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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.2307/89

DATE OF DECISION: 2.5.1990

AMARNATH KAPOOR

APPLICANT

SHRI B.S. MAINEE

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI S.N. SIKKA

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

Shri Amarnath Kapoor filed this application on 10.11.1989 under Section 19 of the Administrative Tribunals Act, 1985 challenging the withholding of a sum of Rs.11,596.72 from his death-cum-retirement gratuity by the respondents. The applicant retired on superannuation w.e.f. 30.4.1989 from the post of Deputy Shop Superintendent (Rs.2000-3200).

2. Briefly the case of the applicant is that he was looking after the duties of Shop Superintendent (Motors) when delivery of some packages, containing material including self starters, was obtained from the Parcel Office, New Delhi in accordance with his

instruction to Shri Tirath Pal, Material Clerk by deputing a Khallasi for the purpose. On receipt of the packages it was found that the consignment was in damaged condition and that there was a shortage of three self starters. A minor penalty chargesheet was issued to the applicant on 3.5.1988. Apparently, the matter was not further pursued after the applicant had given his explanation in a written statement of defence on 17.5.1988. The applicant's plea is that he had instructed Shri Tirath Pal, Material Clerk on 28.5.1984 to arrange to collect the material from Parcel Office, New Delhi by arranging labour as per usual routine. Shri Tirath Pal however, deputed a Khallasi to take delivery instead of going to the Parcel Office himself. The shortage of three self starters was found when the applicant himself checked the consignment after its receipt in the Motor Shop. He brought the matter to the notice of the higher authority immediately when Shri Tirath Pal, Material Clerk, regretted his lapse.

The respondents, however, deducted the following amount from his death-cum-retirement gratuity when he retired from the service on 30.4.1989:

(a)	Cost of three self starters	Rs.8,596.72/-
	foreign service contribution	Rs.3,000.00
	<i>2</i> Total:	Rs.11,596.72

By way of relief the applicant prayed for direction to the respondents to release the amount of Rs.11,596.72 togetherwith interest at 18% per annum.

3. The respondents in their reply have pleaded that the applicant had deputed a Khallasi to receive the material from the Parcel Office, New Delhi instead of giving instruction to Shri Tirath Pal, Material Clerk for arranging collection of the parcel. Further, Deputy Chief Mechanical Engineer (respondent No.2) had referred a claim for recovering the cost of the shortage from the Commercial Department of the Railway. The Chief Claims Officer however rejected the claim as the material was received by the Motor Shop staff without pointing out the shortage at the time of the delivery. Consequently, Shri Tirath Pal, Material Clerk and Shri Amarnath Kapoor, applicant were served chargesheet for minor penalty for recovering of the loss. As a result of the enquiry the responsibility for the loss has been fixed on the Deputy Shop Superintendent - the applicant.

4. We heard the learned Counsel of both the parties on 26.3.1990. The learned Counsel for the respondents was directed to produce the record of the enquiry proceedings which are crucial to determine the fate of this application. We also considered it desirable to dispose of the matter on perusal of the record at the admission stage itself.

We have perused the respondent's file No. 575-M/360/23(MW-III) and file No.575-M/143/PT.II (MW-III). The findings of the Enquiry Officer submitted to Senior Mechanical Engineer (Head Quarter), Northern Railway, Baroda House, New Delhi dated 6.1.1989 are as under:-

- i) This is a case of theft in transit between HWH and Delhi, it is clean from records the box was

received in damaged condition in CPC Office,

- ii) R.R. was received by SS/Motor Shop and was given to the Khallasi Shri Kishan Singh to check the receipt of material on 26.5.1984 as per procedure.
- iii) Shri Kishan Singh was authorised to collect the material from CPC New Delhi on the back of RR which was signed by Shri Amar Nath on 28.5.1984. It is said that SS/Motor Shop Shri S.S. Khanna was on leave on that day.
- iv) Later on Shri Khanna has refused on 13.10.1984 that he did not give RR to Shri Kishan Singh. Since Shri Khanna has retired no action can be taken.
- v) There was a lapse on the part of Khallasi that when he had received a broken box he should have called the C/Man on duty to station and a open delivery should have been taken.
- vi) Since Khallasi Shri Kishan Singh has also left this Railway, there is no alternative other than to waive off the loss.
- vii) Clerk Shri Tirath Pal was no where in picture he should be honourably acquitted of the charges and his office advised according statements of both are enclosed herewith for further n/action."

5. The Enquiry Officer in his enquiry report dated 6.1.1989

has come to the conclusion that the loss was on account of theft in transit between Howra and Delhi. The approval of the head of the department was therefore taken for writing off the amount of the loss. The case was thereafter sent to the Financial Adviser on 14.3.1989, which after a few references between the two offices, was finally turned down by the Financial Adviser on 3.5.1989. The amount of gratuity due to the applicant was paid on 7.5.1989 after withholding the amount in question. It is interesting to find that the note at PP-3 recorded by PA to CME on D&AR file No.575-M/360/23 is undated.

From the facts as above it appears that after considering the report of the Enquiry Officer, the applicant was absolved of the responsibility for the loss. Accordingly, we are of the view that it will not be fair and just to hold back the said amount from the death-cum-retirement gratuity of the applicant - the matter having been treated as closed earlier on the basis of the D & AR enquiry and action taken to write off the amount. In these circumstances, we order and direct that the amount of Rs.8,596.72 should be paid to the applicant within 8 weeks from the date of communication of this order togetherwith interest at the rate of 12% from 7.5.1989, till the date of actual payment. We are not going into the issue of remaining amount of Rs.3000/- as no material has been produced by the applicant for justifying its refund by the respondents.

There will be no orders as to the costs.

(Signature)
(I.K. RASGOPIRA)
MEMBER (A) 18/5/90

(Signature)
10-5-90
(T.S. OBEROI)
MEMBER (J)