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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

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Date of Decision: 12/11/2001

OA 109/98

Jai Bhagwan Sharma s/o Shri Ramphal Sharma r/o Railway Colony, Bhagat ki Kothi, Jodhpur, last employed as Station Supdt. at Railway Station, Jodhpur.

... Applicant

V/s

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.
3. Shri R.L. Meena, Divisional Safety Officer, Northern Railway, Jodhpur Division, Jodhpur.

... Respondents

CORAM:

HON'BLE MR .A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.J.K.Kaushik

For the Respondents

... Mr.S.S.Vyas

O R D E R

PER HON'BLE MR .A.P.NAGRATH, ADMINISTRATIVE MEMBER

Prayer of the applicant in this OA is that the impugned order dated 26.11.97 (Ann.A/7), withholding of an amount of Rs.5448/- from gratuity, and order dated 4.8.97 (Ann.A/2), rejecting the claim of over-time allowance of the applicant, may be declared illegal and the same may be quashed and that the respondents be further directed to make payment of due over-time allowance and release the amount of gratuity withheld, alongwith interest at market rate.





2. As per averments in the CA, the applicant was assigned ~~conditional~~ additional duties as per control message dated 29.12.95. At the relevant time, the applicant was working as Station Master Grade-I in scale Rs.2000-3200 and was posted at Bhagat ki Kothi. He submits that his claim for Rs.5448/- was paid to him but the same was deducted from the salary of February, 1997. This amount was again paid with the salary of March, 1997 but at the time of his retirement the said amount was withheld from his gratuity, as has been mentioned in the impugned letter dated 2.12.97. The applicant retired from service on 30.4.97. His plea is that out of his total claim of 430 hours of over-time, a part of the same to the extent of 145 hours was disputed and he was issued a show-cause notice vide letter dated 16.1.97. He replied to the same vide letter dated 10.2.97. But without assigning any reason or giving him any notice, amount of Rs.5448/- has been withheld from his gratuity and balance of his claim has been rejected by the impugned order dated 4.8.97.

3. Emphasis of the arguments of the learned counsel for the applicant was that having made the payment, even though in part, of an amount of Rs.5448/- to the applicant, there was no reason for withholding the same while releasing his gratuity. He assailed the action of the respondents on the ground that while withholding the amount, no notice was given to the applicant. Moreover, the amount had earlier once been paid and then deducted from his salary but after further verification it was once again paid to him. In view of this sequence of events, the action of withholding of amount from gratuity was irrational. The

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learned counsel referred to the message recorded in the control order register, an extract of which has been filed as Ann.A/3. It is stated that during visit of the officers from the division, the then D.O.M. Jodhpur, Shri N.K.Akhori, dictated a detailed order, on the basis of which the staff, including the applicant, was deputed to various duties and in shifts. It is only on the basis of this order in control register that the applicant became entitled to payment of over-time because by this order he was asked to carry out ~~the~~ a large number of additional duties. When the claim for over-time was made by the applicant, the same was obviously verified by the department and a payment ~~of~~ of Rs.5448/- was made to him. In respect of the objections raised by the respondents to the total claim, the applicant submitted a detailed reply vide his letter dated 16.1.97. The learned counsel contended that there has been no response to the points raised by the applicant and after submission of this reply the amount of Rs.5448/-, which had earlier been recovered from the salary of the applicant in February, 1997, was once again paid back to him alongwith the salary for March, 1997. This, the learned counsel contended, was proof enough of the genuineness of the claim. By withholding the said amount from the gratuity without assigning any reason or without any notice to the applicant, the learned counsel stated, the respondents have acted arbitrarily and illegally. He stressed that not only this amount cannot be withheld but the ~~applicant's~~ balance amount of Rs.9300/- is also required to be released by the respondents.

4. The learned counsel for the respondents drew my attention to the averments made by the applicant in para-2

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of the QA, in which it has been stated that there was a control message on 29.12.95. His plea was that the control message is something which <sup>is</sup> received from the control office and the Ann.A/3, which the applicant claims to be an extract of that message, is in fact not a control message at all. The learned counsel raised doubts on the veracity of this so-called message, which the applicant claims to be a dictation from the officer who had visited Bhagat ki Kothi Station. The respondents in their reply have totally denied ~~that~~ this as any authorised message and have stated that the officers visiting stations, only give inspection notes and such messages are not recorded in the control register. Affidavits had been filed on behalf of the applicant by Shri S.I. Khan, Shri S.P. Agarwal and J.B. Sharma, the applicant himself. The respondents have termed the contents of these affidavits as false. Their plea is that the claim of over-time of the applicant was initially checked and provisional payment made to him. Thereafter, a ~~ex~~ thorough internal checking was done on receipt of a complaint regarding false over-time. On examining the claim again, it was found that the payment of over-time, claimed by the applicant, was not justified. So, the amount of Rs.5448/-, which was paid to him initially, was deducted from the salary of the applicant for the month of February, 1997. Thereafter, it was decided that till a <sup>official</sup> final decision regarding false claim, the amount ~~was~~ so deducted from the salary of February, 1997 be paid to the applicant and the same was refunded alongwith the salary of March, 1997. When the applicant retired at this stage, this amount of Rs.5448/- was withheld from his gratuity as the claim was not found payable.

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5. I have gone through the control message, which has been extracted as Ann.A/3. The very ~~extra~~ manner in which the message has been recorded appears very peculiar. If the officers coming on inspection find some deficiencies, it is not this manner in which the orders in respect of the officiating allowance or the over-time allowance are issued. The officiating allowance orders are issued after obtaining approval of the competent authority on the relevant file. Occasion of payment of over-time allowance could arise only after a person has actually performed duties which are in excess of his roster hours. Peculiarly, the message goes on to record that; "although he shall be doing the duties of intensive nature but will claim OT for continuous roster only." At one place it has also been recorded that; "he will also perform the duties of head clerk/BGKT after the duties of O/D SM and will prepare the daily duty booking roster ~~on~~ and will also compile the attendance registers of Class-III and Class-IV Staff for which he shall be entitled for four hours OT daily till Head Clerk is posted and starts working." It is difficult ~~x~~ to understand and accept that such an order can be issued by an officer in a responsible position. Another noticable feature is that this so-called order or message has been signed by the applicant himself. If the officer ~~x~~ had the time and patience to dictate such a lengthy order, he could have, as well, signed the same. Another pecuniarity is that on the two pages of this message S/Shri R.A.Singh, S.I.Khan and S.P.Agarwal signed and dated. There is no such system of obtaining signatures from other employees when an officer gives an order. The very conduct of the applicant in recording such a message in the so-called control order

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register and making an averment that this was a control message not only brings out a contradiction but makes the action of the applicant suspect. It is also seen from Ann.R/1, filed by the respondents, that the officer has totally denied having given <sup>any</sup> such order in the control order register. The unfortunate part of the entire case is that despite such apparently doubtful records, the respondents did not consider <sup>it</sup> fit or necessary to take any action against the employee. Not only that, payment ~~of~~ of Rs.5448/- had actually been made to him against his claim. It has not come out anywhere in the reply that for this payment, which they have termed as payment wrongly made, any action was taken against the departmental functionaries who are responsible for passing such wrong & claims and making payments. Under the circumstances, the only question which has been left for my consideration is whether the department could have withheld the amount from the gratuity without any notice to the applicant. It is a clear case ~~where~~ where the rule of natural justice has been violated. It is no doubt true that by letter dated 16.1.97 the applicant was informed about his claims as not acceptable but making payment again in March, 1997 <sup>invalidated</sup> ~~voided~~ this stand of the respondents. Having made the payment again in March, 1997, withholding the same in April, 1997 without hearing the applicant, cannot be considered as a reasonable and rational act. On this reason alone, the prayer of the applicant in so far as it relates to refunding the amount of Rs.5448/- is liable to be accepted. In this case, the conduct of the functionaries of the department itself comes to question and is rather erratic. However, in view of the circumstances



and background of this case, I <sup>am</sup> not inclined to accept the prayer of the applicant in respect of the payment of the ~~applicant's~~ balance amount of over-time. In fact the applicant has not been able to make out any case for the balance payment. Because of the contradiction in the averments of the applicant in respect of the control register and the suspect manner of the message in the so-called control order register, I do not find it a case where any payment of interest is justified.

6. In view of the background and the facts of the case, I direct the respondents to release the amount of Rs.5448/-, which has been withheld from the gratuity of the applicant, within a period of one month from the date of receipt of a copy of this order. The applicant is not entitled to receive any interest on this payment. His prayer for the rest of the claim is rejected.

7. The OA stands disposed of accordingly with no order as to costs.



*(Signature)*  
(A.P. NAGRATH)  
MEMBER (A)

all  
on 7/24  
18/10/01

R/copy  
on 22/1X  
on 22/1X

Part II and III destroyed  
in my presence on 22/59  
under the supervision of  
section officer ( ) as per  
order dated 13/3/59

NGK  
Section officer (Record)