)

In this petition, the applicant seeks a direction to the respondents to release his gratuity together with interest accrued thereon. The applicant also seeks a declaration that the action of the respondents in withholding his entire gratuity is illegal.

2. The applicant worked as Signal Inspector (Works) at Ambala Cantt w.e.f. 5.8.1957 and he took voluntary retirement w.e.f. 11.10.1990. All the pensionary benefits were paid to him except the gratuity. The petitioner represented on 26.4.91, 30.4.92, 18.9.93 and sent a legal notice on 22.12.93. Finding no response, he filed this petition.

*Final*

(35)

3. The respondents contend that the gratuity had been lawfully withheld. They contend that during stock verification at Ambala Cantt, some shortfall of materials to the extent of Rs. 54718 was noticed and for this reason and also for non-payment of electricity bill, the gratuity had been withheld. The applicant was informed about the reasons for withholding the gratuity. Learned counsel for the applicant states that at the time of voluntary retirement, the handing over had taken place on 14.9.96 (Annexure R-2). At that time, no discrepancy was pointed out to him. The learned counsel specifically brought to my notice certain certificates at pages 65-66 of the paper book in which it is stated that "no T&P" is due with Shri M.K. Sharma, as on date. Annexure A-1 states that there was handing over of the materials. The main contention of the applicant is that before his retirement, the shortage was not conveyed to him. The applicant submits that the electricity bill for 4 months could not be paid and he volunteers to make the payment. The certificate issued by Shri Birji Mohan clearly indicates that there was no shortage in the store.

4. Learned counsel for the respondents Shri Rajeev Sharma has cited the decisions of the Hon'ble Supreme Court in the case of Jarnail Singh Vs. Secretary, Ministry of Home Affairs 1991, SCC P.47. The propositions of law laid down in this case are that withholding of pension by way of punishment includes gratuity. It is clearly laid down that payment of gratuity as well as pension could be withheld for recovery of the loss sustained by the government. The learned counsel also brought to my notice para 9 of the Supreme Court order wherein the Supreme Court referred to Rules 71 & 73 of the Central Civil Service Pension Rules 1972 relating to recovery and adjustment of the

(36)

government dues and the provisions in the Rules for adjustment of the amount of Death-cum-Retirement gratuity payable to the government servant. The learned counsel, therefore, states that the respondents believed that some missing stock had to be accounted for by the applicant and on that count they withheld the gratuity. This is a very important point made by the learned counsel for the respondents. But unfortunately, this cannot be accepted in this particular case as a valid ground for withholding the gratuity. The law is very clear that pension and gratuity can be withheld under Rule 9. Pension and gratuity can also be withheld for adjustment against any admitted amount owing to the employer under whom the retiring employee worked. It is admitted at the Bar that there was no disciplinary proceeding against the applicant. No disciplinary proceeding was initiated. It is not a case of misconduct. In the celebrated case of the Supreme Court in D.B.Kapoor 1994 SC 314 it was held that the exercise of power under Rule 9 rests with the condition that the findings should be recorded either in a disciplinary enquiry or a judicial enquiry that the person has committed a grave misconduct in discharge of his duties while in service. There was no such findings in D.B.Kapoor's case and hence the withholding of gratuity was declared illegal. Here, there was no disciplinary proceeding, and therefore, the respondents have no right whatsoever to withhold the gratuity. With regard to recovery and adjustment of any debt or railway dues, the learned counsel for the respondents has brought to my notice Rule 15 of the Railway Service Pension Rules. The first condition stipulated in that Rule is that the Head of Office must "ascertain and assess" the government or railway dues payable by a railway servant due for retirement. This rule does not envisage a post retirement enquiry. If a government servant is accused of either dereliction of duty or malfeasance or any misconduct, the enquiry

(37)

should commence before his retirement and conclude immediately thereafter. It is only when the loss is ascertained and assessed that the Government has a right to withhold and adjust the gratuity. The intention is further made clear by a sub-clause, "When it is ascertained what remains outstanding till the date of retirement". It does not talk of what the respondents think would be the dues. Sub clause (3) defines what the dues are: to include, dues relating to government accommodation and dues relating to House Building Advance, over payment of pay and allowances, leave salary etc. or losses to the government or railway as a result of negligence or fraud on the part of a railway servant while he was in service. Here again the respondents are bound to establish that the loss was caused on account of fraud or negligence, and for this purpose before retirement he should have been proceeded against. If a fresh enquiry is initiated after retirement, that would not justify withholding of the gratuity.

6. The learned counsel <sup>for</sup> respondents has cited the decision of the Supreme Court 1997 SCC 484 wherein it states that UOI is a necessary party to be impleaded in a writ petition. This, in my view, does not invalidate the OA. This point should have been raised much earlier.

7. Learned counsel for the applicant cited a Full Bench judgement in Amrit Singh Vs. UOI wherein the Full Bench laid down that the condition precedent for exercising the power of disciplinary proceedings is that if the pensioner is found guilty of a grave misconduct during the period of service in a disciplinary or judicial proceedings, that action can be taken after retirement. The learned counsel has brought to my notice para 6 of the Head note in which while pension and gratuity can

(38)

be inter changeable, it is laid down that gratuity cannot be withheld unless loss is established or disciplinary proceedings are initiated for grave misconduct. Learned counsel for the respondents has brought to my notice true copies of stock material wherein under stock sheet No.5 it is stated that this may be adjusted with item 2. Stock sheet No.5 A being similar stock lying at one place was mentioned as an explanation. It does not appeal to me that this establishes the loss of stock and further establishes that the applicant was responsible for the said loss. The note was signed by the applicant. Learned counsel for the applicant states itemwise the applicant's reply was furnished even after the enquiry was started in July 1991 and by letter dated 6.8.91.

8. Mr. Rajeev Sharma has also raised the question of delay. As it involves payment of retirement dues and as this grievance is recurring, it is settled now that in such matters the delay as invalidating the petition cannot be sustained. This point has, therefore, no merit.

9. After going through all the facts and circumstances of the case, I am satisfied that the action of the respondents in withholding the gratuity is not in accordance with law. First, admittedly no disciplinary proceedings have been initiated. There was no finding of misconduct or grave misconduct. Secondly, the entire concept of adjustment of gratuity is based on two or three premises. The first premise is that the enquiry about the loss caused either by negligence or by fraud by the railway servant must be initiated during his service. Rule 15 does not envisage a situation where much after the government servant retires an enquiry starts and continues on and on and until the said enquiry is concluded, the gratuity is withheld.

39

On the contrary, Rule 15 (4) (iii) states: "Sanction to pensionary benefits shall not be delayed pending recovery of outstanding Government dues". The Apex Court has laid down that payment of gratuity does not depend on the whims and fancies of the department and the employee has a valuable right to receive the said gratuity and it can be withheld only in accordance with law. I, therefore, hold that the respondents shall release the gratuity to the applicant within a period of 12 weeks from the date of receipt of a copy of this order with interest as per the provisions of the law. OA is disposed of as above. There is no order as to costs.

*Kanaknath Sahu*,  
(N. Sahu)  
Member (A)

aa.