

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1798/1990
~~AKAON~~

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DATE OF DECISION 26.07.1991

SHRI KARAM SINGH	Petitioner
SHRI V.P. SHARMA	Advocate for the Petitioner(s)
Versus	
UNION OF INDIA & ORS.	Respondent
SHRI B.K. AGGARWAL	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? ^{1/3}
2. To be referred to the Reporter or not?
3. ~~Whether their Lordships wish to see the fair copy of the Judgement?~~ ^{1/3}
4. ~~Whether it needs to be circulated to other Benches of the Tribunal?~~

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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C.A. NO.1798/1990

DATE OF DECISION 26.7.1991

SHRI KARAM SINGH

.....APPLICANT

VS.

UNION OF INDIA & ORS.

.....RESPONDENTS

CORAM

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

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....SHRI V.P. SHARMA

FOR THE RESPONDENTS

.....SHRI B.K. AGGARWAL

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant since retired from railway service, w.e.f. 31.8.1988 having his last posting in the Parcel Office, Northern Railway, Rawari, filed the application under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs :-

- (i) That the applicant be allowed with costs of application.
- (ii) That the hon'ble Tribunal may be pleased to pass an order directing the respondents to pay the amounts as stated below alongwith the interest at the rate of 18% p.m.
 - i) The Transfer Allowance/Packing Allowance

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- as claimed by the applicant on retirement.
- ii) The amount of Rs.2000/- be paid to the applicant as the same were deducted from amount at the time of retirement.
 - iii) The full pay and allowance for the period from 15.11.1977 to 15.11.1978 be paid to the applicant.
 - iv) The enhanced rate of D.A. for the period July/August 1988 be paid to the applicant.

Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant.

2. Regarding the relief (i) of Transfer Allowance, the applicant stated that after retirement from Parcel Office, Rewari, he settled at New Delhi on 20.5.1991, so he is entitled under Rules the Transfer Allowance/Disturbance Allowance from Rewari to Delhi.

3. The respondents contested the claim of the applicant. The respondents denied their liability to pay the Transfer Allowance as the ^{recorded} place of permanent residence of the applicant was only at a distance of 20 Kms. from the place of his last posting of duty at Rewari. He only shifted to Delhi on 20.5.1991, two years after retirement. Regarding Rs.2,000/-, that has been withheld from his D.S.A.G. against some commercial debits, it is stated that the same has been done under Rule 323 of Railway Pension Rules, 1950. Regarding reliefs

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No.(iii) and (iv), it is stated that the pay and allowances for the period from 15.11.1977 to 15.11.1978, and the difference in the D.A. rates claimed in the relief No.(iv), has also been sanctioned for payment. This fact is not contraverted in the Rejoinder.

4. Regarding the commercial recovery from the applicant, the respondents stated in para 4.4 of their reply that the C.C.S., Bikaner has advised to recover Rs.4,030/- against his commercial debits from his settlement dues. After adjusting Rs.2,000/- which were withheld from the payment of D.D.R.S., still an amount of Rs.2,030/- is to be recovered from the applicant. It is, therefore, stated that the application is without force and be dismissed with cost.

5. We have heard the learned counsel of the parties at length and have gone through the record of the case. Since the matter is short and regarding the payment of certain retirement benefits to the applicant, so without admitting the application directly, the notices were issued to the respondents who have filed a reply and as the pleadings are complete, the matter has been heard on merits at the admission stage itself. Both the counsel of the parties have also agreed that the matter be disposed of finally after hearing.

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6. Regarding the claim of Transfer T.A. of the applicant, it is not disputed by the applicant that at the time when he retired from active service, he was living at his home at Rewari. The applicant in the rejoinder has stated that the applicant's family had migrated from present Pakistan in the year 1947. The applicant has been allotted accommodation at New Delhi vide letter dated 13.10.1988 issued by Virat Cooperative Group Housing Society Limited, but the accommodation was delivered in May, 1990. It is stated by the applicant that he could manage ^{to get} his house at New Delhi only after the applicant received the retirement benefits as it was not possible for the applicant to purchase his house for want of money. The applicant retired from service on 31.8.1988. Under the Extant Transfer Allowance Circular dt. 4.12.1980 Grant / the applicant has prayed only for the amount which he spent to join his family at the home-town after retirement. In the case of the applicant, according to his own showing, the applicant is living 20 kms. of the place of his posting. The Circular No. (F(E)1-70) AL-28/6 dt. 4-12-80, MR 7916 P.C. iii/78 TA/ dt. 20-4-79 (A 7276) provides :-

"(iii) Transfer Allowance (Transfer Grant) (i) It is admissible to all classes of rly. servants in all

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eventualities involving transfer (e.g. promotion demotion or simple transfer) except transfer on employee's own request provided :

- (i) The transfer is not within the same municipal area and
- (ii) it involves a change of residence 'Change of residence' condition is fulfilled if in the case of transfer to a station more than 20 km from the old station the officer makes some residential arrangements at the new station even if he does not shift his family to the new station even Payment of Transfer allowance should not be linked with vacation of quarters at old station."

In view of the clear instructions, the applicant could not get any T.A. to a place where he has shifted 2 years after retirement.

7. Regarding the deduction of the sum of Rs.2,000/- from the P.S.R.G. of the applicant and maintaining a balance of recovery of Rs.2,030/- from him, the respondents appear to have proceeded under para-323 of the Manual of the Railway Pension Rules, 1950. The learned counsel for the respondents has filed copy of the memo dated 4.12.1989 showing recovery of Rs.330/- from the settlement dues of the applicant and another recovery of Rs.3,700/- as per Memo dated 5.12.1990 (Annexure-R 1 to R 3). The total amount, therefore, according to the respondents come to Rs.3,700-Rs.330=Rs.4,030. The learned counsel for the applicant has pointed out the letter dt. 21.5.1991 issued by CFC, Sirsa to DPO Settlement, Northern Railway,

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Bikener regarding a parcel from Sirsa to
Bhaislona wherein it has been written that no bundle
of Pucca Leather has been issued from Sirsa Railway
Station. The learned counsel for the applicant has
also referred to the judgement given by C.A.T.,
Hyderabad Bench in the case of Venkateswara Rao Vs.
Union of India & Others, reported in 1990 (3) SLJ
p-330 (C.A.T.). The Hyderabad Bench of the Central
Administrative Tribunal held that recovery for loss
caused to Government being a penalty cannot be made
without holding a proper enquiry. Even para-323 of
the Manual of the Railway Pension Rules, 1950
the amount due on account of losses caused to the
Government as a result of negligence or fraud on
the part of the Railway servant while on service
cannot be recovered. Para-323 of the Manual of the
Railway Pension Rules, 1950 is reproduced below :-

"F. Recovery of Government dues from pensionary benefits

323 (i) A claim against the Railway servant may
be on account of one or the other of the following:-

- (a) losses (including short collection in freight,
charges shortage in stores) caused to the
Government as a result of negligence or fraud
on the part of the Railway servant while he
was in service;
- (b) other Government dues such as over payment on
account of pay and allowances, or admitted
and obvious dues such as house rent, Post
Office, Life Insurance Premium, outstanding
advance, etc.;
- (c) non-Government dues.

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- (ii) Recovery from recurring pensions as also commuted value thereof, which are governed by the Pensions Act, 1871, can be made only in terms of Para 315: accordingly, a recovery of only item (a) may be made from these provided the conditions laid down in para 315 are fulfilled. A recovery on account of item (a) which cannot be made in terms of para 315 and any recovery on account of items (b) and (c), cannot be made from these even with the consent of the Railway servant. The amount due on account of item (a) which cannot be recovered from these and/or on account of item (b), can, however, be recovered from ordinary/terminal/death/death-cum-retirement gratuity which are not subject to the Pensions Act, 1871. It is permissible to make recovery of Government dues from the ordinary/terminal/death/death-cum-retirement gratuity due even without obtaining his consent or without obtaining the consent of the members of his family in the case of a deceased Railway servant.
- (iii) Sanction to pensionary benefits should not be delayed pending recovery of any outstanding Government dues. If at the time of sanction any dues remain unassessed and unrealised, the following courses should be adopted:-
- (a) In respect of the dues as mentioned in item (a) of sub-para (i) above-A suitable cash deposit may be taken from the Railway servant or only such portion of the death-cum-retirement gratuity as may be considered sufficient may be held over till the outstanding dues are assessed and adjusted.
- (b) In respect of the dues as mentioned in item (b) of sub-para (i) above--(1) The retiring Railway servant may be asked to furnish a surety of a suitable permanent Railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc., and the issue of last pay certificate should not be withheld.

(12)

The surety should be required to sign a bond in form No.22.

(2) If the retiring railway servant is unable or unwilling to furnish a surety, then action should be taken as in (a) of this sub-para above.

(3) The authority sanctioning pension in each case shall be competent to accept the surety bond in form No.22 on behalf of the President.

(c) In respect of the dues as mentioned in item (c) of sub-para (i) above—quasi Government and non-Government dues, such as amounts payable by a Railway servant to Consumer Co-operative Societies/ Consumer Credit Societies or the dues payable to an autonomous organisation by a Railway servant while on deputation may be recovered from the death-cum-retirement gratuity which has become payable to the retiring Railway servant provided he gives his consent for doing so in writing to the administration

(iv) In all cases referred to in (a) and (b) of sub-para (i) it is desirable that the amounts which the retiring Railway servants are asked to deposit or those which are withheld from the gratuity payable to them are not disproportionately large and that such amounts are not withheld or the sureties furnished are not bound over for unduly long periods. To that end the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus 25 per cent thereof. In cases where it is not possible to estimate the approximate amount recoverable from the retired Railway servant, the deposit to be taken or the portion of gratuity to be withheld should be limited to 10 per cent of the amount of death-cum-retirement gratuity or Rs.1,000, whichever is less.

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(b) Efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement of the Railway servant concerned. In any case, it should be presumed that there is no claim against a Railway servant if none is made after his retirement within the period indicated below.

15 months, if commercial debts are involved; and 6 months, if concerned debts are not involved.

In respect of dues on account of rent etc., of Government accommodation, the period of 15 months/6 months shall reckon from the date of retirement of the employee or the date of vacation of the Government accommodation, whichever is later.

After the lapse of this period the cash deposit or surety or gratuity withheld for Government dues will be released. However, the dues themselves will not lapse and will be recoverable through legal procedure.

Note:- The time limit of 15 months and 6 months referred to above shall not apply to cases where finalisation of outstanding dues is delayed by employee's own action i.e. litigation launched against the Government etc.

(c) In order to ensure that difficulties do not arise in observing the procedure indicated in sub-clause (b) above, action should be taken in the following directions:-

(1) Every Railway servant should be informed of the outstanding Government dues (except Commercial debts) once a year within three months of the close of the financial year;

(2) It should be brought to the notice of all Railway servants that it would be in their own interest to vacate the Government accommodation immediately after their retirement as any delay in vacating the same, result in delays in settlement of their pensions.

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In the case of employees in occupation of C.P.W.D. accommodation, the application for the issue of 'No Demand Certificate' from the Directorate of Estates should be sent to the Directorate one year before the date of retirement of the employee concerned.

(3) steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned with intimating and progressing of demands. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount should be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(v) Para 313 cannot be utilized to recover any amount on account of items (a), (b) and (c) of clause (i) from any pensionary benefits of a Railway servant. The failure or refusal of a Railway servant to make good any pecuniary loss suffered by the Government/Government dues/non-Government dues cannot also be deemed to be misconduct within the meaning of Rule 319.

(vi) As soon as proceedings of the nature referred to in Rule 315 are instituted, the authority which institutes the proceedings should without delay intimate the fact to the Accounts Officer."

8. Thus in view of the above cited authority, it is evident that a recovery amounts to punishment within the meaning of Rule 6(3) of the Railway Servants (D & A) Rules and can be recovered only after ^{after} notice and ~~and~~ holding an enquiry in accordance with the ^{Railway} Discipline and Appeal Rules, 1968. Thus the plea of the applicant that withholding of the terminal benefits due to the applicant is illegal and not warranted by law, has clearly been made out.

9. The relief (iii) and (iv) have not been pressed before the Bench and the matter has already been decided in favour of the applicant by the grant of the claimed amount by the respondents.

10. In view of the above discussion, the application is partially allowed inasmuch as the claim of the applicant for the payment of the Transfer Allowance arising out of the retirement of the applicant and shifting to his ultimate place of residence in May, 1990 to Delhi is rejected as the applicant immediately after the date of retirement was living within a radius of 20 kms. from the place of posting as per his recorded permanent address. However, the claim of the applicant for refund of Rs.2,000/- illegally deducted by the respondents is allowed with the interest @ 7½% till the date of payment, being the amount of D.C.R.G. wrongfully withheld from payment to the applicant by the respondents. The prayer for grant of relief (iii) and (iv) has become infructuous as the same has already been meted out to the applicant by the respondents. The respondents are directed to pay the amount due as detailed above within a period of three months from the date of receipt of the copy of the judgment. In the circumstances, the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA) 26.7.91
MEMBER (J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)
26/7/91