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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

DA 175/87

Decided on 13-9-89

Ganpat Rai

...

Applicant

Versus

Union of India and others

Respondents.

For the Applicant - Mr. R.K.Kamal, Advocate.

For the respondents - Mr. Shyam Moorjani, Advocate.

B.S.SEKHON:

The instant Application raises the question of validity of forfeiture/withholding of a sum of Rs. 2000/- out of the gratuity, which is one of the pensionary benefits, by the Railway authorities.

2. Applicant, admittedly, retired on June 30, 1986 from the Railway service. He was holding the post of Chief Parcel Supervisor. According to the Applicant, he was informed orally that the aforesaid sum of Rs. 2000/- shall be released to him within six months of his retirement, but when he again approached the office of the Divisional Rail/Manager, Delhi, he was advised that the said amount has been forfeited for some reasons which could not be communicated. Applicant has averred that no recovery from gratuity can be made from a retired Railway servant unless the President's sanction is obtained to start judicial proceedings against the retired employee and a grave misconduct on the part of such retiree is established.

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He has further pleaded that even a show-cause notice had not been served on him; and that as such the forfeiture/recovery of Rs. 2000/- from his gratuity is illegal, arbitrary and violative of the principles of natural justice. With the aforesaid averments, Applicant seeks a direction to the respondents to release forthwith the sum of Rs. 2000/- and pay him interest at the market rate of 18% for the period since July 1, 1986.

3. The defence, as set out in the counter filed by the respondents is that the Applicant caused hold up of perishable consignment from 24-4-86 to 28/29-4-86 while working as Transit Supdt/L. Supdt. at Delhi Parcel Office. As a result thereof, the respondents had to pay a claim of Rs. 10,820/-, besides earning a bad name. The Applicant was charge-sheeted for imposition of minor penalty and it was found that due to indifferent and apathetic attitude of the Applicant, the respondents had suffered a financial loss to the tune of Rs. 10,820/-; and that the Applicant failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant. The respondents have justified the recovery of Rs. 2,000/- on account of pecuniary loss caused to the Railway Department. The respondents have also denied the allegations about the recovery of Rs. 2000/- being illegal, arbitrary and violative of the principles of natural justice.

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4. In the rejoinder, the Applicant has more or less reiterated his case adding that he had neither detained any such consignment nor received any charge-sheet, nor was advised of any punishment.

5. Two-fold attack was launched by the learned counsel for the Applicant against the recovery/forfeiture of Rs. 2000/- out of the gratuity payable to the Applicant. The learned counsel for the Applicant relying upon the provisions of Rules 2308 and 2308-A of the Indian Railway Establishment Code, Vol. II (for short 'the Code'), urged in the first instance that no departmental enquiry had been instituted against the Applicant prior to his retirement and that during the post retirement period, departmental proceedings can be instituted only with the sanction of the President; and that in view thereof, no amount out of the DCRG could be withheld or recovered. Rule 2308 of the Code clothes the President with the powers to withhold a pension or any part thereof permanently or for a specified period as also the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The Proviso to the aforesaid Rule envisages that departmental proceedings, if not instituted before the retirement of the Railway servant, would not be instituted save with the sanction of the President and shall not be in respect of any event which took place more than four

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years before such institution. Material portion of Explanation (a) to the aforesaid Rule provides that a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the pensioner. ~~.....~~ Memo. relating to the charges for imposing minor penalty (at page 9/C of file No. K/28/ DLI/ Sett./86) in respect of the Applicant, it appears that there is no evidence to establish as to whether this charge-sheet had actually been issued to the Applicant or as to whether the sanction of the President had been obtained for issuing such chargesheet. The burden of proving the grant of sanction visualised by the Proviso to Rule 2308 of the Code is on the respondents, as such a fact could be within their knowledge only. The sine qua non to the exercise of the power of withholding the gratuity or DCRG is the deemed continuation or institution of the departmental enquiry envisaged by Rule 2308. Since no such enquiry is shown to have been instituted either before or subsequent to the retirement of the Applicant, the recovery/withholding of Rs. 2000/- out of the gratuity payable to the Applicant is impermissible.

6. It was next urged by the learned counsel for the Applicant that assuming any enquiry had been initiated subsequent to the retirement of the Applicant, the payment of gratuity is payable to the Railway servant in view of the following Proviso, which has been added to Rule 2308 A(1)-RII:

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"Provided that where departmental proceedings have been instituted under Railway Servants (Discipline and Appeal) Rules, 1968 for imposing any of the penalties specified in Clauses(i), (ii), (iii-a) and(iv) of Rule 6 of the said Rules, the payment of gratuity shall be authorised to be paid to the railway servant."

On the basis of the aforesaid Proviso, the learned counsel for the Applicant submitted that since the charge-sheet/levels allegations only about the breach of Rule 3(1)(i)(ii)(iii) of the Railway Service (Conduct) Rules, 1966 (for short 'the Conduct Rules'), the gratuity cannot be withheld, but is payable to the Applicant.

Applains perusal of the above extracted Proviso goes to show that clause(iii) of Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968 is not also covered by the Proviso. This clause refers to a minor penalty. In view thereof, this ground of attack is not sustained. The learned counsel for the Applicant also pressed the claim for interest.

7. In the premises, we hold that withholding/recovery/forfeiture of Rs. 2000 out of the gratuity payable to the Applicant is illegal and unsustainable. Consequently, the Applicant's claim seeking a direction to the respondents to release the withheld amount of Rs. 2000/- is held to be well founded. So is the claim for interest. In fine, the respondents are directed to pay the sum of Rs. 2000/- to the Applicant alongwith interest thereon @ 12% per annum from 1-7-86 till the date of payment. Respondents are further directed to comply with this order within two months from today. No order as to costs.

D.K.Chakravorty
(D.K.Chakravorty)

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B.S.Sekhon
(B.S.Sekhon)
VC

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Present: Mr. R.K. Kamal, Advocate for the Applicant
Mr. Shyam Morjani, counsel for the respondents.

Judgment pronounced. Application has been
disposed of by a separate order of date.

D. K. Chakravorty
(D.K.Chakravorty)
AM

B. S. Sekhon
(B.S.Sekhon)
VC