

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(6)

OA 2640/91

27.04.1992

SHRI V.P. BHARGAVA

...APPLICANT

VS.

UNION OF INDIA & ANOTHER

...RESPONDENTS

CORAM :

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

FOR THE APPLICANT

...SHRI B.K. BATRA

FOR THE RESPONDENTS

...SHRI K.K. PATEL

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

2. To be referred to the Reporter or not? *7*

JUDGEMENT (ORAL)

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

The applicant in this case is a retired Station Superintendent and was last posted at Delhi Cantt in Northern Railway. The applicant assailed the order dt.20.2.1990 (Annexure A1 to the application) wherein in the DCRG amount, a sum of Rs.1050 was desired to be adjusted on account of certain shortcomings of items which the applicant was required to hand over on transfer from Sarai Rohilla to New Delhi Cantt by the order dt.19.8.1986.

The applicant has claimed the relief that the aforesaid order be set aside and the respondents be directed to make over the illegally deducted amount of Rs.1491 from the DCRG along with interest.

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The learned counsel for the applicant has placed the case on the fact that no notice was ever given to the applicant regarding any shortage when he had already handed over charge of the materials which were in the charge on his transfer to Delhi Cantt from Sarai Rohilla on 19.8.1986. Further it is stated that after retirement, the applicant was issued the impugned order dt.20.2.90 showing certain shortages in the materials which were handed over in the charge which valued Rs.1050 and in spite of this, a sum of Rs.1491 has been deducted from the DCRG though the deduction of Rs.1050 was also illegal. Further it has been pointed out that the amount of DCRG has to be paid as laid down in para 2308 of the Indian Railway Establishment Manual, Volume I. The direction given in the aforesaid para does not cover the present case. He also referred to a judgement of the Division Bench of Central Administrative Tribunal, Patna in T.N.Choudhary Vs. UOI, reported in 1991(3) (CAT) 527.

In the aforesaid authority, the Division Bench has held that gratuity can only be held against the established dues. The learned counsel for the respondents in a succinct reply only denying certain

facts without analysing various points averred in the application, stated that the shortage of said articles came for the first time to the knowledge of the respondents only four days before the retirement of the applicant, i.e., 27.5.1989. It is also stated that after retirement, the DCRG amount has been paid and only certain amount was withheld under para 323 of the Railway Servants Pension Manual, 1950. The learned counsel stated that under the said manual, the amount of the dues found against the applicant can be adjusted from the payment of DCRG.

I have heard the learned counsel for both the parties at length. DCRG is an amount which is earned by the applicant by putting a long stand ⁱⁿ in service and cannot be said to be a charity or bounty. Any amount earned in such a manner cannot be ^{lightly} ~~likely~~ withheld. Even if there was a shortcoming in handing over the charge of certain articles, then it was the duty of the respondents to issue a notice in the form of show cause asking the applicant to explain his conduct regarding the shortage in handing over the charge at the time when he was transferred from Sarai Rohilla to Delhi Cantt in

August, 1986. No person can be condemned unheard.

There can be no unilateral fixation of dues, particularly in terms of money on the basis of certain allegations of certain items not having been handed over by the incumbent when in service. The respondents themselves were negligent in not finding out since 1986 till the date of almost retirement of the applicant the alleged shortage in handing over certain articles in the charge.

Even if there was some shortage whether that can be recovered from the DCRG without any notice as the penal amount. Now the point is clear as held in the case of D.V.Kapoor. The Hon'ble Supreme Court has held (D.V.Kapoor vs. U.O.9 AIR 1990 Sc. 1923) that from the DCRG, no amount can be deducted even by way of penalty. At least certain enquiry under the Disciplinary and Appeal Rules, 1968 has to be gone into before fixing the liability of dereliction of duty against the applicant by the respondents. The same process has not been pursued by the respondents, while the applicant was in service. Before his retirement, no enquiry was instituted nor he was served with the chargesheet. Any deduction from the DCRG shall be unjustified and against the principles of natural justice.

In view of the above, the application is allowed with a direction to the respondents to refund whole of the withheld amount which remained unpaid to the applicant of the DCRG along with 10% interest p.a. till the date of payment within three months from the date of receipt of this order. The learned counsel for the applicant has given the amount as Rs.1491 and if this figure is correct, the same be given as the amount due to the applicant which was withheld illegally. In the circumstances, the parties to bear their own costs.

J. P. Sharma.
(J.P. SHARMA) 27.4.92
MEMBER (J)