

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 24th day of August of 2000.

Coram:-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Mr. S. Biswas, Member (A).

Original Application No. 873 on 1992.

Sri Ballabh Sahai, S/o late Nageswar Prasad,
aged about 64 years, resident of Mohalla,
Daupur, Near Janta Bhartiya Junior High School,
Distt. Gorakhpur.

.....Applicant.

Counsel for the applicant:- S.S. Tripathi.

V E R S U S

1. Union of India, through General Manager,
Northern Eastern Railway, Gorakhpur.
2. Controller of stores Depot, Northern Eastern
Railway, Gorakhpur.
3. Deputy Controller of Stores Depot,
Northern Eastern Railway, Gorakhpur.

.....Respondents.

Counsel for the respondents:- Sri Govind Saran.

O R D E R

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

This application under section 19 of

Administrative Tribunals Act, 1985 has been filed challenging the recovery of the amount of Rs. 39,570.25 as provided in the impugned order dated 19.03.91 (annexure A-1).

2. The facts of the case are that the applicant joined railway^{at} as clerk on 31.12.1951. He retired from service as Depot Store Keeper on 30.11.1986 in grade of Rs. 550-750. The case of the applicant is that he was not given any show cause notice or opportunity of hearing before fixing this liability of Rs. 39,570.25. After retirement he is residing in his village in Deoria District and he did not receive^{at} any letter.

3. From the reply submitted by the respondents it appears that applicant Ballabh Sahai was posted as Depot Store Keeper (II) in Gorakhpur Cantt. By R.R. No. 635801 dated 01.12.85, 58.750 M.T. S.M.Round 20mm was booked to Gorakhpur Cantt. These goods were loaded in wagon No. B.F.R. No. 59371/WR. Consignment was unloaded ^{at} ~~in~~ Gorakhpur. Subsequently it was found from the records of Gorakhpur that the quantity loaded in wagon was short by 7.44.M.T. In para II it has been stated that a letter was written on 15.09.87 intimating the applicant about shortage and loss suffered by the Railways. This letter was written to the applicant after more than 10 months of his retirement. In the counter affidavit it is not mentioned that the letter was served and the applicant had knowledge about this. The order dated 19.03.1991, fixing the liability of the applicant to pay the aforesaid amount has been illegally passed.

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Contd.....

4. Though recovery of the amount from the pay of the Government or Railway employee in respect of pecuniary loss, caused to the Government has been mentioned as minor penalty in rule (6) of Railway Service (discipline and appeal) Rules 1968, ^{elaborate} procedure has been provided in sub rule 11 of the aforesaid rules. Sub rule 11.1.(b) provides that the enquiry shall be held in the manner provided therein. Fixing the pecuniary liability against the employee, though described as a minor penalty, may have very serious consequences ^{as} as seen in the present case. We do not find any averment from material on record on which basis it may be said that enquiry proceedings was initiated against applicant as required in Rules of 1968.

5. Rule 2308/ Indian Railway Establishment Code Vol.II provides provision for withholding or withdrawing a pension of the applicant. The Rule is being reproduced below :-

"Rule 2308..... (C.S.R 351-A) The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if in a 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

- (a) such departmental proceedings, 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



article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

- (b) such departmental proceeding, if not instituted while the railway servant was in service, whether before his retirement or during his re-employment."

6. From the records it is clear that proceedings were not initiated against the applicant during the period he was in service. On the other hand record shows that steps were taken on 15.09.87 i.e. much after retirement.. Proceedings were not in accordance with the provisions contained in Rule 2308 of I.R.E.C. There is no doubt about the legal position that the pecuniary liability can only fixed against an employee either in regular departmental proceeding or by order of Court. We do not find any document of above nature fixing liability of applicant to pay in accordance with law. Order ^{has been passed} ~~is only decide~~ without informing the applicant ~~and~~ which can ~~be~~ not be sustained being in violation of principle of natural justice and provisions of the Rules of 1968.

7. The application is accordingly allowed. The order dated 19.03.1991 (annexure A-1) is quashed. However, it shall be open to the respondents to initiate proceeding for fixing liability in accordance with law. The amount, if any, recovered from the applicant in pursuance of the impugned order shall be paid to him within three months. He shall also be paid all his retired ^{benefits} ~~benefits~~, if there is no other order ^{or} ~~or~~ proceedings pending against him, within the said period i.e. within three months from the date a copy of order ^{is} ~~is~~ communicated to the respondents.

8. There will be no order as to costs.

/Anand/

Member(A)

Vice-Chairman.