

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 9th day of Sept. 2010.

Present:

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

ORIGINAL APPLICATION NO. 935 OF 2007

Mangroo Ram, aged about 65 years, S/o late Sukkhu Ram,
R/o Village Ghatampur, P.O. Chakia, District Chandauli.

.....Applicant.

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Additional Divisional Railway Manager- II, Northern Railway, Hazratganj, Lucknow.
4. The Senior Divisional Railway Manager (Operating) Northern Railway, Hazratganj, Lucknow.

.....Respondents

Advocate for the applicant:

Sri H.S. Srivastava

Advocate for the Respondents :

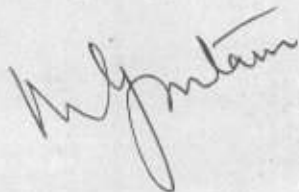
Sri S.K. Rai

ORDER

The applicant was posted as Station Superintendent at Amethi Railway Station in 1993 and retired from that post on 31.1.2002. On the evening of 29.1.2002, just three days prior to his superannuation, he was placed under suspension. Thereafter he retired on 31.1.2002. On 5.2.2002, when the applicant went to the office to collect his retiral benefits, he was informed that all his dues have been withheld by the Senior Divisional Manager (Operating), Northern Railway,



Lucknow. He made a written request dated 5.2.2002 but no reply was given to him nor could he succeed in meeting Senior Divisional Manager (Operating). When he finally met a Divisional Railway Manager on 9.4.2002, he was served with chargesheet dated 30.1.2002. This chargesheet was served to him after a lapse of more than 3 months. A letter dated 22.2.2002 was also issued to him for making recovery of Rs.1,72,780/- from his gratuity if the same is not deposited by him. Subsequently vide letter dated 9.9.2002, the applicant was directed to deposit the above-mentioned amount otherwise the same would be recovered from his gratuity. The applicant made representations dated 6.3.2002 and 20.9.2002. When his terminal benefits were not released, the applicant filed O.A. No. 386 of 2003. The above O.A. was disposed of on 14.8.2003 with direction to the respondents to conclude the disciplinary proceedings against the applicant within four months from the date a copy of this order was filed. It was also provided that amount of Rs.1,67,260, which is recoverable from the applicant may be withheld and remaining amount may be released as per Rules. When above order was not complied, the applicant filed Contempt Petition NO. 7/2005. The enquiry in the disciplinary proceedings was completed without examining Shri Imtiaz Ahmad, who had submitted the Detailed Inspection Report alongwith chargesheet. A recovery of Rs. 1,67,260/- was imposed from the gratuity of the applicant vide order dated 11.1.2007 without making copy of the enquiry report available to the applicant or giving him an opportunity of hearing. The



applicant moved an appeal dated 17.2.2007 stating that no copy of enquiry report had been made available to him. He was supplied the copy of enquiry report vide letter dated 20.3.2007 with direction to represent his case within 10 days. The applicant submitted his representation dated 15.4.2007 but the respondent No. 3 imposed the same penalty of recovery from the gratuity of the applicant by non-speaking order. Aggrieved by the same, the present O.A. has been filed seeking the following relief (s):-

- “(i) to quash the following orders:
 - (a) Order dated 16.5.2007 of the Disciplinary Authority.
 - (b) Order dated 25.7.2007 of the Appellate Authority.
- (ii) to issue orders/directions to the respondents to refund the entire amount of retirement gratuity withheld by them and pay the commuted value of pension, balance amount of G.P fund, transfer and packing allowance and amount of safety award with interest thereon & 18% per annum from 1.2.2002 till the date of actual payment.
- (iii) to issue any other order/direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case”

3. The main contentions of the applicant are that the chargesheet served upon him was backdated to circumvent the necessity of taking Presidential assent after his retirement, therefore, according to the applicant all further proceedings are also illegal. He has also stated that the action taken against him is malafide on the ground that it was initiated just few days prior to his retirement. The enquiry report also held him jointly responsible alongwith one Shri V.P. Singh but no action has been taken against Shri V.P. Singh and entire recovery has been made from him.



4. In the counter affidavit filed by the respondent, it is stated that the applicant was suspended on 29.1.2002 and was called to serve major punishment chargesheet vide S.F. 5 on 30.1.2002 but he did not cooperate. Chargesheet was pasted on the door of the applicant on 31.1.2002. Hence, there was no need for taking Presidential assent for proceeding against the applicant. It has also been stated that in the representations submitted by the applicant, he himself admitted the loss caused to the Railways and has tendered his apology. Accordingly, loss caused to the Railways is being recovered from his gratuity.

5. In the rejoinder affidavit filed by the applicant, his contention is that Annexures Ru D-5 and Ru D-6 bearing the date 30.1.2002, which form part of chargesheet are the Inspection Reports of Amethi Railway Station carried out from 2.40 to 16.20 hrs on 30.1.2002. Amethi Railway Station is about 150 Km away from Lucknow. It is surprising that the Detailed Inspection Report is dated 30.1.2002 and on the same date, the chargesheet based on the Inspection report was issued to the applicant. The applicant has also stated that enquiry report in his case was prepared on 30.8.2006 but letter for recovery was already issued on 22.2.2002. Thus, the punishment to be imposed upon him was already determined even before the finalization of enquiry report. The applicant has also stated that he had admitted his mistake only at the instance of the Senior Divisional Manager as he has been assured in case he accepts his mistake, his terminal benefits

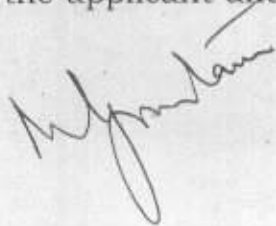


will be released. In fact the applicant points out the fact that in para 4 of the enquiry report, the Inquiry Officer held the applicant and Shri V.P. Singh jointly responsible for the loss to the Government. The applicant has also stated that order of the Hon'ble Tribunal dated 14.8.2003 had directed the respondents to pay all other terminal benefits after withheld of Rs. 1,67,260/- but in spite of that, the following payments have not been made to the applicant:-

<i>Retirement Gratuity</i>	<i>Balance Rs.19498/-</i>
	<i>(after recovery of Rs.167260/-</i>
<i>Commuted Value</i>	<i>Rs. 265239/-</i>
<i>Balance of G.P Fund</i>	<i>Rs.52000/-</i>
<i>Transfer of Packing Allowance</i>	<i>Rs.12000/-</i>
<i>Safety Award</i>	<i>Rs.3000/-</i>

As regards payment of Transfer of Packing Allowance and Safety Award, the applicant had already submitted application to respondents to payment of the same but the same have still not been paid"

6. Having heard both the counsel and perused the records on file, I am of the opinion that the proceedings against the applicant were initiated just 3 days prior to his retirement and inspection was done on 30.1.2002 whereas the applicant had already been suspended on 29.1.2002 and had been asked to handover the charge to Shri V.P. Singh. It is very clear that the inspection note dated 30.1.2002 was annexed to the chargesheet also dated 30.1.2002 in a great hurry. It is also clear that the enquiry report held the applicant and Shri V.P. Singh jointly responsible for the loss of revenue but it is clear from the records available on file, no action taken by the respondents against Shri V.P. Singh and entire responsibility was put on the applicant and recovery of Rs. 1,67,260/- was



affected from his gratuity. The entire proceedings held against the applicant give impression that the respondents had already decided to the effect the recovery from the applicant and no attention at any point of time has paid to his representation. It is also not clear that when the enquiry officer has held that two persons jointly responsible for the loss caused to the Government under what circumstances the entire recovery is being made from the applicant. A recovery of amount of Rs. 1,67,260/- cannot be made on the mere admission of the applicant that he has made a mistake and may be forgiven for this.

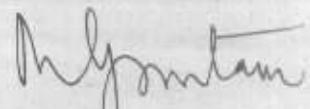
7. The attention of the respondents was invited to the fact, that the enquiry report dated 30.8.2006 found the applicant and Shri V.P Singh jointly responsible but action has been taken only against the applicant. Rule demands that if there is disagreement with the finding of the Enquiry Officer, it should be clearly stated but neither of the impugned orders dated 16.5.2007 and 25.7.2007 state the fact that they are disagreeing with the finding of Inquiry Officer. Learned counsel for the applicant has filed noting dated 5.7.2007, which is prior to issuing of Appellate Order but there also the Appellate Authority has simply stated that the applicant has admitted his guilt and also that in absence of record, it was not possible for his successor to recover the staking charges. But there is no mention of the finding of the Inquiring Officer that two persons were jointly responsible for the loss of Revenue. The entire proceedings stand vitiated due to the fact

[Signature]

that the Inquiry report held two persons jointly responsible but without disagreeing with the same in writing, the recovery orders for the entire amount ~~have~~^{had} been passed against the applicant whereas no action has been taken against Shri V.P Singh.

8. In view of the above observations, the order of the recovery dated 16.5.2007 and 25.7.2007 (Annexures A-19 and A-23) are hereby quashed and set aside. Respondents are directed to consider the matter afresh keeping in view all the points raised by the applicant in his representation particularly the fact that he had only 3 days left to retire when the incident took place. This exercise be done within 2 months from the date of receipt of a certified copy of this order. It is not fair to punish an employee, who has worked satisfactorily throughout the career and then to find fault just 3 days before his superannuation.

9. With the above observations, the O.A. is disposed of. No costs.


Member (A)

Manish/-