

Reserve

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

TRANSFER APPLICATION NO.178 of 1986.

Jagmohan Shaw

....

Applicant.  
(plaintiff)

Versus

Union of India and another

.... Respondents  
(defendants)

Hon'ble D.S.Misra-Member-A

Hon'ble G.S.Sharma-Member-J

(Delivered by Hon'ble D.S.Misra)

This is an appeal against the judgment and decree dated 30.4.1982 of the Ist Addl. Munsif, Varanasi in Original Suit no.80 of 1980 dismissing the suit of the applicant, which has come by transfer under section 29 of the Administrative Tribunals Act, 1985.

2. The plaintiff who was working as Chief Booking Clerk Gaya during the year 1984 retired from railway service w.e.f. from 1.8.1978 and he was not paid full amount of arrears of pay, allowances, encashment of leave and provident fund by the defendants. He had sought a declaration for payment of his dues amounting to Rs.9000/- or whatever more was admissible under the rules. The defendants contested the suit and alleged that on 16.2.1974 a cash bag no.6-C sent by the plaintiff and received by the Divisional Cashier Danapur was found short of Rs.8117/-. A Committee constituted to enquire into the matter held the plaintiff liable to pay 70 per cent of the above mentioned amount and for the remaining other officials were held responsible.

3. On the basis of the pleadings of the parties, learned trial court framed four issues. For the purpose of this appeal it would be sufficient to discuss the findings of the trial court on issue no.1.

Issue no.1. Is the plaintiff entitled to the relief claimed by him.

The trial court observed that according to para 7 of the written statement of the defendant, the plaintiff had been paid a sum of Rs.7,038/- on account of G.P.F. and a sum of Rs.4000/- had been kept on hand out of Rs.10,890/- towards death cum retirement gratuity. The plaintiff-appellant has not denied the receipt of the above mentioned amounts and has failed to specify how much of the amount of Rs.9000/- claimed by him was on account of gratuity, arrears of salary, leave salary and L.T.C.. Learned trial court had, therefore, decided the issue against the applicant.

4. Appellant remained absent on the date of hearing despite service of notice. The main ground of attack taken in the appeal is that the defendants-respondents had made illegal deductions without giving any opportunity to the plaintiff-appellant to show cause against such deduction. The defendant-respondents have accepted that a sum of Rs.4000/- only had been kept in hand out of death cum retirement gratuity. No reasons for doing so has been given. In reply filed before the trial court, the defendants have stated that the matter of fixing responsibility for the alleged loss of Rs.8117/- had not yet been finally decided. They have also stated in para 18 that the then Divisional Superintendent Danapur had given a note dated 8.12.1977 which was in favour of the appellant.

"In such cases the failure can either be by the forwarding station, or in the way, or in the cash office. From the findings the shorty remittance can not be established beyond reasonable doubt because of lapses that have occurred in cash office where the case was received. In this case the last handler taken responsibility.

In my opinion the entire sum should be recovered from the single man responsible in the cash office for his failure when the last transaction occurred."

It is further stated that this advice of the Divisional Superintendent Danapur was not accepted by the Accounts Department. They have tried to justify the with-holding of Rs.4000/- on the ground that the plaintiff was not exonerated for his liabilities by the competent ~~authoritative~~ authority.

*to mention*

5. It would be pertinent that the shortage in the cash bag was discovered on 25.2.1974 and it took almost 3 years for the inquiry committee to give its report. It is pertinent to mention that the defendant-respondents have nowhere contended that any show cause notice was issued before with-holding of Rs.4000/- from the death cum retirement gratuity of the appellant. It appears that by the time the applicant retired from the government service, no final decision had been taken regarding the liability of the plaintiff-appellant towards repayment of the proposed recovery from him. The appellant had filed photo copy of a letter dated 9.9.1983 alleged to have been issued by the office of the Chief Commercial Superintendent Eastern Railway Calcutta to the Divisional Commercial Superintendent Eastern Railway Mohalsarai in which it is stated that the Addl. General Manager (T) had accorded sanction to the proposal to write-off the loss amounting to Rs.8117/- in connection with shortage of Rs.8117/- from Gaya Coaching Cash Bag no.6-C remitted under C.R. Note no. 342358 dated 17.2.1974. The defendant-respondents have not admitted this document and therefore full reliance can not be placed on this document. Learned counsel for the appellant had also filed an application *Seeking* giving direction of the court for production of the document by the respondents which is said to be in their custody. It appears that ~~order~~ <sup>no</sup> ~~order~~ <sup>ad</sup> *order* *to* *be* *pass* on this application and the respondents did not choose to do so. Inspite of this the failure of the defendant-respondent to with-hold opportunity to the *st* such with-holding would

be violative of the principles of natural justice.

6. In view of the admissions made by the respondents the learned trial court should not have dismissed the claim of the plaintiff appellant merely on the ground that he had not given details of the amount claimed by him. In our opinion, the plaintiff is entitled to the sum of Rs.4000/- withheld by the defendant-respondents.

Accordingly, we allow the appeal and direct the respondents to pay an amount of Rs.4000/- to the appellant along with the costs of the suit.

*bh*  
Member-A

*3rd Jan 11/86*  
Member-J

J Singh/ 14.11.1986.