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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 831 OF 2006
CUTTACK, THIS THE ^{01st} DAY OF September, 2008

C.Lingeswar Rao Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

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

(C.R.MORAPATRA)
MEMBER (ADMN.)

(K.THANKAPPAN)
MEMBER (JUDL.)



CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 831 OF 2006
CUTTACK, THIS THE ~~10~~ DAY OF September, 2008

CORAM :

HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

C.Lingeswar Rao, aged about 66 years, S/o. Late Laxman Swami,
58-1-216/23, Flat No.4, Snar Enclave, Karasta, NAD Post,
Visakhapatnam-9.

.....Applicant

Advocate(s) for the Applicant- M/s. Adam Ali Khan, S. Lokesh Kumar,
K.M.S.Niamati, Miss A.Ghosh,
Miss P. Dasmohapatra.

VERSUS

1. Union of India represented by the Secretary to the Govt. of India, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
2. Chairman, Railway Board, Rail Bhawan, New Delhi.
3. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
5. Divisional Railway Manager, E.C.Rly, Khurda Road Division, At/PO: Jatni, Dist. Khurda.
6. Sr. Divisional Personal Officer, E.c.Rly, Khurda Road Division, At/PO: Jatni, Dist. Khurda.
7. Sr. Divisional Engineer(Coordination), E.C.Rly, Khurda Road Division, At/PO: Jatni, Dist. Khurda.
8. Sr. Divisional Engineer (Central), E.C.Rly, Khurda Road Division, At/PO: Jatni, Dist. Khurda.
9. Sr. Divisional Finance Manager, E.C.Rly., Khurda Road Division, At/PO: Jatni, Dist. Khurda.

.....Respondents

Advocates for the Respondents – Mr. B.B.Patnaik.

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J):

The applicant, a retired Sr. Section Engineer of the Railways, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of recovery under Annexure-8, dated 09.01.2006. The applicant also has prayed for a direction to the Respondents to release DCRG, which is withheld by the Respondents, with interest.

2. Short facts of the case, as averred in the Original Application, are as follows:

While the applicant was working as Sr. Section Engineer, Permanent Way, Brag Accounts in the Construction Organization of E.C.Rly., Khurda Road Division as the stockholder of accounts of the materials, on verification of stock, shortage of certain materials was detected, which caused a loss of Rs. 3,42,516/- For the above loss, a committee was appointed to enquire into the matter, assess the loss and also fix liability. As per order dated 09.01.2006 liability having been fixed on the applicant, it has been ordered to recover a total amount of Rs. 3,79,990/-, out of which an amount of Rs. 3,42,516/- has already been withheld from DCRG amount of the applicant and the rest of the amount has been

ordered to be recovered from his pension. Aggrieved by the above action, the applicant has filed this Original Application.

3. This Tribunal heard Mr. A.A.Khan, Ld. Counsel appearing for the applicant and Mr B.B.Patnaik, Ld. Counsel appearing for the Respondents and also perused the documents produced along with the O.A.

4. The Ld. Counsel appearing for the applicant had taken the following contentions while challenging Annexure-A/8.

Firstly, the counsel appearing for the applicant submitted that as per the report of the Inquiry Committee constituted for assessment of loss and fixing liability for loss of the materials, it was found that the applicant is not responsible for the loss sustained and it is the responsibility of the Contractor, viz., Shri H.N.Agarwal, and the Committee had reported that actually the applicant had furnished all the discrepant items of the stocksheet and the stocksheet was already intimated to the FA & CAO(SV)/GRC for scrutiny. Apart from that, it was the findings of the Committee that the loss of the materials found short were stolen from the stock of the Contractor, Shri H.N.Agarwal, and not due to any negligence of the applicant. If so, according to the counsel for the applicant, the liability unilaterally now fixed on the applicant is arbitrary and against the principles of natural justice. The second contention of the

Ld. Counsel for the applicant is that as per the Railway Servants (Discipline & Appeal) Rules, the findings now arrived at by the Respondent Authorities are not tenable in law as the Disciplinary Authority has no power to discard the report of the Inquiry Committee without assigning any reason on disagreement. If so, the fixation of liability on the applicant is erroneous, irregular and not in accordance with the Rules of the Railway Servants (Discipline & Appeal) Rules. The Counsel for the applicant further contended that the alleged loss sustained by the Department had taken place during 1989-91, whereas the same was detected only after a lapse of 13 years and that too after the retirement of the applicant, and if so, liability now fixed on the applicant has to be set aside by this Tribunal as it is not tenable in law. Finally, it is contended by the Counsel for the applicant that as the Inquiry Committee, constituted for the purpose of fixation of liability and assessing loss sustained by the Railways, has clearly exonerated the applicant by fixing liability on the Contractor, the liability now fixed on the applicant, even without a show cause notice or any inquiry is not sustainable being without any evidence.

5. In answering the above contentions of the Ld. Counsel appearing for the applicant, relying on the counter affidavit for and on behalf of the Respondents, the Ld. Counsel appearing for the

Respondents submitted that as per the stock verification in the year 1989-90 (in Part-I of the Store) while the applicant was working as Section Engineer/BRAG, certain discrepancies of 464 numbers of CST-9 plates were detected and the applicant had stated in the remarks that "all the materials were stolen from the stock of the Contractor as per Account Note Number 47/88-89". On further inquiry during 1991, it was found that the Railways had sustained total loss of Rs. 4,36,808/- towards the cost of the shortage of the materials and, accordingly, the responsibility was fixed on the applicant. According to the Counsel for the Respondents, the applicant is responsible for the above loss and hence, the order now passed by the competent authority is sustainable in law. The Ld. Counsel for the Respondents further submitted that this fact was informed to the applicant as per Annexure-10 on 24.04.2006 and hence the contentions raised in the Original Application are not sustainable. The Ld. Counsel further submitted that the 3rd Respondents, General Manager of East Coast Railways, being the competent authority, has rightly fixed responsibility on the applicant, and if so, the loss sustained by the Railways has to be made good from his own pockt. Hence, according to the counsel for the Respondents, the O.A. being devoid of any merit is liable to be dismissed.

6. On considering the rival contentions of the counsel appearing on either side and on perusing the records produced before this Tribunal, it has to be decided by the Tribunal as to whether the Respondents are justified in issuing impugned recovery order and at the same time withholding of the DCRG amount of the applicant.

7. The fact that the applicant while working as Section Engineer was the holder of the Brag accounts of the department, on verification conducted during the year 1989-91 a discrepancy of 464 numbers of CST-9 plates was detected is not in dispute. The fact that the applicant had sent his report to the FA & CAO (SV)/GRC with a remark that all the materials were stolen from the account of Contractor is also not in dispute. Then the question comes up for consideration is whether the applicant is responsible to the loss and/or the discrepancies in the stock register or not.

8. At the outset, it is to be noted that the applicant had already informed this matter to the FA & CAO and reported that the shortage in the stock was due to the theft from the account of Contractor Shri H.N. Agarwal between BRAG-MCS. Thereafter, the Department had already constituted a committee to make an inquiry of the matter during 2005 as evident from Annexure-R/1 report. The report of the Committee reveals the clear picture and the background

or the circumstances under which the loss was sustained by the Department. It is also to be noted that as per the report of the Committee, it is categorically found that the applicant was not held responsible for the shortage or loss of any material at all. Rather the Committee categorically fixed liability on Shri H.N.Agarwal, the contractor. If so, we are not in a position to accept the stand taken by the Respondents that the applicant is responsible for the loss and is liable to be penalized for such loss. It is also to be noted that even after the report of the committee, the General Manger, 3rd Respondent, without giving any further notice to the applicant or making further inquiry in the matter of differing from the findings of the committee, fixed liability on the applicant arbitrarily, unilaterally and without any basis. If so, the liability fixed on the applicant for the loss caused is not sustainable. Further, it has to be noted that the applicant retired from service during 2001, though voluntarily, and in spite of the long delay of the matter, no liability can be fixed on him after his retirement. In this context, It is to be noted that as per the rules, liability on a government servant has to be fixed within three years of his retirement and the action ought to have been initiated within the above period and, after expiry of three years no liability can be fixed and, therefore, the order of recovery as per Annexure-A/8, dated 09.01.2006 is not sustainable in law. Since this

Tribunal has already held that the liability now fixed on the applicant is not sustainable, the withholding of the DCRG and any other retiral benefits to which the applicant is entitled on this score is also not sustainable in law.

9. In view of our foregoing conclusions, we set aside Annexure-A/8 order and direct the Respondents, particularly Respondent No.3, to release the withheld DCRG and other retiral benefits, if any, due and admissible to the applicant within 60 days from the date of receipt of this order with interest @ 4% per annum. If the amount so withheld is not released within the stipulated period, the Respondents shall pay interest @ 8% per annum after expiry of above 60 days till the date of actual payment. Ordered accordingly.

10. The O.A. is accordingly disposed of. No order as to costs.

Chatt
(C.R.MOHAPATRA)
MEMBER (ADMN.)

Thankappan
(K.THANKAPPAN)
MEMBER (JUDL.)