

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**



OA/350/1452/2018

Date of Order: 11.8.21.



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member

Pundu Sadboo, Son of Hatoo, aged about 62 years, worked as Chief Parcel Supervisor, South Eastern Railway, Kharagpur, residing at Jhapatapur, behind Durga Mandir, ward no. 28, Kharagpur, Paschim Medinipur, Pin 721301, West Bengal.

.....Applicant.

Vrs.

1. Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata 700043.
2. The FA & CAO, South Eastern Railway, Garden Reach Road, Kolkata- 700 043.
3. The Divisional Railway Manager, South Eastern Railway, Kharagpur Division, Kharagpur, Paschim Medinipur, Pin 821031.
4. The Divisional Commercial Manager, South Eastern Railway, Kharagpur Division, Kharagpur, Paschim Medinipur, Pin 821031.

.....Respondents

For the Applicant(s) : Mr. A.Chakraborty & Ms. P.Mondal, Counsel

For the Respondent(s): Ms. G.Roy, Counsel

ORDER

Bidisha Banerjee, Member (J):

This application has been preferred to seek the following reliefs:

"A) Speaking Order dated 07.09.2018 issued by the Divisional Railway Manager, South Eastern Railway, Kharagpur cannot be

sustained in the eye of law and therefore the same may be quashed."



2. Shorn of unnecessary details, the applicant has objected to withholding of DCRG amount due to pendency of Writ Petition No. 25306(W)/2015 before the Hon'ble High Court that does not concern him and where he is not impleaded in any manner whatsoever. Ld. Counsel for the applicant would place the order dated 07.09.2018, which records as under:

No: - SER/P-KGP/CC/565/OA-680/18/PS

Date:-07.09.2018

To
 Pundu Sadboo
 Son of Hatoo.
 Jhapatapur (Behind Durga Mandir),
 Ward No.28
 Kharagpur
 Dist: - Paschim Medinipur
PIN: - 721301.

Sub:-OA No. 680/2018, Sri Pundu Sadboo Vs-
 UOI & Ors. before the Hon'ble CAT/CAL.

You filed an Original Application No. 680 of 2018 before the Hon'ble Tribunal/ Calcutta Bench praying for release of your DCRG payment amounting Rs.1189650/- with interest as you retired from service due to superannuation of age w.e.f. 31.10.2016.

The Hon'ble Tribunal has been pleased to dispose of your case vide order dated 17.07.2018 directing the respondent No.3 i.e. Divisional Railway Manager/S.E.Railway/Kharagpur to dispose of your representation dated 16.03.2018 within a period of six weeks from the date of receipt of the order and after such consideration if your grievance is found to be genuine then expeditious steps may be taken by the respondent No.3 within a further period of six weeks from the date of such consideration to extend the benefits to you.

In obedience to Hon'ble Tribunal's order dated 17.07.2018 I, being Respondent No.3 as well as Divisional Railway Manager/ Kharagpur/ S.E.Railway have examined your representation dated 16.03.2018 towards non-payment of DCRG for 16 months vis-à-vis the findings on consultation with Commercial Department i.e. your parent department and observed the followings:-

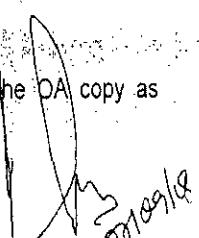
1. Before your retirement on 31.10.2016 you were advised to take in account of coaching balance sheet debited for amounting Rs. 20, 04,040/- (Rs. Twenty lakhs four thousand forty only) vide letter dated 01.03.2016 but you did not account the same in coaching balance sheet till your retirement.



2. These debits has been raised for overloading by submitting multiple manifests at different loading points and you have counter signed the manifests without verifying the contents of the manifests of Howrah/ Shalimar/Santragachhi.
3. Out of that debit amount of Rs. 20, 04,040/- an amount of Rs.1,67,110/- (Rs.One lakh sixty seven thousand one hundred ten only) has been realised from the parties i.e. from M/s Shiv Sankalp Enterprises paid Rs.2269/- out of Rs.26519/- and Sri Umesh Chandra Chowdhury has realised his dues Rs.1,64,841/- but Sri Rajesh Kumar Singh, Bally, Howrah debit amounting Rs. 3,74,314/ (Rs. Three lakhs seventy four thousand and three hundred fourteen only) has not paid his due. So the balance amount of Rs.18, 36,930/- (Rs. Eighteen lakhs thirty-six thousand nine hundred thirty only) is still due in your favour.
4. Out of this due amount M/s Kirti cargo, prop: Sri Kishan Kumar Agarwal, Bhadrakali, Howrah has a huge amount of debit of Rs.14, 38,336/- (Rs.Fourteen lakhs thirty eight thousand three hundred thirty six only) which you had not collected from the consignee during your service period.
5. M/s Kirti cargo, prop: Sri Kishan Kumar Agarwal, Bhadrakali, Howrah has filed a Court Case against the above said debit before the Hon'ble High Court/ Calcutta vide No. WP No.25306 (W) of 2015 which is still subjudice.

In view of the above, your claim cannot be considered till the disposal/finalization of the above Writ Petition.
 This disposes of your representation dated 16.03.2018 as annexed in the OA copy as Annexure A-2.

Please acknowledge the receipt of the same.


 Divisional Railway Manager
S.E.Railway, Kharagpur.

3. Ld. Counsel for the respondents was directed time and again to come up with the notice that was issued before raising a debit against the applicant to legalize withholding of his DCRG and to place the provision of the Commercial Manual for raising of such debit, fixing responsibility on an employee and withholding his DCRG. Ld. Counsel has failed to bring such Manual on record other than an extract of Railway Commercial Manual, particularly paragraph 1820, which reads as under:

"1820. Recovery of railway dues before delivery of goods.- Before delivery of goods, it should be seen that all railway dues and other charges have been paid. Wharfage and demurrage charges should be levied under tariff rules and

recovered, from the consignees/endorsee before the removal of goods from railway remises. Similarly, all undercharges noticed as a result of check of invoices, weighment of goods, etc., should be recovered from consignees/endorsee before delivery of goods. As regards overcharges claimed at the time of delivery, the procedure indicated in Chapter XXI should be followed."



The extract does not imply that DCRG can be withheld pending clearance of commercial debit.

4. Ld. Counsel for the applicant, on the other hand, would invite my attention to paragraph 27.1 of the Board's Circular 6 of 2014 dated 15.04.2014, which reads as under:

"27.1 Loading/unloading will not be supervised by railway staff."

Placing the above, Ld. Counsel would contend that the applicant was not to be held responsible for not supervising loading and unloading and, that, in the absence of any proceedings or show cause or any opportunity, the authorities could not have touched his retiral dues without taking recourse of Rule 9 of the Railway (Pension) Rules, which stipulates that the pension or gratuity of a Railway pensioner can be withheld only by the President, if such an employee has been adjudged guilty of grave misconduct or negligence during his service, for any pecuniary loss caused to the Railways, but not otherwise. That, no proceedings have been initiated against the employee. The rules are as under:

"9. Right of the President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the

pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement;

Provided that the Union Public Service Commission shall be consulted before any final orders are passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem.

(2) The departmental proceedings referred to in sub-rule (1) -

(a) if instituted while the railway servant was in service whether before his retirement or during his re-employment, shall after the final retirement of the railway servant, be deemed to be proceeding under this rule and shall be continued and concluded by the authority by which they commenced in the same manner as if the railway servant had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President;

(b) if not institute while the railway servant was in service, whether before his retirement or during his re-employment-

- (i) shall not be instituted save with the sanction of the President;
- (ii) shall not be in respect of any event which took place more than four years before such institution; and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which and order in relation to the railway servant during his service.

(3) In the case of a railway servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 10 shall be sanctioned. (Authority: Railway Board's letter No. F(E)III/99/PN 1/38(Modification) dated 23.5.2000

(4) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a railway servant.



(5) For the purpose of this rule -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognisance, is made; and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

5. Ld. Counsels were heard and materials on record were perused.
6. Ld. Counsel for the respondents has failed to place on record any provision which allows withholding of DCRG amount due to pendency of any writ petition in regard to commercial debit or pending clearance of any debit not raised against the employee, in question.
7. In view of the above, I would direct the authorities to release the withheld DCRG amount within a period of four weeks from the date of receipt of a copy of this order, if nothing else stands in the way.
8. The O.A. stands disposed of accordingly. No costs.



(Bidisha Banerjee)
Member (J)