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In the Central Administrative Tribunal

Principal Bench: New Delhi

OA NO. 317/1990

Date of decision: 07-07-1992.

Yash Paul Puri

...Applicant

Versus

Union of India & Ors.

...Respondents

Coram :-

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member

For the applicant : Shri B.S. Maine, Counsel.

For the respondents : Shri O.N. Moolri, Counsel.

1. Whether Reporters of local papers may be allowed to
see the Judgement? *yes*

2. To be referred to the Reporter or not? *yes*

I.K. Rasgotra
(I.K. RASGOTRA)

Administrative Member

7/7/92
(P.K. KARTHA)
Vice-Chairman

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For the applicant : Shri B.S. Maine, Counsel.

For the respondents : Shri O.N. Moolri, Counsel.

(Judgement of the Bench delivered by Hon'ble
Mr. I.K. Rasgotra, Member (A))

Shri Yash Paul Puri has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 on 13.2.1990, aggrieved by the unjustifiable delay in payment of D.C.R.G., leave encashment, transfer allowance and bonus, after he retired from service.

2. The applicant retired on 30.09.1988 as Chief Inspector of Works (CIOW) from the Ferozepur Division of the Northern Railway. He handed over the charge of the post including stores correctly to the successor, as is apparent from Assistant Engineer/ASR letter dated 31.8.1989 addressed to DEN (1) FZR. The said letter is reproduced

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below:-

"Reg:-Clearance of Sh.Y.P.Puri CIOW/ASB retired on 30/9/88.

Ref:-DEN(I)FZR No.369W/4 Dt.9/6/89.

Reference above, kindly also refer to this office letter of even No. dated 15/6/89. It is brought to your kind notice that all the concerning papers i.e. stock sheets & handing over & taking notes has since been submitted to your office for further disposal & it is to certificate that, there is no any out standing against the above named employee.

Therefore, requested that his dues of settlement may please be made to him after deducting the amount if required.

Necessary remarks of both the IOWs has already been given in the stock sheets & handing and taking over notes."

The applicant vacated the railway accommodation immediately on his retirement on 1.10.1988. The respondents, however, paid him only his provident fund money and released his pension but have not disbursed him the DCRG, amounting to Rs.50,000/-, leave encashment, amounting to Rs.25,000/-, transfer allowance and bonus for the year 1988-89, together accounting for Rs.3,700/-. Finally another amount of Rs.1120.40 spent on local purchase has too not been

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reimbursed to him. The applicant made a representation on 21.1.1989, requesting for releasing of DCRG and other amounts due to him to the DRM, Northern Railway, Ferozepur and followed it up by representations dated 1.6.89 and 10.5.89. He again wrote to General Manager (Pension and Grievances) Northern Railway on 10.6.1989. His representations did not result in either any response or payment of the amounts claimed by him. He has, therefore, prayed that the respondents be directed to pay the amount of DCRG, leave encashment, transfer allowance etc. as due to him without any further delay. He has further prayed that the respondents be directed to make payment of interest at the rate of 18% per annum for the period of delay in paying his retiral benefits from the date of retirement to the date of actual payment.

3. The respondents in their counter-affidavit have submitted that the applicant was the custodian of the Government stores and was responsible for proper upkeep of the said stores placed under his charge. During the course of stock verification several irregularities/discrepencies came to the notice and accordingly stock sheets No.18, 19 and 21/CIOW/ASR dated 29.9.1988 were prepared by the Stock Verifier and the applicant asked to explain the discrepancies/irregularities/shortages. On receipt of the explanation from the applicant as per R-1 vigorous efforts were made to set right the stores and ultimately the

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recoverable amount from the applicant was assessed at Rs.34088.23 which comprises:-

- i) 100 bags of Cement costing Rs.7,000/- was shown to have been issued to the contractor on 4.3.88 vide Pink Slip No.182588 dated 4.3.88 for works at DIW but there is no gate entry for receipt in the receipt Register of RPF DIW.
- ii) Costs of various shortages/discrepancies as detailed in R-II - Rs. 27088/-.

Total (i) + (ii) = Rs.34088/-

The respondents further submit that the applicant was intimated the above recoveries vide registered letter No.726-E/1665/Pension dated 17.10.1990 and deny that the applicant had handed over the complete charge on his retirement. They affirm that DCRG, amounting to Rs.50,235 less Rs.35434 (Rs.34088/- store debits and Rs.1344.93 electrical charges) has since been authorised to be paid to the applicant on 26.10.1990.

Regarding the leave encashment it is submitted that the respondents have not been able to trace out his original leave account and that the applicant has been asked vide No.726-E/1665/TIB/Duplicate dated 30.10.1990 to submit an affidavit to the respondents to enable to obtaining the sanction of the competent authority for exemption from the missing portion of leave account. As soon as the reply is received from the applicant the leave encashment will be processed. Regarding the next claim relating to transfer allowance, the respondents contend

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that applicant has not filed any claim with requisite details for the transfer allowance and, therefore, he has been asked to do the same by 15.11.1990. They further state that the applicant is not eligible for the bonus for the year 1988-89 and further no voucher has been submitted by him for the local purchases made, costing Rs.1120.40/-.

4. In the rejoinder the applicant contends that stock sheets issued by the stock verifier on 30.9.1988 were fully explained by him on 5.10.1988 as would be seen from Annexure R-1 filed by the respondents with the counter-affidavit. After he had furnished explanation/clarification there was no justifiable reason for the respondents to withhold the amount of DCRG due to him. It is further contended that the recoveries made from the DCRG are absolutely arbitrary and against the principles of natural justice. He further contends that according to the provisions in the Indian Railway Pension Manual, 1950 the debit against a retired employee falling in his category can be raised only within six months from the date of retirement. He affirms that he had submitted a detailed note of handing over taking over duly signed by the applicant and his successor (a copy of which is enclosed with the rejoinder). The last paragraphs of the said taking over note reads as under:-

"All the stock sheets till last verified i.e. prior to 9/88 have since been replied and nothing is outstanding.

All the store returns upto 6/88 have been got reconciled in Divl. office. For the period ending 30/9/88 the store returns may be submitted.

All the stores have been handed over to you as per ledger balances correctly. S/Sh. R.L. Ohri Asstt. Supdt & Paramjit Singh Sr. Clerk may be consulted in all the cases for reference.

Sd/-

Sd/-

(Y.P.Puri)
Handing over
CIOW/ASR

(C.L. Bansal)
Taking over
CIOW/ASR."

5. Shri B.S. Maine, learned counsel for the applicant highlighted the fact that the applicant has been paid Rs.14,891 only on 24.11.1990, but no payment has been made on account of leave encashment although the applicant had submitted the required affidavit to the respondents. The learned counsel asserted that the deductions made by the respondents from the amount of DCRG are arbitrary, illegal and in violation of principles of natural justice. In support of his case the learned counsel referred us to the following judicial pronouncements, which are briefly examined hereunder:-

- i) **ATR 1990 (1) 300 Ganpat Rai Vs. U.O.I.**
- ii) **1989 (11) ATC 699 CAT (Cal) S.S.Polley Vs. UOI.**
- iii) **1991 (2) SLJ 63 CAT Ahmedabad P.G. Mehta Vs. UOI & Ors.**

All the above three cases are distinguishable from the case before us and relate to broadly the issues connected with the recovery of commercial debits from Commercial staff without assessing the liability and without giving any show cause notice. Further, the period for which the DCRG can be withheld according to the administrative instructions is comparatively longer for recovery of commercial debits than 6 months prescribed in other case of loss.

iv) **1987 (3) ATC 441 (CAT Cal.) Dr. Mihir Banerjee Vs. UOI & Ors.**

v) **1990 (3) SLJ 379 (CAT Hyd.) Ch. Venkateswara Rao Vs. U.O.I. & Ors.**

The above cases are, however, germane to the issues of law and of fact raised before us, although the material of facts is substantially different. While in the former case **Dr. Mihir Banerjee** (supra) was a Dental Surgeon and was responsible for the medical equipment, tools and balance (dead stock and consumable stocks of the dental clinic), in the latter case the applicant was a Head Clerk stores (Deposit Works). In both the cases, the applicants are stock holders where certain discrepancies/- shortages were found consequent to verification of stores. The respondents in both the cases had taken the stand that recoveries on account of shortages of stores determined after verification can be made without following the procedure under Railway Servants (Discipline & Appeal) Rules, 1968 in accordance with the provisions made in paragraph 323 of the Manual of Railway Pension Rules, 1950. In **Dr. Mihir Banerjee** (supra) case the Tribunal held that:-

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"5. There is no doubt that some discrepancies have been found after stock verification in the Stores of the Dental Clinic. But the railways have not started any departmental proceedings against the applicant and under the Pension Rules, in the absence of departmental enquiry or some other steps for realisation of the amount held to be realisable from the applicant, the retirement benefits cannot be withheld for more than six months.....

It appears from para 6(16) of the reply that the Railway Administration has yet to find out legal avenue for realisation of its legitimate dues from the applicant. In other words, the Railway Administration has not yet made up their minds about the steps to be taken in this regard. For this, we have to refer to the last two lines of the said sub-paragraph.

6. It is true that after the disclosure of the discrepancies in the stock and the equipment of the Dental Clinic the Railway Administration was in genuine difficulty about releasing the retirement benefits of the applicant. But the retirement benefits cannot be withheld for an indefinite period. We have already noted that under the Pension Rules, such withholding of retirement benefits should not go beyond six months in the absence of steps being taken for

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realisation of dues. We cannot, therefore, allow the retirement benefits to be withheld for an indefinite period."

In **Ch.Venkateswara Rao** (supra) case the Hyderabad Bench of the Tribunal examined the implications of paragraph 323 of the Manual of Railway Pension Rules, 1950 and observed that:-

"If as in the instant case the recovery is sought to be made for losses for which the applicant-employee is responsible it would clearly follow that such a recovery amounts to a punishment within the meaning of rule 6(3) of the Railway Servants (Discipline and Appeal) Rules and can be recovered only after a notice and holding an enquiry in accordance with the D&A Rules. Consequently as a result of such an enquiry if it is established that the employee was responsible for the loss or if fraud and negligence is established, the question of consent would not obviously arise. Reference to recovery without consent is only after establishing the liability of the employee and not by arbitrarily determining or holding that an employee has caused the loss. The interpretation sought to be put to Rule 323, para (2) is, in our view, misconceived. We would accordingly hold that the recovery sought to be made from

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the applicant pursuant to the order of the
CAO/C/SC No.W.CON.480/VI/XI dated 21.2.1990 by
setting off the amount allegedly due by the
applicant from his terminal benefits to the tune
to Rs.23,133.78 ps. cannot be sustained. The
plea of the applicant that withholding of
terminal benefits due to the applicant is
illegal and not warranted by law has clearly
been made out."

6. We have heard the learned counsel for both the
parties and perused the record very carefully. In our
opinion, first, the D.C.R.G. and other retiral benefits
cannot be withheld beyond a period of six months as
provided in paragraph 323 of Manual of Railway Pension
Rules, 1950. In this case clearly no action was taken to
recover the amount from the applicant within the said
period. In fact he filed the O.A. in February, 1990 and it
was only thereafter in November, 1990 that payment of
Rs.14,981 was made to him. Withholding of the DCRG of the
applicant beyond a period of six months, therefore, without
initiating any proceedings against him is not legally
sustainable. We are in agreement with the conclusions of
the Calcutta and Hyderabad Benches of the Tribunal reached
in **Dr. Mihir Banerjee** (supra) and **Ch. Venkateswara Rao**
(supra) case. Besides, the accountal of the stores is kept
by the Engineers Subordinates in Numerical Ledgers.
Balances (as brought out in the half yearly statement) are

required to be reconciled frequently with the actual quantity in hand. The Divisional Engineers are required to arrange the verification of approximately 1/6 of the stock under each subordinate by actual account each month so that the whole stock is verified at least once every six months. This verification is in addition to the stock verification made by Accounts Stock Verifier (para 1428 of Indian Railway Code for Engineering Department, 1989). According to the handing over taking over note the applicant had got all the stores returns upto 6/1988 reconciled in the Divisional Office. Thus the discrepancy which would have been requiring settlement would ordinarily relate to the period 1.7.1988 till 30.9.1988 when the applicant retired. We have also perused the stock sheets, containing the description of the items, the discrepancy, the remarks given by the applicant and the remarks given by his successor. In all cases excepting three remarks given by the applicant have been accepted by his successor. These items are briefly discussed below:-

Item-I relates to the two bicycles where there is discrepancy in number of bicycles. The bicycles are in position, but their number given by the manufacurer does not tally. This type of discrepancy can be ascribed to various reasons. Clearly, however, there is no loss involved.

The second item relates to burnt out GI Tank two numbers which is stated to have been cut into plates.

The successor to the applicant has not raised any question about the non-availability of the plates, but has inscribed that the competent authority may take a decision.

The third item of ^{some} significance relates to 780 litres high speed diesel oil. Here the quantitative balance is not in dispute. The quantity has, however, not been taken in the Numerical Ledger pending receipt of the test report of the sample sent to the Deputy CME for testing. We further observe that the details of the recovery assessed by the respondents as per R-II enclosed with counter-affidavit are not in line with the discrepancies listed in the stock verification sheets. Several other items which are not in the stock sheets have been added and cumulatively valued at Rs.27088.23.

The case for effecting recovery for the alleged loss on the basis of the discrepancies listed in the stock verification appeared to lack conviction. In any case, under the Pension Rules in the absence of departmental enquiry or some other steps for realisation of the amount held to be reliable from the applicant. The retirement benefits cannot be withheld for more than six months. It is nobody's case that respondents had initiated any steps to effect the recovery of the realisable amount within the prescribed period of six months. Even the alleged assessment of the loss vide Annexure R-II (p.25 of the paperbook) was done on 18.12.89. No set of the alleged loss against the retirement benefits is allowed unless the due procedure of law is followed, as prescribed under the relevant rules.

In the facts and circumstances of the case, we are of the opinion that the action of the respondents to withhold the payment of the DCRG, leave encashment etc. for over two years and thereafter releasing only the DCRG, after making deductions of the alleged loss, which is unproven is arbitrary and legally not sustainable. Accordingly, we order and direct that the respondents shall pay to the applicant:-

- i) Full amount of DCRG to the applicant less Rs.14,891/- paid on 24.11.1990, togetherwith interest at the rate of 7% beyond three months and upto one year and beyond one year at 10% per annum till the date of actual payment.
- ii) Leave encashment for the period of the leave accumulated in his leave account till the date of retirement. If the leave account has still not been reconstructed, the applicant shall be paid leave encashment for the maximum period of leave which can be accumulated for encashment on retirement, in accordance with the Rules viz. 240 days.
- iii) Transfer allowance, as due to him under the Rules subject to the applicant furnishing full details of his claim. // The applicant shall also be paid interest at the rate of 12% per annum from the date of his retirement till the date of actual payment on the amount of leave encashment.

iv) We pass no orders in regard to the claim for local purchase made by the applicant. If the respondents are satisfied with the vouchers produced by him for the local purchase, his local purchase bill may be settled in accordance with the Rules.

v) The claim for bonus is disallowed.

The O.A. is disposed of on the above lines, with a further direction to the respondents to make payment of the amounts due to the applicant, as per the above orders, as early as possible but preferably within 3 months from the date of communication.

There will be no order as to costs.

Sahayogi 7/7/92
(I.K. RASGOTRA)
Administrative Member

Ansari 7/7/92
(P.K. KARTHA)
Vice-Chairman

July 7, 1992.

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