

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.1223/92

New Delhi this the 23rd Day of May, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)  
Shri C.J. Roy, Member (J)

S.K. Khanna,  
S/o Sh. Waris Ram Khanna,  
R/o 4/143, Subhash Nagar,  
New Delhi.

...Applicant

(By Advocates Sh. R.K. Kamal with Sh. S.K. Gupta)

Versus

Union of India through:

1. The Secretary, Railway Board,  
Railway Bhavan,  
New Delhi.
2. The General Manager,  
Central Railway,  
Bombay V.T.
3. The Divisional Railway Manager,  
Central Railway,  
Jhansi Division,  
Jhansi (U.P.)

...Respondents

(By Advocate Sh. H.K. Gangwani)

ORDER

Mr. N.V. Krishnan:

The applicant, a retired Chief Inspector of Works, Central Railway has filed this O.A. for a direction to the respondents to pay him all the dues with penal interest.

2. The respondents have filed a reply indicating the reasons why certain payments have still not been paid.

3. The matter came up before us for final hearing on 29.4.94. The learned counsel for the applicant pointed out that in regard to two matters there are practically no disputes. In so far as his pension is concerned, the respondents have stated that that his pension has been fixed at Rs.1,578 plus D.A. on the consideration that the 10 months average

pay relevant for fixing the pension is Rs.3,155/-.  
The applicant seeks a direction on this basis.

4. In so far as the claim relating to the T.A. D.A of about Rs.1200/- pertaining to August and October, 1990 is concerned, the respondents have stated that the applicant has been asked to furnish non-payment certificate on the production of which they shall be released.

5. In the rejoinder filed by the applicant it is stated that the necessary certificate has already been filed and, therefore, the respondents should be directed to sanction the TA/DA bills.

6. <sup>only</sup> The contentious issues relate to a claim of Rs.2,162/- stated to be incurred by the applicant on the occasion of the visit of the Chairman, Railway Board in 1986 and his claim for payment of gratuity.

7. We have heard the learned counsel of the parties in this regard. The respondents have not given any specific reply to the claim/ <sup>regarding Rs.2162.</sup> It is, however, contended by the learned counsel for the respondents that vouchers for the expenditure incurred amounting to Rs.2,162/- have still not been submitted. It is also submitted that the applicant did not follow the proper procedure. The learned counsel for the applicant submitted that such expenditure is incurred on the occasion of the visit of high dignitaries and it is in the interest of justice and maintenance of honesty in administration that it is reimbursed. We would have taken such a view in this regard had the applicant furnished more details about this claim such as the items on which the amount was spent, the efforts made

to get the bill sanctioned and what other steps the applicant took. As it is, we notice that this claim does not contain any details for a proper adjudication and besides it has not been explained as to why timely legal action was not taken. In the circumstances, we are inclined to reject this claim.

8. Admittedly, the death-cum-retirement gratuity (DCRG) has not been paid. The case of the respondents is that the applicant was a Chief Inspector of Works and the clearance of the stock verification sheets for the year 1985-86 is still pending. In the absence of a satisfactory reply, the applicant has been held responsible for shortage of stock. Hence, the DCRG has not been paid.

9. The learned counsel for the applicant submitted that as in the case of <sup>the</sup> general civil service, in the Railways also, any loss caused to the Government can be ordered to be recovered by way of minor penalty in a disciplinary proceeding. No such proceeding was initiated while the applicant was in service to recover the alleged loss caused to the Railways by the alleged negligence of the applicant. The applicant retired on 31.10.90. After his retirement no recovery can be made except by instituting a disciplinary proceeding. Again, as in the case of Civil Services, such proceeding cannot relate to any delinquency older than 4 years preceding the date of institution of disciplinary proceeding. In the present case no such proceeding has been instituted even till date. The learned counsel contends that the respondents have acted high handedly in not releasing the DCRG. The applicant is, therefore, entitled to full payment with interest.

In this connection he relies on the decision of the Supreme Court in State of Kerala v. M. Padmanabhan Nair - 1985 SCC (L&S) 278 and a decision of the Full Bench of the Tribunal in Amrit Singh v. Union of India (CAT Full Bench Judgements Vol.I 227).

10. The learned counsel for the respondents agrees that no disciplinary proceeding was initiated against the applicant either before his retirement or thereafter to impose a penalty on him in respect of his acts of omission and commissions resulting in shortage of stock.

11. We have considered the matter. The learned counsel for the applicant is on firm grounds in his submissions. Recovery for making good the loss incurred by the Government as a result of the acts of omissions and commissions of a Government servant is a penalty under the disciplinary rules. Admittedly, no such penalty has been imposed on the applicant.

12. That leaves the question about the action that may be taken after retirement. The learned counsel for the applicant has produced for our perusal the volume-2 of the Indian Railway Establishment Code (5th Reprint) published in 1974. Chapter-23 contains the Railway Pensions Rules. Rule-2308 corresponds to rule 9 of the Central Civil Services Pension Rules, 1972. The rule makes it clear that the President alone is competent to withhold or withdraw a pension if in a departmental proceeding the pensionary is found guilty of grave misconduct or negligence. Clause (b) of the proviso to this rule stipulates that no such departmental proceeding not initiated

before retirement shall be instituted except with the sanction of the President and that it shall not be in respect of any event which took place more than 4 years before such institution. As on date, the alleged loss sustained in 1986 and 1987 cannot be recovered even if the proceedings are initiated against the applicant. It is surprising that the matter was raked up for the first time on 22.2.91 by the respondents when they asked the applicant to attend the office of the Senior Divisional Accounts Officer to explain the S.V. sheets. In the circumstance, we find that even if the respondents decide to institute proceedings against the applicant such proceeding will be illegal in the light of the above provision.

13. We are, therefore, satisfied that the applicant is entitled to the payment of gratuity, which has been withheld for no fault of his, with interest.

14. We, therefore, dispose of this O.A. with the following directions:-

- i) The respondents are directed to sanction and pay pension to the applicant w.e.f. the following (date ~~of~~) his retirement (i.e. 1.11.90) at the montly rate of Rs.1,578/- plus dearness allowance thereon less amount already paid within two months from the date of receipt of this order.
- ii) The respondents are directed to consider the T.A./D.A. claims of about Rs.1200/- for the months of August, 1990 and October, 1990, as mentioned in para 4.2 and dispose of the same within the same period indicated above.

iii) The respondents are directed to disburse to the applicant the amount of DCRG due to him, without making any deduction therefrom on account of the loss alleged to be caused by the applicant as brought out by the S.V. sheets of 1986 and 1987. This amount shall also be paid within the same period as indicated above and it shall carry interest @ 12% p.a. from 1.1.191 (i.e. two months after the applicant had retired on 31.10.91) until the payment is actually made.

15. The O.A. is disposed of with the above directions, with no order as to costs.

*[Signature]*  
(C.J. Roy)  
Member(J)

Sanju.

*[Signature]*  
23/5/94  
(N.V. Krishnan)  
Vice-Chairman