

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 48 OF 1996

Allahabad, this the 18th day of August, 1999.

CORAM : Hon'ble Mr.S.Dayal, Member(A)
Hon'ble Mr.S.K.I.Naqvi, Member(J)

--

S.N.Pandey,
S/o. Late Shri Suraj Din Pandey,
R/o. House No.1 D/1,
Tula Ram Bagh,
Allahabad.

.....Applicant

(By Shri K.N.Katiyar, Advocate)

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Superintending Engineer-II
Northern Railway, Lucknow.
3. Senior Divisional Personnel Officer,
Northern Railway, Lucknow
4. Assistant Engineer, Northern Railway,
Pratapgarh.
5. Chief Permanent Way Inspector,
Northern Railway, Janghai, Distt. Jaunpur.
6. Divisional Security Commissioner (RPF),
Northern Railway, Lucknow.

.....Respondents

(By Shri Amit Sthalekar, Advocate)

O R D E R (Open Court)

(By Hon'ble Mr.S.Dayal, Member(A))

This original application has been filed by
the applicant with a prayer that impugned order of recovery

of Rs.7167/- should be set aside as arbitrary and illegal, and the respondents should be directed to refund Rs.7167/- to the applicant and pay interest of Rs.18% per annum alongwith the cost of the application.

2. The case of the applicant was that he worked till 30-6-94 as Permanent Way Inspector Grade-II and was looking after section from K.M.No. 9/0 to 47/0 between Jaraula and Zafraabadi. He was working under the over all control of Chief Permanent Way Inspector. A theft of 10 rails of 75 Lbs. each was committed in the night of 16-3-94 and 17-3-94 at KM No.41/8-9 where Shri Ganga Ram, Gangman was utilised as Watchman/ Chaukidar. The applicant lodged report of theft on the basis of information received by him from Chaukidar on 17-3-94. The G.R.P. Jaunpur registered a case under Section 379 I.P.C. on 19-3-94. The Assistant Engineer was directed by the Divisional Superintendent Engineer to take action against the persons responsible on the basis of report received through Divisional Security Commissioner (RPF) Lucknow. By Memo dated 8-6-94 respondent No.4 & 5 who were Assistant Engineer and Chief Permanent Way Inspector held the applicant jointly responsible for recovery alongwith the Chief Permanent Way Inspector, Janghai and Gangman Chaukidar. Since the applicant was retiring in the same month, he made a request on 18-6-94 to Assistant Engineer, Pratapgarh that an amount of Rs.7167/- may be deducted from his D.C.R.G. and the balance may be paid to him. It is the contention of the applicant that he had allowed an amount of Rs.7167/- to be deducted because he was in need of retiral benefits for survival after his retirement. He has contended that recovery from his pay

for any pecuniary loss caused to Government of Railway Administration was a minor penalty mentioned under Rule 6 and the respondents were duty bound to follow procedure laid down under Rule 11 and 12 to impose this penalty.

3. We have heard the learned counsels for the parties. The case of the respondents has been given in the Counter Reply in which it has been mentioned that since applicant had submitted an application to Assistant Engineer, Pratapgarh, that since he had been held responsible alongwith two other persons for the theft of 10 rails and was retiring from service on 30-6-94, therefore a sum of Rs.7167/- equal to 1/3rd of Rs.21,500/- loss caused to Railway Administration may be deducted from his retiral benefits and D.C.R.G. and the remaining amount released. Hence the deduction has been made on the basis of willingness given by the applicant.

4. We have perused the letter of the applicant dated 18-6-94 (Annexure- A VI) in which it has been mentioned that the applicant was retiring and with regard to making goods a loss of Rs.21,500/- in the Preliminary Enquiry held by R.P.F. three persons including the applicant was stated to be responsible. In order to avoid withholding of payment of his retiral benefits on account of a technical ground, Rs.7167/- which is 1/3rd of the amount of loss may be deducted from his D.C.R.G. and may be kept with the respondents as this would enable the applicant to perform his family obligations.

5. It is thus clear that the so called admission of the applicant is not an admission but in his anxiety to get his retiral benefit he had requested the Railway Administration to withhold the payment of Rs.7167/- from his D.C.R.G. No proceedings were undertaken by the respondents against the applicant for fixing his responsibility in the matter of theft and in so much as the respondents acted in effecting the recovery outside the provisions of Railway Servants Disciplinary Appeal Rules, 1968, Rule - 6, 11 & 12, the recovery effected by them is clearly bad in law. The respondents are, therefore, directed to refund the amount to the applicant with an interest of 12% within a period of three months from the date of receipt of copy of this order.

6. There shall be no order as to costs.

S. Ram
MEMBER (J)

Havel
MEMBER (A)

/satya/