

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 333 OF 1996

Present : Hon'ble Mr. D. Purakayastha, Judicial Member

Hon'ble Mr. B.P. Singh, Administrative Member

Promode Ranjan Guha,
Ex-Chief Commercial Clerk,
E. Rly. Kancharapara,
R/o Bepin Behari Ganguly Sarani,
Sarkar Bazar, P.O. Halisahar,
Dist. North 24 Parganas,
PIN : 743 134

VS

1. Union of India through the
General Manager, E. Rly.
17, N.S.Bose Road, Calcutta
2. The Chief Personnel Officer,
E. Rly. Fairlie Place, Calcutta
3. The Divisional Railway Manager,
E. Railway, Sealdah
4. The Sr. Div. Personnel Officer,
Sealdah Division, E. Rly. Sealdah
5. The Sr. Div. Accounts Officer,
Sealdah Division, E. Rly. Sealdah
6. The Sr. Commercial Manager,
Sealdah Division, E. Rly. Sealdah

..... Respondents

For the applicant : Mr. S.M.Dutta, Counsel

For the respondents : Mr. P.K.Arora, Counsel

Heard on : 11.1.99 : Order on : 09.2.99

O R D E R

D. Purakayastha, J.M.:

In this original application filed u/s 19 of the Administrative Tribunals Act, the applicant has prayed for a direction upon the railway respondents to release his DCRG amount and the balance of leave salary as admissible under the rules with interest at the rate of 18% per annum.

2. The applicant joined service under the Eastern Railway in the year 1957 and in due course he was posted as Chief Commercial Clerk at Kancharapara railway station under the Sealdah Division in 1991. He retired from railway service in

that capacity on 30.11.91 on attaining the age of superannuation. It is his grievance that the railway authorities have not yet release his DCRG money amounting to Rs. 28,875/- and further that his full leave salary has not also been paid and an amount of Rs. 2711/- is still to be paid to him on this account. He made several representations before the appropriate authorities for release of the aforesaid amounts but to no effect. He also made an appeal before the Railway Pension Adalat on 7.10.93 raising his grievance and in reply he was informed on 7.12.93 that a sum of Rs. 28,875/- towards his DCRG had already been sanctioned by the Accounts Section on 21.9.92. The applicant claims that he has not yet received the said amount. The applicant also made appeals before different authorities of the railway praying for payment of the aforesaid amounts stating that even though he retired from railway service w.e.f. 1.12.91, he had not been paid his DCRG and balance of leave salary. He also stated that no disciplinary proceeding was pending against him nor was he retaining any railway quarters. Having failed to get his grievance redressed, he has filed the instant application praying for the reliefs as mentioned above.

3. The respondents have contested the case by filing a written reply. They have admitted that the DCRG and part of leave salary due to the applicant on his retirement were not paid to him. According to the respondents, an amount of Rs. 31,586/- was due from the applicant towards loss of revenue and as such the aforesaid amount was realised from him by adjusting from his DCRG and leave salary. The case of the respondents is that earlier, the applicant was posted in the Naihati booking office from where he was transferred to Kanchrapara railway station on 16.6.88 and he was directed to hand over charge to his reliever one Shri S.K.Prasad. Thereafter, a joint enquiry was held by the Traffic Accounts

section and by its report submitted on 13.11.91, it was detected that a total amount of Rs. 63,172/- was lost to the railway due to loss of printed card tickets for which both the applicant and Shri Prasad were jointly held responsible and the said amount was ordered by the competent authority to be realised from them in equal share. Since the applicant had already retired from service, it was realised from his DCRG and part of leave salary. That is why, no DCRG and full leave salary could be paid to the applicant. It is also submitted by the respondents that as per para 15 of Chapter II of Railway Servants Pension Rules, 1993, recovery of government dues can be made from the DCRG of a retired railway servant. The respondents have, therefore, submitted that no illegality was committed by them in realising railway dues from the applicant's DCRG and leave salary and hence this application is liable to be dismissed.

4. We have heard the learned counsel for the parties at length and have gone through documents produced including the concerned departmental file.

5. The learned counsel for the applicant has submitted that even though the applicant retired on superannuation w.e.f. 1.12.91, and no disciplinary proceedings were pending against him, the railway authorities have wrongly withheld the DCRG amount of the applicant. He has also contended that even if it is assumed that there were railway dues against the applicant, no opportunity was given to the applicant before realisation of the said amount from the applicant's DCRG which is in contravention of the principles of natural justice. He has also argued that the incident which the respondents have referred to occurred long before and 4 years having been passed, no disciplinary proceedings can now be instituted under the rules. He has also pointed out that a disciplinary proceedings have been instituted against Shri Prasad, who has

been held to be jointly responsible for the alleged loss of blank tickets whereas no such proceedings have been instituted against the applicant and instead the amount has been realised straightway without giving him any opportunity to defend himself which is not permissible under the law. He has argued that the respondents cannot take two different course of action against two employees involved in the same incident.

6. Mr. P.K.Arora, the 1d. counsel appearing for the respondents has drawn our attention to annexure-R2 to the reply which is a copy of the joint enquiry report against the applicant and Shri Prasad. He has submitted that it will be clear from this report that the applicant was partly responsible for the loss of card tickets worth Rs. 63172/- and that the said enquiry was held in presence of both the applicant and Shri Prasad. At the time of question and answer, the applicant admitted his lapses and hence there was no question of initiation of any DA proceedings against him. On the other hand, when recovery was being made from the salary of Shri Prasad, who is still serving, he raised objection and therefore it was decided to hold a DA proceeding against him. Mr. Arora has also pointed out that in the detailed joint enquiry report, it was held that the applicant was responsible for non observance of the rules inasmuch as on his transfer to Kanchrapara from Naihati, he did not himself made over charge to his successor and made the stock register filled up. Instead, it was filled up by Shri Prosad and the applicant only put his signature which is not the rule. Thus the applicant was held responsible for gross negligence as he also did not turn up to Naihati subsequent to his transfer to hand over the charge of stock register to his successor. In any way, since the applicant admitted his lapses for the loss, the respondents are within their right to recover the amount of loss from his DCRG and leave salary as per rules.

7. We have given our anxious consideration to the rival arguments. We find that it is not in dispute that the respondents have realised a sum of Rs. 31.586/- from the applicant from his DCRG amount of Rs. 28,875/- and part of his leave salary amounting to Rs. 1750/-. According to the respondents, this was admitted railway dues and it can be realised from a retired railway servant as per rule 15 of Railway Pension Rules without following any DA proceedings. On the other hand, it is the stand of the applicant that he was never informed of this position and that he did not receive any DCRG amount by putting his signature although an amount of Rs. 28,875/- was in fact sanctioned in his favour as was intimated to him by the Pension Adalat. It appears from para 14 of the reply of the respondents that an amount of Rs. 28875/- was in fact sanctioned by the Sr. Div. Accounts Officer on 21.9.92 and that the said amount was received by the applicant on the next date. A copy of the sanction order is annexed at annexure-R to the reply. We have seen therefrom that somebody has received the same putting his signature on 22.9.92 which is obviously not of the present applicant as will be evident from tallying the two signatures, one appearing on the body of Annexure- R and the verification page of this OA. It appears from the para-wise comments addressed to the ld. advocate for the respondents dt. 16.1.97 availabale in the departmental records, it is mentioned at page 2 that "someone received the payment advice of DCRG money putting the signature whether it may be the applicant himself or someone on behalf of the applicant what it may be". This clearly shows that the concerned deptt. handed over the payment advice to someone without proper identification, which is very surprising. Therefore, the allegation of the applicant that he was never informed about the DCRG appears to be correct.

8. It is the contention of the respondents that the applicant has admitted his lapse for the loss of blank tickets. We have gone through the joint inspection report available in the departmental file. Statement of the applicant in connection with the inspection is also available in the file which was signed by the applicant himself. We find that 12 questions were put before the applicant. It is found that during his taking over charge at Naihati station the applicant did not verify the stock register and during his departure from that station on transfer he also did not make over charge to his successor and the reasons stated was shortage of time. He also stated that his successor prepared the charge report as there was lack of time and he could not turn up at Naihati after his transfer to Kanchrapara because one BS/KPA fell sick and he had to manage his work as well. He candidly stated that he put his signature on the charge report prepared by his successor Shri Prasad without verifying the same.

9. Based on these answers of the applicant, the enquiring committee held that the applicant was partly responsible for the loss of blank tickets. We, however, need not reappreciate the evidence. We have mentioned this in order to show that the applicant never admitted that he was responsible for the loss as contended by the respondents in support of their contention that because of this admission of the applicant, no DA proceeding was considered necessary to be instituted against him, although such an enquiry was subsequently instituted against the other employee i.e. Shri Prasad. At best the applicant can be said to be careless but it cannot be held that he admitted his guilt for the loss of blank tickets.

10. We also find from the departmental records that although the decision to realise the aforesaid amounts from the applicant's DCRG and leave salary was taken on 28.7.92, the applicant was never informed about the reasons for

non-payment of his DCRG and short payment of leave salary. On the other hand, a communication from Pension Adalat dt. 7.12.93 clearly stated that "a xerox copy of Accounts" Advice bearing No. DAS/Pension/18223 dated 21.9.92 is sent herewith about release of your DCRG of Rs. 28,875/-". Therefore, it can be safely assumed that upto December 1993, even the Pension Adalat, which is an authority to look into the grievances of the retired railway employees, was not aware of such deduction not to speak of the applicant. The entire action of the respondents, as it appears, was taken behind the back of the applicant without giving him any opportunity to state his case which is clearly an infraction of the principles of natural justice.

11. In view of our findings made above, we are of opinion that action of the respondents in recovering an amount of Rs. 31,586/- from the applicant's entire DCRG and part of his leave salary cannot be supported. We are also unable to accept the contention of the respondents that the applicant had admitted his fault as opined by the Sr. DCM/Sealdah in his note appearing at page 77 of the office file. Therefore, the decision of the respondents not to initiate any DA proceedings against him for his alleged misconduct or otherwise, as was done against Shri Prasad for the self-same incident, cannot also be sustained. Now that four years have already passed after the event took place, the respondents also cannot initiate any DA proceedings against the applicant. More than 7 years have passed since the applicant retired from railway service and he has not been paid his DCRG amount without giving him any opportunity to show cause and the entire action was taken behind his back. He was not even informed about the decision of the respondents to recover the said amount from him. In our opinion, there was clear violation of the principles of natural justice in this case.

12. In the result, the application succeeds. We allow this application and direct the respondents to release the entire amount of DCRG admissible to the applicant as also the balance of leave salary within a period of 60 days from the date of communication of this order. The entire amount will carry an interest of 12% per annum from two months after the date of his retirement i.e. from 1.2.92 till the date of actual payment. Considering the circumstances of the case, we leave the parties to bear their own costs.

2-7-92
(B.P.SINGH) 912(9)

MEMBER (A)

2-7-92
(D. PURAKAYASTHA)

MEMBER (J)