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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.625 of 1986

(C.A. No.102 of 1984)

Union of India Defendant-Appellant

Versus

O.D. Costa Plaintiff-Respondent

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.S.Zaheer Hasan, V.C.)

Appeal No. 102 of 1984 has been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. Plaintiff O.D.Costa was working as Shunter-cum-Driver in 1964-65. An excess payment was made to the tune of Rs. 1900/- in various months of 1964-65. On 17.1.66 chargesheet was served on the plaintiff. On 19.8.69 his services were terminated. On 15.1.1970 his appeal was dismissed. He filed a writ in the same year and on 9.8.74 the Hon'ble High Court directed to take opinion of the Railway Rates Tribunal and thereafter the appellate authority passed the suitable order. On 22.9.75 it was ordered that the removal order stands and they have consulted the Railway Rates Tribunal. Thereafter on 27.9.76 the present suit was filed challenging his order of termination from service. The

learned Munsif decreed the suit. The Union of India filed the present appeal which has been transferred to this Tribunal.

3. Of course we cannot sit in appeal over the findings of the Enquiry Officer and appraise the evidence like a trial court, but at the same time the case should be proved by cogent evidence and findings should not be based on suspicion and conjectures. The learned Munsif has given ground for holding that it could not be proved that plaintiff knew about this bungling and knowingly accepted the excess withdrawal. We need not rehearse those reasonings here. It would suffice to say that the plaintiff's version is that interpolation in the pay sheet was done after obtaining his signature, and this cannot be ruled out of possibility under the circumstances of the case. The pay sheets were summoned but not produced. An affidavit was filed and the plaintiff was allowed to cross examine the person who filed the affidavit but that person was not produced. All the witnesses have stated that they could not say whether the plaintiff knew about the interpolation and knowingly accepted the excess payment. As already stated the ~~valuable~~ chargesheet and other papers have not been produced to prove that the plaintiff knowingly accepted the excess payment. The clerks who could throw light in this matter were not examined. It cannot be ascertained as to how and in what manner the interpolation was done and excess amount was

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withdrawn. The matter was referred to the Railway Rates Tribunal. The third Member of the Tribunal who gave ^Mthe dissenting note has made the following observations: -

- " 1. There is no direct evidence of collusion - nay even of personal acquaint between Shri D.Costa and anyone of the of clerks responsible for the fraud. 20
2. Though the fact of having receiv-10 excess amounts has been 'proved' th possibility, remains that because of appeal composite nature of the receipts of of pay, mileage, overtime running a list etc. and the fact that amounts of th^{wa} court order of magnitude were received ever^{al} nal. he was transferred to Jhansi, Shri D'Costa may have been unaware of the excess receipts.
3. The petitioner's record of service until this case arose, was unblemished.
4. The real culprits in the Accounts office have all been let of lightly."

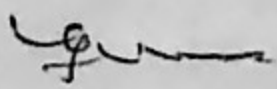
4. In view of all the above we agree with the learned Munsif that the case against the plaintiff has not been proved and the findings are based on suspicion and conjecture. In this connection I would like to mention that on page 2 of the Enquiry Report the following chart was given by the Enquiry Officer:

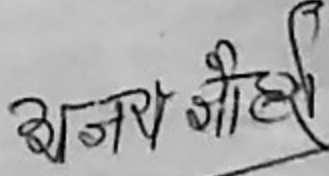
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Month of the pay- sheet.	Entries as per office copy of personnel Branch					Entries as per paid copy				
	L.A. Acctt.		Gross amount payable		Amount payable	L.A. Acctt.		Gross amount payable		Amount payable
	Rs. Ps	Rs. Ps	Rs	Ps.	Rs. Ps	Rs. Ps	Rs. Ps	Rs. Ps	Rs.	Ps.
Feb.65	16-40	79-80	315-60		200-75	116-40	279-80	615-60		500-73
Mar.65	41-07	93-60	383-27		264-50	141-07	193-60	583-27		464-50
Apr.65	Nil	112-75	304-85		187-18	200-00	212-75	604-85		487-18
June.65	Nil	63-00	249-35		164-73	Nil	263-00	449-35		364-73
Jul.65	Nil	78-75	298-45		188-55	Nil	278-75	498-45		388-55
Aug.65	Nil	78-75	314-90		225-20	100-00	278-75	614-90		525-20
Sep.65	Nil	66-15	277-30		186-10	200-00	266-15	677-30		586-10

5. As regards limitation the departmental appeal was dismissed on 15.1.1970 and in the same year the writ petition was filed. On 9.8.74 the Hon'ble High Court ordered to take the opinion of the Railway Rates Tribunal. On 22.9.75 it was ordered that the removal order will stand and the ²²plaintiff's Tribunal has been consulted. After giving notice the, suit was filed on 27.2.76. So there is no question of the suit being barred by time. No other point was pressed before us. The ^{appeal}suit is dismissed with costs on parties.


Vice Chairman


Member (A)

Dated the 23 Oct., 1987

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