

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABD BENCH
~~XXXXXXXXXXXX~~

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O.A. No. 29 OF 1987.
~~ExxNxx~~

DATE OF DECISION 27-8-1990.

SHRI P.G. MEHTA Petitioner

MR. C.S. BADKAS Advocate for the Petitioner(s)

Versus

UNION OF INDIA & CRS. Respondents.

MR. N.S. SHEVDE Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. N.R. CHANDRAN, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? Ys
2. To be referred to the Reporter or not? Ys
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Ys

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(8)

Shri Pradyumn Gangashanker Mehta,
Adult, Occupation Pensioner,
Residing at B-27 Navanath Nagar,
Baroda - 390 015.

.... Petitioner.

(Advocate: Mr. C. S. Badkas)

Versus.

1. Union of India,
Represented by Secretary,
Ministry of Railways,
Government of India,
New Delhi.

2. General Manager,
Western Railway,
Churchgate, Bombay.

3. Divisional Railway Manager,
Baroda Division, Western Railway,
Pratapnagar, Baroda.

..... Respondents.

(Advocate: Mr. N. S. Shevde)

J U D G M E N T

O.A.No. 29 OF 1987.

Date: 27-8-1990.

Per: Hon'ble Mr. M. M. Singh, Administrative Member.

The superannuated (with effect from 31.12.1985) applicant was last serving as Railway Station Superintendent at Ankleshwar in Baroda Division of Western Railway. He has questioned the non-disbursement to him of a sum of Rs. 37405.50, the death-cum-retirement gratuity amount, which the Respondents kept in deposit and oral and written requests made to Respondent No. 3, the D.R.M. Baroda Division, went unheeded and the D.R.M. allegedly neither acknowledged nor replied his two letters dated 3.3.86 and 3.5.86. Even the notice dated 9.11.86 from his advocate went unheeded. The applicant therefore seeks direction to the Respondents to disburse the amount immediately with

18% interest from 1.1.86 upto the date of disbursement and Rs. 1000/- in costs of the suit.

2. It is to be especially noticed that a cheque for Rs. 62642.95 as terminal benefits was sent to the applicant under a covering note. In this note, the total amount due for payment to the applicant is mentioned as Rs. 100048-45 from which Rs. 37405-50 (equal to the DCRG, as shown in the note) having been kept in deposit, cheque of Rs. 62642-95 only was sent to the applicant. Except for this covering note with the cheque, no other intimation to the applicant that the DCRG amount is not to be disbursed to him and reasons for the same and asking the applicant to show cause against it is on record of the case. Applicant's representation dated 3.3.86 addressed to Sr.D.C.S., Baroda says that he had received the cheque and the covering note on 4.1.1986 and as even till date the amount taken in deposit was not released, he made the representation. Followed another representation dated 3.5.1985 and Advocate's notice dated 9.12.1986 to the General Manager, Western Railway.

3. Paras 6.4 to 6.13 of the application which inter-alia level serious allegations like : "nothing as a reason has been informed to the applicant upto now", "nothing pertaining to such deposit and its calculation has been informed to the applicant," the "amount deducted without any knowledge and, reason" shared with the applicant , "the respondent No.3 did not have courtesy to

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acknowledge the letters even, leave alone replying to them and performing the legitimate duty of return of the amount so arbitrarily deducted" have been answered by the respondents with bald facts and no explanation for the alleged acts of omission and commission by saying that DCRG amount was retained in deposit as the DCS, under his reference letter of 21.2.1986 incorporating note dated 11.2.1986 of Commercial Inspector (D) sent through him, advised that debit amount of Rs. 49980/- is outstanding at Ankleshwar against the applicant and O.S. settlement should keep Rs. 50,000/- as deposit till further advice from the debit section. In view of this advice, the Commercial Department kept in deposit the DCRG amount against railway claims. The amount thus kept in deposit was released on 16.10.87 after deducting Rs. 7390/- towards rent, cess charges, traffic debit and Electrical charges. The applicant is not entitled to any of the reliefs claimed. The reply shows that the Respondents are under the impression that the applicant could get only as much from the retiral benefits as they gave and when they ^{gave} / and the respondents not owing any duty to clarify or reply to the applicant much less give opportunity to the applicant to show cause before withholding from him his rightful retiral benefits.

4. Para 4 of the reply of the respondents shows that Rs. 30,015-50 paise from the amount kept in deposit was released for payment on 16.10.1987 after recovering (i) Rs. 9-05 towards rent from 1.1.86 to

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7.1.86, (ii) Rs.1-35 Paises towards cess charges for the above period, (iii) Rs. 249-60 paises towards electrical charges and (iv) Rs. 7130 towards traffic debit as per DRM's order and Sr.DPD's note dated 15.10.87. Even if the recovery of the amount towards the first three items adding upto Rs.260 without notice is ignored as the same reflects applicants' undisputed commitment to pay being connected with his occupation^{of} the railway quarter, the fourth item involving an amount of Rs. 7130 continues to be retained against traffic debits. Thus keeping in deposit Rs. 37,145.50 paises (Rs. 37405.50 paises of DCRG reduces by Rs. 260 being the amount of rent, cess and electrical charges) upto 15.10.1987 and Rs. 7130 thereafter also ^{remains} the subject matter of dispute.

5. We heard the learned counsel for the applicant and the respondents and perused the record.

6. The learned counsel for the applicant argued on the arithmetical nature of the covering note and absence of any proper intimation, order or concrete steps on the part of the respondents to fix any responsibility on the applicant for any misconduct or negligence which might have resulted in any financial loss to the Railways and that the shocking step of keeping in deposit the large sum of DCRG without sufficient explanation or prior intimation to the applicant is not permissible under the law and rules and is violative of the

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principles laid down by the Supreme Court in A.I.R. 1985 S.C. 356 (State of Kerala Vs. M. Padmanabhan Nair), infra, and the respondents must pay the penalty for their illegal acts.

7. Mr. Shevde, learned counsel for the respondents, while urging the pleadings submitted that there is a background of correspondence between the applicant and Railway Administration with regard to the debits. He, however, admitted that the written reply makes no reference to such background correspondence to justify keeping the DCRG amount in deposit but relies only on the intimation from Commercial Inspector (D) sent through the DCS as justification for the Respondents' action. There is no averment that the applicant was at fault for which responsibility fixed or sought to be fixed in accordance with law and rules and he asked to show-cause. Even after more than four years after his retirement till date, no responsibility has been fixed on the applicant and no disciplinary proceedings taken against him despite which a sum of Rs. 7130 continues to be retained in deposit for which the reason mentioned is "towards traffic debit as per DRM's order and Sr.DPO's note dated 15.10.1987". It is not even averred or submitted by the respondents that the applicant has been furnished with a copy of this order and Sr.DPO's note for his information about the reasons or that the DRM's order was issued after hearing the applicant.

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8. In order to avoid delay in preparation and finalisation of pension papers a monitoring system with specified time schedule for completing various steps for timely sanction of pensionary benefits has been laid down in Government instructions. The preparation of pension papers is required to be initiated two years before the date of retirement and the officer responsible for issuing the pension payment order is required to issue the same including the order of payment of DCRG not later than one month in advance of the date of retirement. The case law on the subject of timely payment of all retiral benefits and the compensation to the retiring employee in case this has happened because of the negligence and absence of diligence of the employer is well settled. In D.S. Nakara & Ors. V/s. Union of India and Ors., 1983 S.C.C.(L&S) 145, the Supreme Court held that "Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past service rendered." Law is also settled about the need for making timely payment of retiral benefits. In State of Kerala and Others. Vs. M. Padmanabhan Nair, Supra, relied upon by the applicant, there was delay by nonproduction of last pay certificate and no liability certificate from the concerned departments which resulted in delay in sanction of pension and gratuity. The Supreme Court held thus on the nature of pension and gratuity and how culpable delay in their disbursement is to be viewed:

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"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

"Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."

In view of the rules on timely payment of retiral benefits and the Supreme Court decisions that the administration is answerable for any inordinate

delay, it is for the respondents to satisfy us that their keeping from the DCRG amount ^{sum} a of Rs. 37145-50 ps. in deposit to begin with and Rs. 7130 from that amount from 16.10.1987 onwards was lawful.

9. In view of the contention of the respondents that there being outstanding debit against the applicant due to which the DCRG amount was taken in deposit, we referred to the rules on the subject. According to Rule 323(I) of Manual of Railway Pension Rules 1950 (corrected upto 1st September 1969), a

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claim against a Railway servant may be on account of: (a) losses (including short collection in freight charges shortage in stores) caused to the Government 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 admitted and obvious dues such as house rent, Post Office Life Insurance premia, outstanding advance, etc.; and (c) non-Government dues. According to sub Rule 323(iii) of Pension Manual, sanction to pensionary benefits should not be delayed pending recovery of any outstanding Government dues and if, at the time of sanction, any dues remain unassessed and unrealized, the prescribed course of action has to be adopted. The prescribed course in regard to ^{claims} such/figures in (a), (b) and (c) of para 323 and provides for taking suitable cash deposit from the Railway servant or holding over only such portion of the death-cum-retirement gratuity as may be considered sufficient over till the outstanding dues are assessed and adjusted with regard to claim of the type (a) mentioned above. Clause (b) of subpara (iv) of para 323 says that efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement of the Railway servant and presumption that there is no claim against a Railway servant arises if none is made after his retirement within the period of 15 months, if commercial debits are involved and 6 months, if commercial debits are not involved. As the applicant was last working as Railway Station

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Superintendent at Ankleshwar Railway Station, we also referred to Indian Railway Commercial Manual to understand the system of railway debits. According to para 2703 of this Manual, Railway station debits arise as a result of internal checking in the Traffic Accounts Office of the various returns submitted by the railway station and also as a result of the examination of accounts by the Inspector Station Accounts during his inspection at the railway station. These reveal mistakes like error in charging fare or freight, short remittance of cash, base coins, or other causes, involving apparent financial loss to the railway revenues and the amounts so identified have to be debited in full to the Station responsible by means of an error sheet. All such error sheets have to be taken to debit side in the Station balance sheet of the month in hand and if not fully adjusted or paid by the close of the month, the unadjusted or unpaid amount has to be shown as outstanding in the station balance sheet. According to provisions in Para 2709 of the Manual, they are "payable by the person through whose fault it has been incurred". In the same rule, duty is placed on Station Master to thoroughly check the error sheets or debits with the connected initial documents and, in case the debit is admitted, to determine by whom the amount is payable. For admitted debits against persons still working at the station, the employee concerned has to give it in writing whether he proposes to clear

the debit by cash payment or agrees to a deduction through his salary bill. If the staff is since no longer at the station, the Station Master has to ensure that the responsibility is fixed against the correct person. If debits are objected to, detailed reasons are required to be given in support enclosing copies of supporting documents, if any. Objections from Stations can be, according to para 2714 of the Manual, entertained upto a period of two months from the date of receipt of the error sheet at the railway station. Para 2734 of the Manual which lays down the procedure of recovery of debits from staff leaving service is relevant in the case before us. This para is reproduced below:

"2734. Recovery of debits from staff leaving service. - When any member of the staff is retiring from or otherwise leaving service, all debits outstanding in the station books, whether admitted or objected, pertaining to such staff should be listed in triplicate furnishing full details of the outstanding debits, one copy of the list of such debits should be submitted each to the Traffic Accounts Office and the Divisional Commercial Superintendent for arranging recovery, wherever due, from the settlement dues of the staff concerned, and the third copy retained as station record."

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10. From the above outline of the rules is clear that it is not the Station Master who is to be held responsible for the debits raised against his station staff unless the debits arose because of the station master's own errors. The Station Master is charged with the responsibility of receiving error sheets and to proceed in the

✓ (18)

prescribed manner to check and determine by whom in his staff the amount of the debit is payable and to take prescribed measures to arrange to recover the same from the concerned. Debits thus have to be linked by the station master to the concerned member of the staff responsible and when such member of the staff is retiring or otherwise leaving service, steps in accordance with para 2734 (supra) have to be taken. In railway hierarchy, Station Superintendent is immediately superior to the Station Master and could therefore normally not be directly responsible for action on error sheet and taking the debits to the concerned staff. Also, as Station Superintendent, he should normally not be required to directly perform such duties as are performed by railway station staff in the course of which may occur errors giving rise to error sheets. This is the understanding emerging from the rules to which we referred to in order to understand the probable situation in the face of scanty light thrown by the parties.

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The respondents have to strictly clarify how, in such an hierarcheal arrangement and the rules, the Station Superintendent came to be personally held responsible for any outstanding debits. We are of the view that the respondents have miserably failed to do so.

11. Law is undoubtedly settled (Delhi Cloth & General Mills Co. Ltd. V/s. Its Workmen, AIR 1970 SC 919) that employer can forfeit an amount equal

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to the loss directly suffered in consequence of the misconduct or negligence of the employee. Railway rules, supra, contain provisions enabling that Law is equally settled that the enabling provisions in this regard cannot be invoked without giving opportunity to the employee to show cause which becomes even more necessary in this case in view of the rules stated above and the position emerging from them. Retiral benefits are held to be, in the case law supra, valuable rights and property of the retiring employees. It should therefore be evident that these rights are infringed ^{depriving} by retiring employee the enjoyment of retiral benefits wholly or partly, for a questionably long time, except when the retiring employee himself is to be blamed for delaying settlement (about which there is no averment or allegation in the case before us and the applicant was in fact submitting representations which elicised no reply as stated earlier).

In State of Orissa Vs. Dr.(Miss) Binapani Dei and others.(A.I.R. 1967 S.C. 1269) in which an administrative order involving civil consequences was issued without sufficiently complying with the principles of natural justice, the Supreme Court observed :

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

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applied
The above ratio was by the Supreme Court in State of Punjab Vs. K.R. Erry (A.I.R. 1973 S.C. 834), a case involving cut in pensions, without giving reasonable opportunity to show cause. The Court observed in para 20 :

"The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice audi alteram partem applies."

and in para 22 :

"In the case before us the officers are being deprived of part of the pension. Therefore, it was quite assential in all fairness and elementary justice that they should have been given reasonable opportunity to show cause against the proposed action."

12. We have carefully considered the respondents' reply. The reply bears testimony to their not asserting to have discharged the obligation of informing the and giving him opportunity to show cause with regard to the debits. The applicant's allegations which the respondents have not even controverted by evidence confirms the allegations that the respondents derogated from the rules and the law. We thus find that the application deserves to be allowed.

13. In view of our above conclusions in the facts and evidence of the case, we hereby allow the application with following directions to the respondents :-

- (i) The respondents shall pay to the applicant interest at the rate of 14% per annum on Rs. 37,145-50 paise with effect from 1.4.1986 to 15.10.1987, both days inclusive, within two months of the date of this order.

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(ii) The respondents shall pay interest on Rs. 7130/- at the rate of 14% per annum from 16.10.1987 to 31.7.1990, both days inclusive, within two months of the date of this order.

(iii) The respondents shall treat Rs. 7130/- as if retained in deposit from 1.8.1990 on account of Railway's traffic debits against the applicant with liberty to either take the steps in accordance with the principles of natural justice with regard to this amount if advised and to complete the steps within a period of three months from 1.8.1990 or to pay this amount to the applicant within the same period of three months.

14. We clarify that the applicant shall be at liberty to question in proper forum according to law and rules, his any grievance about the final outcome of the steps the respondents shall take in compliance with (iii) above.

15. There are no orders regarding costs.

M. R. Chandran
(N.R. CHANDRAN)
Judicial Member

M. M. Singh
17/07
(M.M. SINGH)
Administrative Member