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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.539 OF 2005
Cuttack, this the 03.10. Day of OCT, 2007

R.K. M. Patnayak Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *yes*.


(N. D. RAGHAVAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.539 OF 2005
Cuttack, this the 03.10.07 Day of OCT., 2007

CORAM:

HON'BLE SHRI N.D. RAGHAVAN, VICE-CHAIRMAN

IN THE CASE OF:

R.K. M. Patnayak aged about 63 years son of Late K.S.N. Patnayak retired as Chief Booking Supervisor, E.Co. Railway, Khurda Road Division at present residing at Door No.12-16-8 Sai Nilayam, Laxmi Ganapathy Colony, Phool Bag Road, Vizianagarm, Andhra Pradesh, Pinn- 535002.

..... Applicant

By the Advocate(s)

Mr. Achintya Das

Vs.

1. Union of India service through General Manager, E.Co. Railway, Chandrasekharpur, Bhubaneswar.
2. Divisional Railway Manager, E.Co. Railway, Khurda Road, P.O. Jatni, Dist-Khurda, Pin-752050.
3. Sr. Divisional Finance Manager, E.Co. Railway, Khurda Road, P.O. Jatni, Dist-Khurda, Pin-752050.
4. Sr. Divisional Commercial Manager, E.Co. Railway, Khurda Road, P.O. Jatni, Dist-Khurda, Pin-752050.
5. Sr. Divisional Personnel Officer, E.Co. Railway, Khurda Road, P.O. Jatni, Dist-Khurda, Pin-752050.

..... Respondent(s)

By the Advocate(s)..... Mr. T. Rath.



ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

1. Applicant, while working as Chief Booking Supervisor, Palasa, in the erstwhile S.E.Railway, Khurda Road, was issued with a Memorandum of charge dated 31.5.2001 (Annexure-A/1), for the following reasons:

“While booking 3 GP Bdis. Cashewnuts vide PW Bill No.719534 of 2.3.97 Ex.PSA to KRNT he failed to mention the correct code of Kurnool Station as KRNT and instead he mentioned it as KRN. This led to a serious consumer case.

Thus he is charged for omission rather than commission”.

It was indicated in the Memorandum that if the applicant failed to submit his representation within 10 days, it would be presumed that he had no representation to make and orders would be liable to be passed against him.

1.1 The applicant vide Annexure-A/2 dated 1.6.2001 appears to have explained the position. In the 3rd paragraph of his representation, the applicant has mentioned as under:

“If it is not reached the destination, then it should return to Booked Station or if it is lying at some other station as unconnected then they should send a sale notice asking the forwarding station to send a copy of P.W.Bill for forwarding note or if it was claimed by the party for non arrival of their consignment, then the NR Cell/SC Railway and a tracer could have traced the consignment. It is simply a pen mistake, which could have been rectified by the claims department”.



Lastly, he has begged excuse for the mistake of station code KRN instead of KRNT.

1.2 On receipt of the said representation, Respondent No.4, i.e., the Disciplinary Authority, vide Annexure-A/3 dated 30.5.2002, as a measure of minor penalty, ordered recovery of Rs.32,000/- from the salary of the applicant in twelve equal instalments. It was stipulated therein that if the applicant had anything to say against the punishment, he should make appeal within 45 days to the Divisional Railway Manager.

1.3 The applicant preferred appeal dated 10.7.2002 (Annexure-A/4) to the Divisional Railway Manager, S.E.Railay, Khurda Road, reiterating the same plea as in Annexure-A/2 dated 1.6.2001 by seeking justice.

1.4 While the matter stood thus, the applicant retired on superannuation with effect from 31.8.2003. The D.C.R.G. amount having not been released, the applicant preferred a representation dated 9.2.2005 (Annexure-A/6). It reveals, vide Annexure-A/7 dated 16.3.¹⁴2005, the Sr.Divisional Finance Manager, E.Co. Railway, released an amount of Rs.1,79,763.00 after making recoveries of Rs.32,741.00 towards excess payment, house rent, coaching debt, etc.

1.5 The applicant thereafter made a representation dated 22.3.2005 (Annexure-A/8) to the Divisional Railway Manager, E.Co. Railway, Khurda Road Division, for refund of Rs.32,000/-, besides claming interest for



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delayed payment of D.C.R.G. His grievance having not been met by the Respondent-Railways, the applicant has moved this tribunal in the present O.A. filed on 25.5.2005, seeking the following relief:

“To direct the respondents to refund the amount of Rs.32,000/-, which has been deducted from the DCRG.

To direct the Respondents to pay interest @ 9% from 1.9.2003 to 15.3.2005 on the sum of Rs.2,12,504/-.”

2. The Respondent-Railways have filed a detailed counter opposing the prayer of the applicant.
3. The applicant has also filed a rejoinder to the Respondent-Railways' counter reiterating, more or less, the same plea as was raised by him in the O.A.
4. I have heard Shri Achintya Das, the learned counsel for the applicant and Shri T.Rath, the learned Panel Counsel (Railways) appearing for the Respondent-Railways and have also perused the records.
5. The sole point, that emerges from the pleadings of the parties for consideration of the Tribunal, is whether the Respondent-Railways are within their right to recover Rs.32,000/- from the D.C.R.G. of the applicant.
6. In order to adjudicate the said point, the explanation offered by the applicant vide Annexure A/2 dated 1.6.2001 to the Memorandum dated 31.5.2001(A/1), the order dated 30.5.2002 passed by the disciplinary



authority (Annexure A/3), and the appeal dated 10.7.2002 (Annexure A/4) filed by the applicant vide A/4 are self serving.

6. Admittedly, the memorandum of charge dated 31.5.2000 (Annexure A/1) was issued to the applicant in consequence of the judgment dated 20.1.2001 passed by the District Consumer Forum, Kurnol, in Consumer Dispute Case No.148/97, by virtue of which the Respondent-Railways made payment of Rs.32,000/- towards compensation to the claimant on account of the omission rather than commission on the part of the applicant. It reveals from the order dated 30.5.2002 (Annexure A/3) that while imposing minor penalty, the disciplinary authority ignored the explanation offered by the applicant in Para-3 (as quoted above) vide Annexure A/2 dated 1.6.2001. Be that as it may, the applicant, within the time stipulated by the disciplinary authority, preferred an appeal dated 10.7.2002 before the appellate authority (Annexure A/4) and just after one year, i.e., on 31.8.2003, the applicant retired on superannuation from service. It is also not in dispute with regard to payment of post retiral dues, viz., GPF, leave salary, Group Insurance, commuted value of pension, last month's salary, etc., in favour of the applicant. It is also admitted that the applicant is in receipt of pension regularly. Respondent-Railways have also made it clear that an amount of Rs. 1,79,763/-, after deduction of Rs.577.00, Rs.164.00 and Rs.32,000/- (in toto Rs.32,741/-) towards excess payment,



and coaching debit respectively, from out of Rs.2,12,504/- towards D.C.R.G. has been received by the applicant on 16.3.2005.

7. In order to decide the point in issue, the criterion is the appeal preferred by the applicant vide Annexure A/4 dated 10.7.2002 against the order of punishment (A/3 dated 30.5.2002) of recovery of Rs.32,000/- from the salary of the applicant. Admittedly, the appeal preferred by the applicant has not been disposed by the appellate authority. But the fact remains, non-disposal of appeal by itself does not ipso facto extinguish the punishment of order of recovery nor could the applicant be said to have been absolved of the same till the punishment order subsists. Therefore, when the punishment order of recovery was much hanging over his head as a Damocles' sword and the appeal preferred by him against the punishment order was not disposed of by the appellate authority by passing an order, the applicant ought to have approached the Tribunal after expiry of a period of six months from the date on which such appeal was preferred in as much as he should have been deemed to have availed of the remedy available to him under the relevant service rules in terms of Section 20(2)(b) of the Administrative Tribunals Act, 1985. From this it is to be inferred that preferring an appeal by the applicant against the order of punishment and non-disposal of the appeal by the appellate authority cannot intrinsically extinguish, or wipe out, or make the punishment order null and void.



8. Rule 15 of the Railway Services (Pension) Rules unequivocally mandates that losses caused to the Government or the Railways as a result of negligence or fraud on the part of the Railway servant while he was in service shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity. There is no dispute that the dues sought to be recovered from the gratuity come under the meaning and definition of "Government dues". Therefore, the applicant cannot be said to be immune from liability, as submitted by the Respondent-Railways.

9. I have gone through the decisions cited by the applicant in the written note of arguments in support of his contentions. But the principle laid down in those decisions is not applicable to the case of the applicant because the facts of those cases and the instant case are not similar. In this case, after complying with the principles of natural justice, the disciplinary authority passed the punishment order dated 30.5.2002 (Annexure A/3) directing recovery of Rs.32,000/- from the salary of the applicant in twelve equal instalments and before the recovery could be effected, the applicant retired from service on 31.8.2003 and therefore, this amount of Rs.32,000/-, which remained unrecovered as on the date of his retirement, was treated by the Respondent-Railways as "Government dues" within the meaning of Rule 15 of the Railway Services(Pension) Rules. As the punishment order still



subsists, the action of the Respondent-Railways in recovering the said "Government dues" of Rs.32,000/- remains unassailable.

10. In his rejoinder the applicant has set out a new pleading that the Respondent-Railways ought to have followed the procedure in line with the departmental enquiry under sub-rules (3) to (19) of Rule 9 of the Railway Servants (D&A) Rules, 1968 (Annexure A/16 dated 23.5.1975). I am quite at one with the applicant in this regard. But the fact remains that this point is no more open to be urged by the applicant before the Tribunal at this stage inasmuch as he had not taken such ground either before the disciplinary authority or before the appellate authority. As observed earlier, the punishment of recovery of Rs.32,000/- still subsists against the applicant. The repeated arguments of the applicant with regard to violation of the principles of natural justice hold no water by reason that before passing the order of recovery, as a measure of punishment, the applicant was asked to explain vide Annexure A/1 dated 31.5.2001 and he had also preferred appeal against the order of punishment of recovery.

11. Respondent-Railways in sub-paragraph of paragraph 1 (page 2) of their counter, have stated that as per rule, interest is admissible on delayed payment of D.C.R.G. to the applicant from 1.3.2004 to 28.2.2005 and that after making necessary calculation, the interest works out to Rs.14,381/-. This statement of the Respondent-Railways has not been



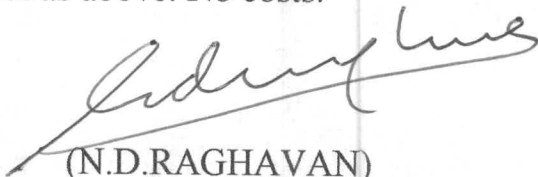
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questioned by the applicant in his rejoinder anywhere. Therefore, it is to be held that the applicant is entitled to interest of Rs.14,381/- on delayed payment of D.C.R.G.

12. Having regard to the above discussions, I hold that the applicant cannot be absolved of his liability till Annexure A/3 dated 30.5.2002 holds good and therefore, the Respondent-Railways are within their right to recover Rs.32,000/- from the D.C.R.G. of the applicant. In the circumstances, the prayer of the applicant to direct the Respondent-Railways to refund an amount of Rs.32,000/- deducted from his D.C.R.G. fails. As observed above, interest calculated by the Respondent-Railways to the tune of Rs.14,381/- on delayed payment of rest of the D.C.R.G. amount shall be paid to the applicant, if not paid already, within a period of 30 (thirty) days from the date of receipt of this order.

13. In the result, the O.A. is disposed of as above. No costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

PPS

for pronouncement.

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