

1/10

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH.

O.A.No.253/2004

January 18,2005.

CORAM : **HON'BLE MR.M.K.MISRA, MEMBER (ADM.)**

Pawan Kumar Anand S/o Late Shri Durga Das Ji, aged about 64 years, resident of I-D-68, J.N.Vyas Colony, Bikaner, last employed on the post of Assistant Engineer (C-I), Jodhpur, in the office of Dy. CE ©, Jodhpur, North/West Railway.

.... Applicant

By : Mr.B.K.Khan, Advocate.

Versus

1. Union of India through General manager, North/West Railway, Jaipur (Raj).
2. The Chief Administration Officer (Const.), North/West Railway, Kashmere Gate, Delhi.
3. The Deputy Chief Engineer (C-I), North/West Railway, Jodhpur.
4. Dy. Chief Engineer ©, North/West Railway, Bikaner.
5. Financial Advisor and Chief Accounts Officer, North/West Railway, Baroda House, New Delhi.
6. Union of India through General manager, Northern Railway, Baroda House, New Delhi.

By: Mr.Manoj Bhandari, Advocate.

.... Respondents

ORDER

M.K.MISRA,AM

Through this O.A. applicant Shri Pawan Kumar is before this Tribunal in the third round of litigation. The applicant was initially appointed as Group-D employee on 5.11.1958 and during the course of employment, he came to be promoted as Assistant Engineer on 1.11.1994 under Deputy Chief Engineer (C-I), Northern Railway, Jodhpur. He retired on superannuation on attaining the age of 60 years on 31.7.2000. Initially, he was paid only the amount of Provident Fund and leave encashment in

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-2-

July 2000 and was not released pension, commutation value of pension and DCRG etc. He filed O.A.No.10/2001 before this Tribunal for release of his dues. During the pendency of the O.A. the respondents issued PPO granting him pension but last pay drawn was shown as Rs.10,000/- instead of Rs.11,000/-. He was issued another letter-dated 17.4.2001 (Annexure A-3) by which his pay was ordered to be re-fixed in order to carry out a correction from 1.11.1994. He was also asked to explain as to why a sum of Rs.1,09,208/- (Rs.95,408/- on account of difference of pay already drawn by him and the pay he should have drawn and Rs.13, 800/- on account of the difference in leave encashment which had already been received by him.), on account of over payment, be not deducted from his DCRG. The applicant challenged this order in O.A.No.109/2001. Both the O.As. were decided on 9.4.2002, by a common order. The re-fixation of pay of the applicant was upheld but recovery of Rs.95,408/- ordered by the department against the applicant was quashed. However, it was held that the respondents were well within their rights to recover the amount of Rs.13,800/- from the amount of leave encashment already paid. The operative portion of the judgement being relevant is reproduced as under :



"the pay of the applicant has been correctly refixed and there is no infirmity in the Pension Pay Order issued in his favour. The respondents are directed to release gratuity of the applicant, withheld by them, by adjusting an amount of Rs.13,800/-, which was paid in excess as leave encashment. The balance shall be paid to the applicant within one month from the date of receipt of a certified copy of this order. If the payment is made after expiry of one month, the respondents shall pay to the applicant interest at the rate of 9% per month for the period of delay after one month. In respect of the other retiral dues, the respondents shall calculate the amount of interest on the delayed payments according to rules and pay the same to the applicant within a period of two months from the date of receipt of a certified copy of this order".

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2. Since the respondents failed to implement the order dated 9.4.2002, the applicant filed C.P.No.51/2002 and after issuance of notice, the respondents passed an order dated 24.6.2002 (Annexure A-1) indicating that a sum of Rs.17, 84,000/- is outstanding against the applicant and he was asked to deposit balance of Rs.15, 51,350/- after adjusting due against the payment of the DCRG. However, since the recovery of Rs.95, 408/- had already been quashed by this Tribunal, the said amount was decreased from the figure of outstanding due and the due was modified to Rs.14, 55,942/- (Annexure A-2). The applicant was asked to deposit the above amount within 15 days by letter-dated 4.7.2002 against which he submitted representations on 18.7.2002 and 29.7.2002. The applicant has challenged the impugned orders, Annexure A-1 and A-2 with a prayer to quash the same and for a direction to the respondents to pay him the amount of DCRG alongwith interest at the market rate.

3. The ground to challenge the impugned order is that the alleged outstanding due pertains to the goods which were to be received at Lalgah Railway Station in the year 1992 and the statement of claim was pending with the Sr. DCM, as on 10.3.1999. The matter was also referred for CBI enquiry in which nothing was found against the applicant. The CBI made even no remark and charges were framed against one Shri Ram Kumar. In this regard a copy of the letter-dated 29.4.2001 (Annexure A-6) has been placed on record by the applicant. The applicant pleads that before resorting to fresh recovery, no



I/O
1/13

notice or opportunity of hearing has been granted to him. He is suffering from financial hardship and if at all it was to be done, the alleged dues should have been adjusted within a period of three months from the date of retirement and not at this stage.

5. The respondents have contested the Original Application by filing a detailed reply. The stand taken by them to oppose the O.A. is that O.A. is barred by delay and laches. The pay of the applicant has been correctly fixed which stands upheld by this Tribunal. In the order given by this Tribunal in favour of the applicant, there is no direction or order regarding over-payment and outstanding amount against the applicant which is totally a separate matter. After quashing of recovery of over-payment on account of difference in the pay and allowances, the said amount was reduced from the total amount due against the applicant. His DCRG amount has been adjusted against house rent, electricity and loss of government material. Applicant is yet to deposit Rs.14, 55,942/- and thus, there is no question of release of the DCRG etc. that too with interest. The applicant was incharge and was PWI/LGH when wagons were loaded with P.Way material were booked from various places and firms to PWI/C/LGH for the gauge conversion project from LGH to Merta Road including some wagons which did not arrive at destination nor received by the applicant and due to non receipt by applicant, claim had been lodged by the concerned PWI with CCS, Bikaner. The applicant was the person responsible for not giving any clue about the missing material belonging to the railways and, therefore, he has caused huge loss to the railways and for that purpose a sum of Rs.16,71,060/- on account of loss



I/14

of government material was found to be outstanding against him. Since the applicant caused loss to the railways worth Rs.16,71,060/-, the responsibility of the payment of the said amount was fixed upon him. The recovery can be made under the Pension Rules, 1993.

6. Much emphasis has been laid on rule 15 of the Railway Services (Pension) Rules, 1993, on behalf of the respondents. The same being relevant is reproduced as under: -

"15. Recovery and adjustment of Government or Railway dues from pensionary benefits—(1) It shall be the duty of the Head of Office to ascertain and assess Government or Railway dues payable by a railway servant due for retirement.

(2) The Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression "Railway or Government dues" includes—

(a) dues pertaining to railway or government accommodation including arrears or licence fee, if any;

(b) dues other than those pertaining to railway or government accommodation namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges, shortage in stores) caused to the Government or the Railway as a result of negligence or fraud on the part of the railway servant while he was in service."

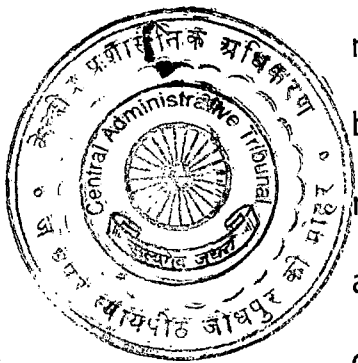


Reading of the above provision makes it clear that Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in terms of the provisions mentioned there under.

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7. Undisputedly, the applicant has specifically pleaded in para 4(viii) of the O.A. that in the alleged outstanding dues calculated against him on the ground that applicant failed to receive certain consignment at Lalgah Railway Station and the concerned party had lodged a claim with the Railways a CBI inquiry was also made in the matter and nothing was found against the applicant and even the CBI did not make any remark against the conduct of the applicant and the charges were framed against one Shri Ram Kumar. In reply to this, the respondents have only submitted that "No dues certificate" was issued by the concerned office in view of the fact that when the applicant was posted at Lalgah in the year 1992-93, he was found responsible for causing loss to the railway worth Rs.16,71,060/- and thus the responsibility of the payment of the said amount was fixed upon him. The recovery can be made under the Pension Rules, 1993. Nobody can dispute the position available under the rules that the government dues can be recovered or adjusted against the DCRG of a retired employee but that power cannot be exercised in an arbitrary manner. The reading of the rule discloses that it is incumbent upon the authorities to first ascertain and assess Government or Railway dues. There is a specific allegation against the applicant that he was negligent in discharge of his duties, which caused some loss to the Railways and on account of which the huge recovery has been imposed upon him. Once the element of negligence as is the case of the respondents comes into picture, the least expected of the respondents was to order a thorough enquiry to ascertain and assess the total loss to the Railways and the



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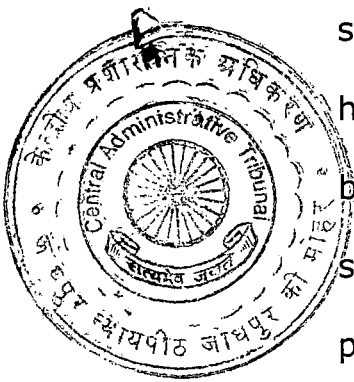
amount of negligence attributable to the applicant. The respondents in their wisdom have not cared to carry out any enquiry against the applicant as envisaged under the rules. However, the respondents were very well aware about the seriousness of the entire matter which is apparent from the fact that a CBI enquiry was ordered in the case and in the said enquiry, nothing has been found against the applicant and another person Shri Ram Kumar has been charge sheeted as is apparent from the communication dated 29.4.2001 (Annexure A-6), written from the office of the Assistant Engineer/Construction, Northern Railway, Bikaner, to the Deputy Chief Engineer/Const-I, N.Rly, Jodhpur. From this letter, it is clear that applicant is not a charged officer by the CBI nor anything has been attributed to him that may have caused loss to the Railways. The CBI has not passed any remarks to applicant and rather the charges were framed against Shri Ram Kumar. Once an expert body after its investigation has gone to the extent of forming an opinion that no case is made out for charging the applicant and instead Sh. Ram Kumar has been charge-sheeted, how the respondents have come to a conclusion that the loss was caused by the applicant and a huge recovery has been slapped on him, does not appeal to reasons. In so far as history of MGR cases is concerned, the applicant, in his defence, has submitted that there was four missing goods report cases pertaining to 1992. The consignment did not reach destination i.e. at LGH station, so the consignee reported the same to the carrying (Transporting) wing of the railway i.e. CCS/Claim, Bikaner, within the prescribed time as per codal



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1/17

procedure i.e. Stores code. The responsibility lies with CCS, Bikaner, for locating the missing goods, which is very clear as per the correspondence exchanged between Deputy Chief Engineer ©, Bikaner with CCS Claims, Bikaner & New Delhi. The consignee reported the 4 ledgers MGR within time limit to the commercial department. He submits that it is the CCS (Claims) Bikaner, who is at fault as he failed to trace, locate and deliver the goods to consignee i.e. PWI ©, LGH, and is liable to pay the claim of the goods. Further, as per Stores Code, the CCS claim is required to finalize the claims within maximum time of 12 months. The respondent kept on sitting tight over the matter from 1992 to 1999 with the CCS (Claims), Bikaner and New Delhi, but the CCS (Claims) has replied that since the cases are old, no record is available, as such nothing could be done at this belated stage. The matter was referred to FA&CAO ©, Kashmere Gate, office for waiver of the claims but the case has not yet been finalized and suddenly the respondents have slapped the applicant with the huge recovery. The respondents have not cared to reply to the specific submissions made on behalf of the applicant. It appears that they themselves are not sure about the nature and character of the case and are proceeding in the matter in a slipshod manner alleging serious charges against a retired employee. After taking into account the sequence of events having taken place in this case, this Bench is of the firm opinion that the respondents have failed to ascertain and assess the alleged dues against the applicant, as is the requirement in the rules before resorting to make recovery. Neither the respondents have conducted any disciplinary enquiry



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I/15
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nor they have conducted any departmental enquiry against the alleged conduct of the applicant. The respondents have not even cared to issue a show cause notice giving therein the detailed reasons as to why and how the huge amount of recovery has been arrived at against the applicant and as to whether he wants to say something about the same. Thus, the entire exercise of raising huge recovery against the applicant is found to be arbitrary and illegal.

7. It is undisputed that a Bench of this Tribunal in its order dated 9.4.2002 had directed the respondents to release the gratuity of the applicant, withheld by them, by adjusting an amount of Rs.13,800/-, which was paid in excess as leave encashment, and pay the balance to the applicant within one month from the date of receipt of certified copy of the order. It was further directed that if the payment is made after expiry of one month, the respondents should pay to the applicant interest at the rate of 9% per month for the period of delay after one month. In respect of the other retiral dues, the respondents shall calculate the amount of interest on the delayed payments according to rules and pay the same to the applicant within a period of two months from the date of receipt of certified copy of the order. However, on filing of the contempt petition by the applicant, the respondents in their wisdom passed the order-dated 24.6.2002 (Annexure A-1) which has been impugned in this case containing huge recovery against the applicant and thus there was no occasion with them to release the payment to the applicant as ordered by this Tribunal. It appears that action of the applicant in filing C.P. was not taken by the respondents

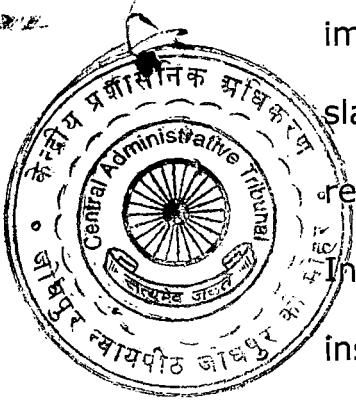


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kindly and they decided to pass the impugned order, Annexure A-1, by which the applicant, without any show cause notice or enquiry, was slapped a huge recovery of Rs.16,71,060-/-, in addition to other amounts. Even in the earlier case, this Bench has observed that the series of events indicate lackadaisical approach on the part of the dealing staff and officers of the department who have processed the pension papers of the applicant. The action of correcting his pay was taken rather belatedly and it is not the case of the respondents that there was any misrepresentation on the part of the applicant which resulted in wrong fixation of his pay. Infact, it is a case in which the dealing staff and officers should have been taken up departmentally for acting negligently and for fixing the pay of the applicant wrongly. After the observation of this Tribunal in the earlier case of the applicant, the respondents should have exhibited a better sense of responsibility. However, despite strictures having been passed against them, they failed to improve themselves and this time again the respondents have slapped the applicant with huge recovery. It appears that the respondents are playing hide and seek game with the applicant. Instead of acting as a model employer by following the rules and instructions, they have bowed not to release the rightful dues of the applicant. Such conduct of the respondents cannot be appreciated by a court of law. They cannot impose huge recovery against the applicant that too without issuing him any show cause notice etc. and there has been gross violation of the principles of natural justice in this case and as such the



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impugned order, Annexure A-1 is liable to be quashed and set aside.

8. In view of the above discussions, this Original Application merits acceptance and is allowed. The impugned order, Annexure A-1, is quashed and set aside. The respondents are directed to refund the entire amount of Gratuity excluding the amount of Rs.13,800/- alongwith interest which is assessed @6% from the date the amount became due to the actual date of refund within a period of three months from the date of receipt of copy of this order. However, the respondents would be at liberty to proceed against the applicant in accordance with rules and law i.e. first of all they will have to conduct a proper enquiry to ascertain and assess the dues of the government to be charged from the applicant, if any, and if the applicant is found guilty only then after giving him show cause notice to explain his side of the case, they can pass fresh orders, if so advised, as per rules and law. No costs.



(M.K.MISRA)
Member (A)

HC*

January 18, 2005.

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Part II and III destroyed
in my presence on 08/01/2014
under the supervision of
section officer (1) as per
order dated 18/12/2013

Section officer (Record)

8/1/14