

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 13th day of April 2011.

Present:

Hon'ble Mrs. Manjulika Gautam, Member (A)

ORIGINAL APPLICATION NO. 834 OF 2006.

Suresh Tiwari, son of late Sri Shrikant Tiwari, R/o Village Saureji, P.O Saureji -via- Bhatpar Rani, District Deoria, retired as Commercial Superintendent from the office of Goods Office, Deoria.

.....Applicant.

VE R S U S

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi U.P.
3. Senior Divisional Commercial Manager in the office of North Eastern Railway, Varanasi, U.P.
4. Station Superintendent, North Eastern Railway, Deoria Sadar, U.P.
5. Station Superintendent, North Eastern Railway, Gopalganj, State of Bihar.

.....Respondents

Advocate for the applicant:

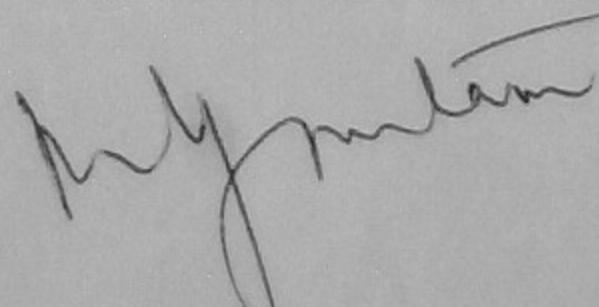
Sri Anil Kr. Tiwari
Shri G.D. Mishra

Advocate for the Respondents :

Sri Anil Kumar

OR D E R

The applicant was appointed on the post of Commercial Clerk, North Eastern Railway, Garahara, Barauni on 25.2.1966. He retired on 31.3.2005. At the time of



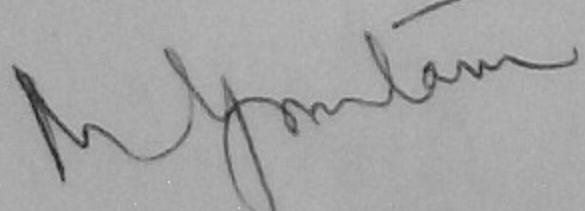
superannuation, three large amounts were deducted from his salary and retiral benefits namely:-

- (i) *Rs. 1,01,482.66P deducted from salary and gratuity as damage rent for the Railway Quarter.*
- (ii) *Rs. 1,47,912 has been recovered as siding charges from gratuity.*
- (iii) *Rs. 89444/- and Rs. 72432/- as demurrage charges.*

In order to effect these recoveries, Rs. 13964/- has already been recovered from the pension of the applicant. Aggrieved by this, the applicant has filed the present O.A. seeking following relief(s):-

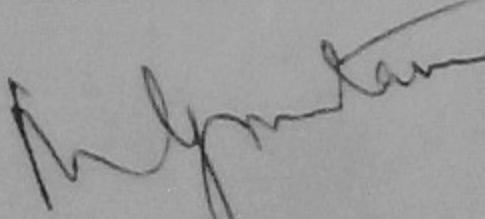
- "(i) *Issue a writ, order or direction in the nature of certiorari quashing the communication/recovery advice dated 8/16.11.2005 and recovery of Rs. 13,964/- from the pension of the applicant which was made on 3.6.2006 (Annexure 22 and 23 to the Compilation I to the Original Application).*
- (ii) *Issue a writ order or direction in the nature of mandamus commanding the respondents and directing them to make payment of Rs. 1,01,482.66P which the respondents illegally recovered as damage rent with 18% interest after adjusting the damage rent as per dated 31.1.2005 passed by the respondents.*
- (iii) *Issue a writ, order or direction in the nature of mandamus directing the respondents to make payment of Rs. 1,61,876/- with 18% interest to the applicant, which the respondents illegally recovered from the Death-cum-retirement Gratuity and pension of the applicant.*
- (iv) *Issue a suitable writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- (v) *Allow the application with costs".*

2. At the time when the arguments were heard on 20.9.2010, the applicant's counsel was not aware of certain facts and, therefore, he has filed Misc. Application dated 14.3.2011 accompanied by an affidavit by the applicant in which it has been stated that relief No.2 has already been



given to him. Applicant has requested in the O.A with regard to relief No.1, 3, 4 and 5 may be decided finally. In view of the fact that relief No. 2 has already been granted to the applicant only relief No. 1 and 3 are to be decided in the present O.A.

3. The case of the applicant is that while he was posted as Commercial Superintendent, North Eastern Railway, Gopalganj, Bihar from 8.12.2000 to 14.2.2004, there was agreement between the Railways and Vishnu Sugar Mills Ltd. Gopalganj for transport of Sugarcane. The siding charges were enhanced w.e.f. April 2000 but there was no Circular available in the office of Station Superintendent, North Eastern Railway, Gopalganj as such the siding charges at the enhanced rate could not be charged from Vishnu Sugar Mills Ltd. Gopalganj leading to loss of Rs. 89,444/-, Rs 72,432/- as late fee was due to be paid by Vishnu Sugar Mills Ltd., Gopalganj to the Railways, 50% of the amount was waived off by the Railways but no payment was made by Vishnu Sugar Mills Ltd., Gopalganj. The applicant wrote several letters to the Vishnu Sugar Mills Ltd., Gopalganj requesting them to pay the amount as siding and demurrage charges. These letters are filed as Annexures No. 8, 9, 10, 11, 12 and 13 to the O.A. The applicant has referred to correspondence between him on behalf of the Railways and Vishnu Sugar Mills Ltd., Gopalganj and has filed the copy of the same. In fact, Vishnu Sugar Mills Ltd., Gopalganj claimed return of Rs. 40,964.60 from the Railways. Thus according to the applicant all efforts made to him to create the payment from Vishnu

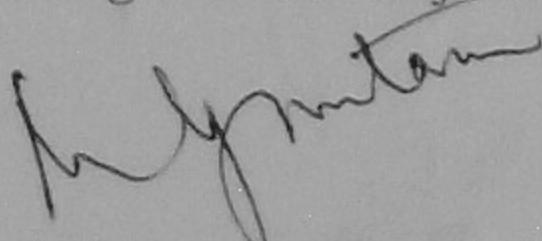


Sugar Mills Ltd., Gopalganj. Subsequently, no chargesheet was served on the applicant and no enquiry was conducted finding him responsible for loss on account of demurrage and siding charges payable by Vishnu Sugar Mills Ltd., Gopalganj. Without any procedure being followed or no opportunity being given to the applicant to defend himself, a total recovery of Rs. 1,61,876 was imposed on the applicant from his gratuity and pension.

4. In the counter affidavit filed by the respondents, it has been stated that impugned order of recovery has been passed as per Rules and law. At the time of his retirement, applicant was held responsible under the Rule 2734 of Indian Railway Commercial Rules, part II for the loss of Railways to the tune of Rs. 1,61,876 and accordingly the same was recovered from his gratuity and pension. In support, they have annexed a copy of the relevant Rules from Indian Railway Commercial Manual Vol-2. Relevant Rule 2734 reads as follows:-

“2734. नौकरी छोड़ कर जाने वाले कर्मचारियों से नामखातों की वसूली जब कोई कर्मचारी सेवा निवृत्त हो रहा हो या अन्यथा नौकरी छोड़ रहा हो तो स्टेशन के बहीखातों में ऐसे कर्मचारियों से संबंधित बकाया पड़े स्वीकृत या आपत्ति वाले सभी नामखातों की एक सूची तीन प्रतियों में तैयार की जानी चाहिए जिसमें बकाया नामखतों का पूरा ब्योरा दियाजाय। ऐसे नामखातों की सूची की एक एक प्रति यातायात लेखा कार्यालय और मंडल वाणिज्य अधीक्षक को भेजी जानी चाहिए ताकि संबंधित कर्मचारी के निपटान देय (सैटिलमैट ड्यूज) में से अपेक्षित वसूली की जा सके। तीसरी प्रति स्टेशन अभिलेख के रूप में रखनी चाहिए”।

5. In compliance, letter dated 3.1.2005, Bakaya Nirikshak informing him of the amount in which the applicant was responsible and letter dated 29.12.2004 in which instructions have been given for adjusting the amount from the retrial



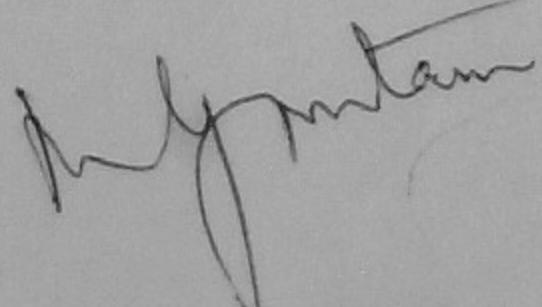
benefits of the applicant have been placed at Annexure C.A. 2 and C.A. 3. While pursuing these documents, it has been noted that Rule 2732 of the Commercial Manual Vol-2, which is applicable in the case of the Railway Servant, who was still in services. The relevant Rule reads as follows:-

“-----यदि आवश्यक हो तो मंडल कायालिय को लिखा जाएगा कि जिस कर्मचारी की लापरवाही या आदेश भंग से प्रशासन को आर्थिक हानि हुई है उसके वेतन में से कटौती का दंड लगाने के लिए स्थापना संहिता में निर्धारित कार्यविधि के अनुसार कार्रवाई की जाय। दंड लगाने के अंतिम आदेश संबंधित कर्मचारी को लिखित रूप में भेजे जाएंगे और प्राप्य रकम उसके वेतन में से वसूल की जाएगी।”

Letter dated 29.12.2004 also says that procedure for making adjustment should be followed.

6. In the rejoinder affidavit filed by the applicant, he has stated that the provisions of Rule 1820 and 2734 of Indian Railway Commercial Rule Part II are wrongly invoked and applied. In his case, that no inquiry or procedure held against him and nor the responsibility fixed. The orders of the recovery were passed without any intimation to him and without giving him any opportunity to defend himself. This is against the principles of natural justice.

7. I have heard Shri A.K. Tiwari, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and perused the records on file. It is very clear that recovery was made from the gratuity and pension of the applicant without any departmental proceeding or inquiry being held nor was he given any opportunity to defend himself

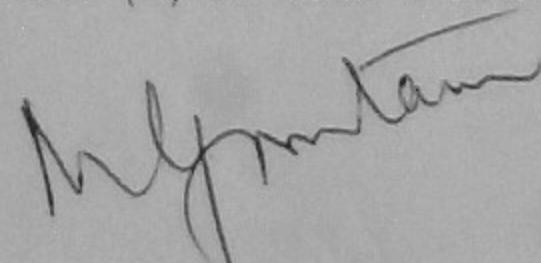


and, therefore, principles of natural justice were flouted by the respondents.

8. Provision regarding recovery of Railway dues from pensionary benefits are provided in Rule 15 of Railway Services (Pension) Rules, 1993, which reads as under:-

- “(1) *It shall be the duty of the Head of Office to ascertain and assess Government or Railway dues payable by a railway servant due for retirement.*
- “(2) *The Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of Sub Rule (4).*
- “(3) *For the purposes of this rule, the expression “Railway or Government dues” includes-*
 - (a) dues pertaining to railway or government accommodation including arrears of licence fee, if any;*
 - (b) dues other than those pertaining to railway or government accommodation, namely, balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance Premia, losses (including short collection in freight charges, shortage in stores) caused to the Government or the Railway as a result of negligence or fraud on the part of the railway servant while he was in service.*
- “(4) *(i) A claim against the railway servant may be on account of all or any of the following:-*
 - (a) losses (including short collection in freight charges, shortage in stores, caused to the Government or the Railway as a result of negligence or fraud on the part of the railway servant while he was in service.*
 - (b) other Government dues such as overpayment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance.*
 - (ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871)”*

Recoveries which were made from the applicant fall in the category of Sub Rule 4 (i) (a) and are to be governed by Rule 8. Sub Rule (3) of Rule 8 reads as follows:-

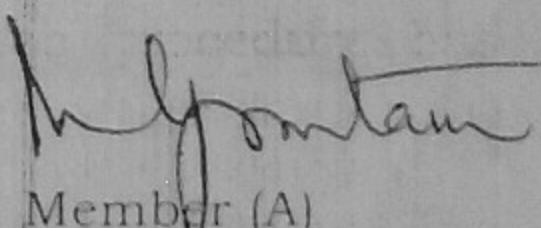


(3) "In a case not falling under sub-rule (2), if the authority referred to in sub-rule(1) considers that the pensioner is *prima facie* guilty of grave misconduct it shall, before passing an order under the sub-rule (1)-

- (a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the appointing authority, such representation as he may wish to make against the proposal; and
- (b) take into consideration the representation, if any, submitted by the pensioner under clause (a)"

The case of the applicant in this O.A. is that there was no finding to the effect that loss to the railway as a result of negligence or fraud on the part of the railway servant while he was in service and, therefore, no recovery could have been effected from the railway servant without such a finding. But even if we consider it as the case of negligence, the provision of Sub Clause (iii) of Rule 8 will apply and, therefore, notice will have been served upon the retired railway servants and action proposed to calling upon him to submit his reply within 15 days and orders will be passed only after taking his representation into consideration. No such procedure has been followed in the case of the applicant.

9. In view of the above facts, the O.A. is allowed. As far as reliefs No. 1 and 3 are concerned, respondents are directed to refund the entire amount deducted from the applicant from his gratuity and pension alongwith 10% interest immediately as recovery has been made without considering the provisions made in the Rules. No costs.


Member (A)

Manish/-