

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 787 of 1999
this the 10th day of April 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Anand Shankar Pandey, s/o late Sri Chandra Shekhar Pandey,
R/o Nai Basti Sahadatpur, Brahim Nagar, District Mau.

Applicant.

By Advocate : Sri A.K. Gupta.

Versus.

1. Union of India through General Manager, N.E.R., Gorakhpur.
2. F.A. & C.A.O., N.E.R., Gorakhpur.
3. D.R.M. (P), N.E.R., Varanasi.

Respondents.

By Advocate : Sri G.P. Agrawal.

ORDER (ORAL)

By this O.A., applicant has sought quashing of the undated deduction order of the applicant's DCRG amounting to Rs.27218 and to issue a direction to the respondents to pay DCRG amounting to Rs.27218 and leave encashment amount of Rs.65010/- alongwith 18% interest from the date of retirement dated 31.7.95 till the date of payment and also to pay him deducted salary of Rs.62595/- deducted from 17.8.92 to the date of retirement i.e. 31.7.1995 with 18% interest till the date of payment.

2. It is submitted by the applicant that while working as PWI Gr.II, he had been served with a minor chargesheet. He had submitted his reply and the disciplinary authority vide order dated 1.5.95 fixed him at basic for a period of three months. Against which, he preferred an appeal, but the same has not been decided.

3. Thereafter he was served with another minor chargesheet on 30.7.92/14.8.92 for loss of Rs.519592/- and for violation of Rule 3(1)(i) (ii) & (iii) of Railway Service Conduct Rules 1966 (Annexure A-2) on the ground that there were some shortage in the charge paper given to one Sri Yeswant Singh, which had been given in the year 1985-86, while the applicant was posted as PWI at Aurihar. The applicant had personally met the respondents and explained that the same had ~~happened~~ happened due to clerical error committed by Store keeper and Store Clerk to which the respondents had directed the applicant and one Sri S.D. Ram to go at the store of Aurihar and tally all the articles and enter in the stock register, till such time some amount would be recovered from the applicant's salary, but the same will be returned after completing the formality of charge paper and ~~adjusted~~ adjusted. Accordingly, ~~thus~~, the respondents made certain recovery from the applicant's salary which was not challenged by him thinking that the amount will be returned to him after verification of the charge paper. He has further submitted that pursuant to the chargesheet dated 14.8.92, no enquiry was conducted as per Rule 11, nor a copy of enquiry report was served upon ^{was} the applicant, but ultimately punishment order issued under Rule 11 of Railway Servants (Discipline & Appeal) Rules, imposing a punishment of stopping the applicant's privilege passes for the year 1995 (Annexure A-3). No order for recovery was ever issued to the applicant and he had already retired on 31.7.95, but till date in spite of his representation, the respondents have not released the amount of DCRG and leave encashment alongwith interest @ 18% per annum. He has further submitted that after completing the formality of stock verification, the applicant had been only held responsible regarding 54 wooden sleeper and 40 empty bags vide letter dated 8.6.98.

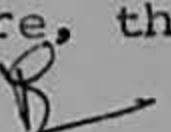
The letter dated 8.6.1998 is annexed as Annexure A-5 to the O.A. In the month of September'97, the Asstt. Divisional Accounts Officer, Varanasi, sent a letter dated 5.9.97 addressed to the Branch Manager of State Bank of India, Mau regarding deduction of Rs.337370/- from the applicant's pension amount. Therefore, being aggrieved, he filed O.A. no.1023/97 before this Tribunal to stay the recovery order. It is submitted in this O.A. that he came to know about deductions from his salary only from the Counter reply filed by the respondents in the said O.A. Therefore, he is filing the present O.A. for the relief(s) as claimed above.

4. The respondents have opposed this O.A. and have raised a preliminary **objection** to the maintainability of this O.A. on the ground that this is barred by order¹¹ rule 2/CPC. In support of their contention, they have relied on 1990 ATC (12) 497 wherein the tribunal had relied on a judgment given by Hon'ble Supreme Court holding therein that order¹¹ rule 2 is based on public policy and since the applicant had already filed another O.A. no. 1023/97 i.e. after his retirement claiming therein quashing of the order dated 25.9.97 and a direction to the respondents not to recover any amount from the pension of the applicant. They have submitted that the applicant could have claimed even this relief in the earlier O.A. because admittedly these ~~documents~~^{deductious R} were made for the periods from 1992 to 1995 and the applicant was very much aware about it at the time of filing of that O.A., but since he did not claim the said relief in the first O.A., he cannot be allowed to file another O.A. claiming the relief in peacemeal. They have also annexed copy of the earlier O.A. with their Counter reply. They have further submitted that this O.A. is grossly barred by time as admittedly, the ~~documents~~^{deductious} were made from 1992



to 1995 and if he he was aggrieved, he ought to have challenged the same at that relevant point of time. Admittedly, at that time the applicant did not raise any ^{On the contrary P} objection, willingly allowed the deductions to be made by the respondents. Since the applicant was Incharge of the stock and shortage was found in the stock, so the recovery was started and the applicant never challenged the same. They have further submitted that on 8.12.93, 20.1.94, 9.2.94, 12.5.94 repeatedly the administration wrote to the applicant to submit the explanation of the chargesheet, but since the applicant did not file any reply, the competent authority ordered for recovery from his salary for the shortage of stores. They have also annexed the letters written to the applicant calling-upon his explanation regarding shortage.

5. I have heard both the counsel and perused the pleadings as well.

6. It is also seen that ^{in Q} O.A. no. 2023/97, the Tribunal had directed the respondents to make payment of the applicant's retiral benefits within a period of three months from the date of communication of the order alongwith 10% interest per annum from the date of filing of the O.A. till the date of actual payment and incase the payment was not to be made within stipulated period of three months, interest was to be raised @ 18% per annum. Therefore, he has submitted that pursuant to the said order, all the retiral benefits, which were due to the applicant, had already been paid to the applicant. In the said order, it is seen that a reference was made ^{that} ^{is Q} an amount of Rs.69995/- was deducted from the salary of the applicant. Apart from it, an amount of Rs.65010/- was deducted from DCRG, yet the Tribunal only directed to release the retiral benefits and did not grant the relief with regard to the deduction from the salary ^{is Q} of the applicant. Therefore, that relief ^{deemed to have been} 

refused by the Tribunal . In the present O.A., applicant has taken a contradictory stand and he has tried to argue that he was unaware of the deduction made from his salary and came to know about it only after the respondents filed their reply in the earlier O.A. But in para 4.7 of the O.A., applicant has himself stated that certain recovery was made from the salary of the applicant which was not protested by him with the hope, that after verification of the charge papers, the said amount will be returned to him. Therefore, the stand of the applicant that he was not aware about the deduction from his salary cannot be accepted and has to be rejected.

7. The applicant's counsel has also relied on the report dt. 8.6.98 (stated to have been given in the year 1998, which is annexed at page 21 of the O.A. The applicant's counsel has also relied on 1994 (28) ATC 20. Since the recovery was made from the applicant's salary before his retirement from service and he had filed another O.A. after his retirement claiming only for release of his retiral benefits, this O.A. is clearly barred by order rule 2 of CPC as he could have claimed this relief even in that O.A. especially when a reference was made in the said order to the deduction with regard to the salary part as well.

8. In view of the above discussions, this O.A. is not maintainable being hit by order rule 2 of CPC. The O.A. is accordingly dismissed. NO costs.



MEMBER (J)

GIRISH/-