

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

counter not  
filed

admission  
Bench

Free COPY of  
the order dt 4.5.01  
given to the both  
counsel.

Rao  
28/5/

Par  
S. O

✓ 1/2m.

Order dated 4.5.2001

Heard Shri S.S.Rao, the learned counsel for the petitioner and Shri D.N.Mishra, learned Standing Counsel for the Respondents.

In this 1996 matter dealing with the retiral benefits of a railway servant, counter <sup>not</sup> has been filed inspite of passage of five years. In order dated 17.4.2001, learned Standing Counsel was given three weeks' time ~~on~~ request as last chance to file counter and the matter was posted to this day for final disposal at the admission stage. To-day counter has been filed in Court. Petitioner does not have any objection if the counter is taken into consideration. Accordingly counter is taken into consideration.

We have gone through the pleadings of the parties. The applicant in this Application has prayed that an amount of Rs.4356/- being the part of DCRG, which has not been released in his favour, be directed to be released along with interest. He has also asked interest on the amount of Rs.29,469/- of DCRG, which has already been paid to him. Alternatively it is prayed that respondents be directed to conduct an enquiry within a given period of time and if the petitioner is found not guilty to refund the amounts, as stated above, with costs.

The case of the applicant is that through out the service career of 40 years he was all along posted in Commercial Wing, from which he retired as Chief Booking Clerk w.e.f. 1.1.1993. The applicant has stated that in order dated 19.1.1993 at Annexure-1, it has been indicated that he is entitled to gratuity of Rs.33,825/- and a pay order for the above amount was certified to be issued subject to furnishing of No Demand Certificate. The applicant has stated that while he was working in the Booking Counter of Cuttack Railway Station on 12.3.1992, Senior Traffic Inspector (Accounts) (Respondent No.5) wrongly reported

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against him with regard to refund of 2 A.C. Two-tire tickets. But no action was taken on this report nor any proceedings were initiated against him. His explanation was also not called for. After his retirement, the applicant has been paid the gratuity of Rs.29,469/-, but the amount of Rs.4356/-, relatable to the refund of above two tickets have been illegally retained. In the context of the above the applicant has come up in this petition with the prayers referred to earlier.

Respondents have in their counter have not denied the averment of the applicant that before retention of this amount of Rs.4356/- no explanation was called for from him nor was he asked to show cause. They have merely stated that this amount has been kept back from DCRG due to coaching debit and this is according to rules. Rule-15 of Railway Servants (Pension) Rules, 1993, deals with recovery and adjustment of railway dues from pensionary benefits. It is not necessary to refer to all the provisions under Rule-15. It will only be adequate to mention that sub-rule-1 provides that it is the duty of Head of Office to assess and adjust the railways dues payable due to retirement. Sub-rule-4 deals with two types of claims, viz., one relates to loss including shortage in collection of fares, charges, shortage of coach etc. and the other Govt. dues due to over-payment on account of pay and allowance and other dues. With regard to first category, it is said that this amount can be recovered from the railway employee. But this should be done expeditiously from the date of retirement of railway servants. The relevant provision is quoted below :-

" (b) Dues mentioned in Clause(i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned".

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In the instant case, an amount of Rs.4356/- has been presumed to be recoverable from the applicant on the basis of the report given by the Senior Traffic Inspector of Accounts. From the pleadings in the counter of the Railways it is clear that at no point of time the applicant had been asked to explain in respect of this amount, which is stated to be recoverable from him. For this alleged loss no proceedings have also been initiated against him. Lastly this amount has still not been adjusted and has been kept back from the gratuity, as has been mentioned by the Respondents in Para-10 of their counter. Such action of the respondents is wholly against the provision, as quoted above, which enjoins that the Head of Office must finalize this within a period of three months from the date of retirement of the railway servant concerned.

In the instant case the applicant retired on 1.1.1993 and in the meantime more than 8 years have passed. In view of this, action of the railway authorities in keeping back the amount of Rs.4356/- cannot but be termed illegal. In consideration of this the railway authorities are directed to refund this amount to the applicant within a period of 60(Sixty) days from the date of receipt of this order.

The second prayer of the applicant is with regard to payment of interest on this amount. We have considered the submissions made by the learned counsel for both sides, in this regard. In consideration of this, it is ordered that in case payment of Rs.4356/- is not made to the applicant within the time as indicated above, then the applicant shall be paid interest <sup>at 12% per annum</sup> <sub>from</sub> on this amount after expiry of the said period of sixty days till the actual payment is made.

The third prayer of the applicant is for payment of interest on the D.C.R.G. amounting to Rs.29,469/- which has already been received by him. The applicant in this O.A. has not mentioned when this amount was paid to him and what was the period of delay. In this view of the matter we are not inclined to accede to this prayer of

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the applicant for directing the respondents to pay him interest on DCRG, amounting to Rs.29,469/- which has already been received by him. This prayer is accordingly rejected.

In the result, Original Application is disposed of as per direction and observations made above, but without any order as to costs.

MEMBER (JUDICIAL)

VICE-CHAIRMAN

4.5.2001