

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABADAllahabad : Dated this 28th day of September 2000

Original Application No.46 of 1997

CORAM :Hon'ble Mr. Rafiquddin, J.M.

Brahma Deo S/o Mahabir,
 Ex-Asst. Station Master,
 Northern Railway, Station Suriawan,
 District-Bhadoli, R/o Abhiya Road,
 Opposite Railway Station, Suriawan,
 District-Bhadoli.

(Sri Ganga Prasad, Advocate)

. Applicant

Versus

1. Union of India through Secretary, Railways,
 New Delhi.
2. Senior Divisional Accounts Manager (N.R.),
 Hazaratganj, Lucknow.
3. Senior Divisional Commercial Manager (N.R.),
 Hazaratganj, Lucknow.
4. Divisional Railway Manager (N.R.), Hazaratganj,
 Lucknow.
5. The General Manager (N.R.). Baroda House,
 New Delhi.

(Sri Prashant Mathur, Advocate)

. Respondents

O R D E RBy Hon'ble Mr. Rafiquddin, J.M.

The applicant retired on 31-7-1995 on attaining
 the age of superannuation on the post of Assistant
 Station Master from Suriawan Railway Station, district

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Bhadohi. The grievance of the applicant is that he has not been paid gratuity amounting to Rs.50,000/- and the amount of Provident Fund for the period 1958 to 1968 which is due and payable to him by the respondents.

The applicant has, therefore, filed this OA seeking a direction to the respondents to pay his gratuity amounting to Rs.50,000/- and Provident Fund for the period 1958 to 1968 with 18% interest.

2. The facts of the case which emerge from the record are that on 19-4-1995 while the applicant was posted as Assistant Station Master, Suriawan Railway Station, an incident took place in which a mob had assembled at the Railway Station, ransacked the Railway Station and looted the Railway property. A FIR relating to this incident was also lodged by the applicant at the outpost G.R.P. Jhunghai. It appears than an enquiry was held by the Commercial Inspector and it was found that a sum of Rs.46,046/- were looted and a shortage of Rs.420/- was also found. /is

3. The case of the respondents/ that the applicant was required to clear the aforesaid commercial debts due to the Railway administration. It is further stated that during the course of inspection by the Senior Audit Inspector, it was reported by him that the applicant had not remitted the aforesaid amount to the tune of Rs.46,046/- to the DCPM Office w.e.f. 12-4-1995 to 15-5-95 The aforesaid Commercial Inspector vide his report dated 18-09-1995 also held the applicant responsible for the shortage and booking which resulted in loss of Rs.420/- to the administration and as such the total amount in question i.e. Rs.50,000/- had been laying outstanding against the applicant and, therefore, the competent authority ordered to realise the said amount due to the applicant after deducting Rs.50,000/-. As regards payment

of Provident Fund for the period 1958 to 1968, it has been stated by the respondents that in the absence of record from the erstwhile Railway, the same could not be paid at the time of retirement of the applicant.

4. The applicant has, however, denied any commercial debit outstanding against him and he was not required to make any clearance. Thus, the stand taken by the respondents is unreasonable and unjustified in withholding the legitimate claim of the applicant.

5. I have heard learned counsel for both the parties and perused the record carefully.

6. As regards the question of deduction of Rs.50,000/- on account of certain dues to the respondents from the amount of gratuity of the applicant is concerned, it is to be seen whether the respondents have legally deducted the amount or not. It has been contended by the learned counsel for the applicant that the respondents have deducted the amount in an arbitrary manner without fixing the liability of the applicant in respect of the loss to the Railway administration by holding a proper departmental enquiry. Learned counsel for the respondents on the other hand has argued that since the amount in question is an admitted debit, due to the Railway administration, therefore, the Railway administration after completing certain requisite formalities can ask the applicant to make payment of the commercial debits due to the applicant. Thus, there has been no irregularity if the amount in question has been deducted. However, the arguments of the learned counsel for the respondents appears to be very vague because it has not been clarified as to how the amount in question is admitted commercial debit and what are the requisite formalities which the Railway

administration is required to complete before deducting the amount. It is, however, not stated by the respondents that any departmental enquiry or any other enquiry was conducted for fixing liability of the applicant in respect of the loss caused to the Railway administration at the time of the incident which took place on 19-04-1995.

Learned counsel for the respondents has referred to the report of the Commercial Inspector dated 18-9-1995, a copy whereof has been annexed as Annexure-CA-1 and to the contents of the FIR dated 19-4-1995 on the basis of which the Cr. Case under Sections 147, 148, 427, 395, 150 and 151 I.P.C. was registered by the G.R.P. Junghai against certain persons. This FIR was of course lodged by the applicant himself. It is not clear as to whst was the result of the criminal case, which was investigated on the basis of the aforesaid FIR. I also find from the perusal of the report dated 29-4-1995 submitted by the Commercial Inspector of the Railway Station, Varanasi (Annexure-SCA-3) that it was merely a fact finding preliminary enquiry before and not a formal departmental enquiry against the applicant. It is no doubt correct that in this report a mention has been made that the Commercial Inspector also made queries from the applicant regarding the incident and mentioned about his version of the incident. But it cannot be said that it was a formal enquiry in which any liability or responsibility of the applicant was fixed regarding the loss of the Railway property.

7. It is evident from the facts of this case that a very serious nature of incident took place at the Railway Station where the applicant was posted as Assistant Station Master. However, the Railway Authorities concerned did not take any step to hold any enquiry against the applicant for fixation of liability for the loss. The respondents now have made the applicant scap-goat by deducting the

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amount of alleged loss from his gratuity without affording him any opportunity to defend himself or to have started his case. This action of the respondents is certainly in violation of the principles of natural justice and is, therefore, not permissible. The respondents cannot make any recovery of alleged loss from the gratuity of the applicant in this arbitrary fashion without holding a proper enquiry and fixing the liability on the applicant. The action is also painful because the amount is deducted at the time of retirement of the applicant.

8. Learned counsel for the applicant has referred to the decision of the Apex Court in 'D.B. Kapoor Vs. UOI and Ors reported in AIR 1990, SC 1923 in support of his contention. It was held by the Apex Court that withholding the gratuity payable to the employee after his retirement is a measure of punishment. The right to receive gratuity is a statutory right and hence the President is not empowered to withhold gratuity after retirement. In the present case, it is an admitted position that the applicant was not charged with nor was he given any notice that his gratuity would be withheld as a measure of punishment. The ~~factum~~ law laid down by the Apex Court in the aforesaid case is fully applicable to the present case. The respondents are not empowered to withhold the amount of gratuity of the applicant after his retirement without fixing liability after holding enquiry. The Apex Court has also expressed the views in H.L. Trihan Vs. UOI & Ors, 1989 SCC (L&S) 246 that any adverse action involving civil consequences without substantially complying with the principles of natural justice is arbitrary. Therefore, the action of the respondents being arbitrary is not sustainable and the claim of the applicant on this point is justified.

9. It is not in dispute that the applicant was the

regular employee of the Railway. It is not specifically denied by the respondents that the claim of the applicant for non-payment of Provident Fund from 1958 to 1968 is false. It has been merely stated that the record of the erstwhile Railway i.e. Central Railway, Bombay, has not been received. In my considered opinion, it is not a valid ground for rejecting the claim of the applicant. The respondents should have requisitioned particulars and records of the applicant's Provident Fund for the period in question and pay him his dues. Therefore, the claim of the applicant for payment of Provident Fund for the period in question is also justified and deserves to be allowed.

10. In view of what has been discussed above, I allow the OA and direct the respondents to pay a sum of Rs.50000/- to the applicant with interest @ 12% till the date of payment within three months from the date communication of this order. The respondents are further directed to make arrangement for payment of the Provident Fund of the applicant for the period from 1958 to 1968 with interest till date of payment @ 12%. ~~This~~ exercise shall be done within a period of six months from the date of communication of this order. There shall be no order as to costs.

Dube/
Member (J)

Dube/