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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, -NEW DELHI

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O.A. NO.830/1991

DATE OF DECISION : 5.3.92

SHRI G.C.MADAN

...APPLICANT

VS.

UNION OF INDIA

...RESPONDENTS

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SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

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

FOR THE APPLICANT

...SHRI O.P. KHOKHA

FOR THE RESPONDENTS

...SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? HP
2. To be referred to the Reporter or not? VB

JUDGEMENT

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

The applicant in this case, who retired as Chief Goods Supervisor, Central Railway, Faridabad challenged the order dt.16.10.90 passed by Divisional Railway Manager, Central Railway by which a sum of Rs.19,632 is to be recovered from the applicant and this amount is to be deducted from the withheld amount of DCRG. The applicant claimed the relief that the respondents be directed to pay Rs.19,632, the amount of DCRG illegally withheld along with interest. He also claimed interest on the delayed payment of DCRG of Rs.16,960.

2. The contention of the applicant in the application is that the debit of Rs.19632 was raised due to complaint made by Traffic Inspector (Accounts), Ballabgarh and the case was later examined by General Manager (Commercial), Central Railway and Divisional Railway Manager, Jhansi was advised to withdraw the aforesaid debit of Rs.19,632 against the applicant and as a consequence an amount of Rs.20,000 was illegally withheld from the DCRG and was not paid to the applicant. It is further stated that amount of Rs.182 and Rs.1092 was ordered to be refunded to the consignee of the aforesaid goods, meaning thereby that the rate charged in respect of these consignments was not only correct, but there was over charge which was refunded to the consignee. It is stated that after decision was given by General Manager (Commercial) vide letter dt.4.10.88, there was no justification of withholding the amount from DCRG.

3. The respondents contested the application and stated that a sum of Rs.19632 is to be recovered from the applicant because the applicant did not collect under charges on misdeclaration. The consignment was declared as fire wood while the consignment was of timber and it should have been charged double the highest class 300 vide Rule 126, Goods Traffic No.39 Part-I (Vol.I). The applicant himself verified the contents and found them misdeclared. He made an entry of misdeclaration consignment in the misdeclaration register, but ^{had} not recorded the facts on original Railway receipt

4. We have heard the learned counsel for both the parties at length and have gone through the record of the case.

In fact, the deduction is ordered to be made from DCRG and no enquiry has been held against the applicant.

In Ganpat Rai Vs. UOI, ATR 1990(1) CAT 300, there was a similar case of deducting gratuity without any departmental enquiry instituted before or after retirement. The exercise of power of withholding the gratuity is deemed continuation of institution of departmental enquiry as envisaged by Rule 1309. Since no enquiry is shown to have been instituted before or subsequent to the retirement of the applicant, recovery of withholding of gratuity payable to the applicant was held impermissible. Again in the case of D.V. Kapoor Vs. UOI 1990 (14) ATC 906, the Hon'ble Supreme Court also considered the matter where it was held that the petitioner of that case was not charged with nor was given any opportunity, i.e., gratuity will be withheld as a measure of punishment. Therefore, it was held that withholding of gratuity as a measure of penalty is obviously illegal and devoid of jurisdiction. In another case of the Principal Bench in Amrit Singh Vs. UOI & Ors., Full Bench Judgement CAT 244, it was observed that unless there is a proceeding under Rule 2038, the Railway has no right to withhold gratuity. In State of Punjab Vs. K.R. Erry, AIR

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1973 SC 34, where there was a cut in pension without giving reasonable opportunity to show cause, it was held that without giving reasonable opportunity to the show cause against the proposed action of cut in pension, the action could not be justified.

5. In view of the above position of law from the record, it is evident that the applicant was not given any opportunity to show cause and was served with a memo showing a debit of Rs.19,632. In view of this, the action of the respondents cannot be said to be according to law. Moreover, in this case the Divisional Railway Manager, Jhansi by the Memo dt.28.10.1988 clearly informed CGSR, Faridabad that the case cannot be said to be a case of misdeclaration. So the debit note of Rs,19,632 raised on this account be withdrawn.

6. In view of the above facts, there is no ambiguity or doubt in the position of law in this matter and the amount of Rs.19,632 cannot be held from DCRG as a measure of penalty.

7. The application is, therefore, allowed and the respondents are directed to refund the amount of Rs.19,632

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to the applicant, which has been illegally withheld along with 10% interest p.a. till the date of payment. The respondents are directed to comply with the above order preferably within a period of six weeks. In the circumstances, the parties to bear their own costs.

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(J.P. SHARMA) 5.3.92
MEMBER (J)

D.K. Chakravorty

(D.K. CHAKRAVORTY)
MEMBER (A)

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