

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.417/1998

Thursday this the 8th day of July, 1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

G.Appukuttan,
Retired Executive Engineer,
Southern Railway,
Residing at:
Sree Shanmuga Vilasam,
Palachira P.O.,
Varkala.

..Applicant

(By Advocate Mr.T.C.G.Govinda Swamy)

vs.

1. Union of India represented by
The Secretary to the
Government of India,
Ministry of Railways,
Rail Bhavan,
New Delhi.
2. The General Manager,
Southern Railway,
Headquarters office,
Park Town P.O.
Madras-3.
3. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Madras-3.
4. The Chief Engineer(Construction),
Southern Railway,
Madras Egmore,
Madras-8.

..Respondents

(By Advocate Mrs. Sumathi Dandapani)

The Application having been heard on 5.7.99. the Tribunal on
8.7.99 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

While working as Executive Engineer in the Palakkad
Division of the Southern Railway, the applicant retired on
superannuation on 30.9.93. As disciplinary proceedings were
pending against the applicant, his retiral claims were not
settled and he was being paid provisional pension. The
disciplinary proceedings ended in withholding 50% of the

applicant's pension for one year with effect from 6.3.97. In the meanwhile by a letter dated 30.6.95(Annexure A1) the fourth respondent had informed the applicant that it was proposed to recover a sum of Rs.34,100/- from the retirement gratuity of the applicant in connection with some discrepancies in handing over rail rolls pertaining to Aroor Bridge construction, giving the applicant 14 days time to show cause as to why recovery should not be effected. The applicant submitted reply Annexure A2 requesting that the proposal be dropped and payment of entire gratuity be arranged. He followed it up by another letter addressed to the third respondent dated 14.9.1995 (Annexure A3). As the matters rested there, while making payment of applicant's retirement gratuity a sum of Rs.34100/- was found withheld. The applicant therefore made representation A4 dated 21.9.97 to respondents 3 and 4 as also to F.A. and C.A.O, Southern Railway, Madras. The third respondent in reply sent Annexure A5 letter dated 13.10.95 stating that the 4th respondent vide order dated 14.5.96 had advised recovery of Rs.34100/- from the applicant's gratuity towards Railway dues and hence the recovery. Stating that the applicant did not receive the order dated 14.5.96 and requesting that the amount of Rs.34100/- be refunded to the applicant made a representation to the third respondent on 30.10.97 (Annexure A6) and followed it with a lawyer notice Annexure A7. Finding no response, the applicant has filed this application seeking to have the impugned order Annexure A5 set aside and for a direction to the respondents to refund Rs.34,100/- to the applicant with interest at 18% per annum from 11.4.97 declaring that the withholding of the said amount from the applicant's retirement gratuity is arbitrary, discriminatory and opposed to law and unconstitutional.

2. The respondents contest the claim. The material contentions raised by them can be briefly stated leaving out the details as follows. While the applicant was working as IOW in charge of construction of Aroor-Kumbalam bridge in the month of August 1984 he reported sick and IOW Sri K.K.Thomas was put in charge in his place. However the materials in his charge were not handed over by the applicant to Sri Thomas despite repeated requests and instructions from Executive Engineer. In the mean while the applicant was promoted as AEN and was relieved on 14.9.1985 without handing over the materials. Some items were handed over on 1.1.86 and the applicant was advised to hand over the remaining items also. On verification it was found that there was vast difference in the materials handed over on 1.1.86 and the list prepared. In spite of several reminders the applicant failed to hand over the materials, nor did he co-operate with the settlement of the issue of the materials not handed over. He did not attend the office of the XEN in spite of directions. The audit inspection of the accounts of applicant revealed the following materials were either not handed over or accounted for.

- | | | |
|-------------------------------|---|----------------|
| 1. Rails 50 'R' Cl.III | - | 298.525 meters |
| 2. Rails 90 'R' Cl.III | - | 371.35 meters |
| 3. Rails 30 lbs Cl.III | - | 66.95 meters |
| 4. Rails 60 'R' Cl.III | - | 1146.52 meters |
| 5. MS plates of various sizes | - | 6383 kgs. |

As no effort was made to settle this by the applicant an inventory committee was formed, which included the applicant also. The applicant did not take part in the inventory. He did not co-operate at all. Thereafter a further inspection was made by XEN/CN/ERS in February 1993 and it was found that the materials still to be handed over by the applicant were as follows:

- | | | |
|------------------------|---|----------------|
| a) Rails 50 'R' Cl.III | - | 298.525 meters |
| b) Rails 90 'R' Cl.III | - | 371.350 meters |
| c) Rails 30 lbs Cl.III | - | 66.950 meters |
| d) Rails 60 'R' Cl.III | - | 907.030 meters |

A further review made by Sri Madan Mohan, XEN/CN/ERS in August 1993 revealed that the following materials were not accounted for by the applicant:

- | | | |
|-----------------|---|-----------------|
| 1. Rails 50 'R' | - | 298.750 meters |
| 2. Rails 30 lbs | - | 66.950 meters |
| 3. Rails 60 'R' | - | 929.850 meters |
| 4. Rails 75 'R' | - | 869.190 meters |
| 5. Rails 90 'R' | - | 1218.760 meters |

The above details were furnished to the applicant and he was directed to hand over the materials by letter dated 16th August, 1993 of the XEN/CN/ERS (Annexure R1). In response to this applicant attended the office of the Dy CE/CN/ERS on 20.9.1993 and stated in his letter dated 29.9.93 Annexure R2 that he could not accept the statement of discrepancies as enumerated in R1, but accepted the statement of discrepancy indicated in XEN/CN/ERS letter dated 25.2.93 (Annexure R3) and the materials shown in that letter were to be returned by him. As several chances given to the applicant to settle the claim did not produce any result, the DCE by his letter dated 16.1.94 advised the applicant that the amount proposed for recovery was Rs.81468/- . However as the applicant had accepted that he had to return the materials as assessed and mentioned in the letter of XEN/CN/ERS dated 25.2.93, the CE/CN/ERS decided to limit the recovery to the value of those items amounting to Rs.34100/- and the same was communicated to the

applicant vide letter dated 30.6.1995(Annexure A1). As the representation submitted by the applicant dated 13.7.1995 did not contain any fresh facts or circumstance, the proposal to recover Rs.34100/- was confirmed and the applicant was advised accordingly by letter dated 14.5.96(Annexure R4). The applicant has aggrieved by the recovery from the retirement gratuity the Railway dues as provided for in the Railway Services Pension Rules filed this application which according to the respondent has no merit. The respondent contend that the recovery has been made as per rules and plead that the application may be dismissed with costs.

3. The applicant has filed a rejoinder. It has been stated that the Inventory Committee in its note dated 10.4.91 (Annexure A8) had inter alia recommended a thorough trace out under water to see whether the remaining rails could be traced out, that the search was not done and despite the fact that the applicant had made a representation on 17.3.1993 requesting for further intensive search and to absolve the applicant from the liability and that as the applicant has not accepted liability the recovery made after nearly two years of his retirement is unsustainable in law. The applicant has denied the receipt of R4 order. The respondents reiterated their contention that R4 was served on the applicant and have produced extract from the Despatch Register Annexure R15 to show that it was sent to the applicant by registered post with A/D.

4. I have very carefully gone through the entire materials available on record and have also scrutinized the despatch register in original. I notice that Annexure R4 was sent to the applicant by registered post with AD.

5. Sri T.C.G.Swamy, the learned counsel of the applicant argued that the decision to recover Rs.34100/- from the applicant's retirement gratuity was taken arbitrarily in total disregard of the principles of natural justice and without making any attempt to see whether the materials not

handed over could be traced out as suggested by the inventory committee in its note Annexure A8. He further argued that the reason for the loss was because no substitute was arranged at the appropriate time by the higher authorities despite requests made by the applicant. I am unable to agree with the learned counsel. The documents produced by the respondents and the pleadings clearly establish that the applicant failed to hand over the materials to his successor Sri K.K.Thomas in spite of several requests and instructions by the XEN/CN/ERS. It is also evident that the applicant did not take care to see that the matter is settled for years though on several occasions he was called upon to do so. From Annexure R2, the letter written by the applicant to XEN/CN/ERS on 20.9.1993, it is evident that he had accepted categorically the liability to return the materials enumerated there. The letter reads as follows:

"From

G.Appukuttan,
AEN(CN) PGT ERS

To

XEN(CN)ERS.

Sir,

Sub: Non-return of material land statement.

I have already accepted the statement for the materials to be returned by me issued by XEN(CN)ERS letter No.W.193/2/ERS-APY dated 8.4.87. Based on that statement, the XEN(CN) ERS replied to the Audit para dated 20.8.90.

As per this, XEN(CN)ERS letter No.W.412/P.Way/Surplus dated 25.2.93 the following materials are to be returned by me.

1.Rail 50 R Cl.III	298.525 M.
2.Rail 90 R Cl.III	371.350 M.
3.Rail 30 Lbs.Cl.III	66.95 M.
4.Rail 60 Lbs.Cl.III	907.03 M.

But a new statement shown by XEN(CN)ERS to me is entirely different from the original statement and I am not in a position to accept new liability.

Yours faithfully,

Sd/-

(G.Appukuttan)

Ernakulam
20.09.93 "

This letter was written more than two years after inventory note dated 10.4.91(Annexure A8) was prepared and more than six months after the applicant made Annexure A9 representation. Therefore from Annexure R2 the applicant's letter dated 20.9.93, it is evident that ultimately the applicant has accepted his liability to return the materials enumerated there. The applicant has no case that he did return the above said materials. Therefore as the applicant himself has admitted his liability, the argument that the decision to recover the value thereof has been taken arbitrarily and in disregard of principles of natural justice does not deserve to be taken serious notice of.

6. Sri T.C.G.Swamy next argued that as there has not been an adjudication and finding that the applicant was negligent or had committed any fraud, no recovery under Rule 15 of the Railway Services Pension Rules could be validly made from the gratuity of the applicant. Rule 15(4)(i) of the Railway Services Pension Rules reads :

"(4)(i) A claim against the railway servant may be on account of all or any of the following:-

(a) 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;"

I have observed that the applicant has unequivocally admitted in R2 his liability to return the materials enumerated there. There is no case for the applicant that he returned the same. Therefore on account of his failure

to return the materials either on account of his negligence to do so, or wantonly the applicant has caused loss to the Railways. Therefore the situation is fully covered by the sub-rule quoted above and therefore the decision to recover the amount from the applicant's gratuity is perfectly justified.

7. The last limb of the argument of Sri Swamy, the learned counsel of the applicant is that the adjustment having made more than 3 months after the retirement of the applicant as is evident from Annexure A1, the same is illegal and opposed to the rules. In support of this argument the learned counsel placed reliance on Rule 15(4)(iv) (b) which reads thus:

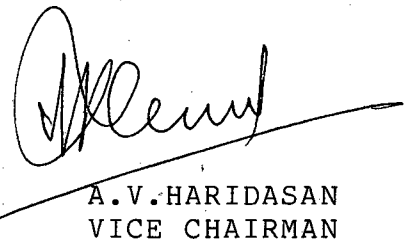
"(b) Dues mentioned in clause (i) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned."

As the quantification of the loss was made about 2 years after the applicant's retirement as is seen from Annexure A5, the counsel argued that the assessment and adjustment having been made beyond the period prescribed is unsustainable. I find no force at all in the argument. Quantification of the loss was undisputedly made when the applicant admitted his liability in Annexure R2 on 20.9.93 before his retirement. The applicant has no case that the value of the materials mentioned in R2 was less than Rs.34100/- on that date. Therefore it is meaningless to argue that the loss was not assessed within three months of his retirement for it was assessed before his retirement.

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Adjustment from the retirement gratuity could be made only after the disciplinary proceedings come to an end. Therefore the last argument of the learned counsel also is without any force at all.

8. In the result in the conspectus of facts, circumstances and the position of the rules, finding no merit, the application is dismissed without any order as to costs.


A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the Order

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| 1. | Annexure A1 | True copy of letter No.W.208 /1/1/CN dated 30.6.95 issued by the 4th respondent. |
| 2. | Annexure A2 | True copy of letter dt.13.7.95 submitted by applicant to the 4th respondent. |
| 3. | Annexure A3 | True copy of representation dt. 14.9.95 submitted to 3rd respondent. |
| 4. | Annexure A4 | True copy of representation dt. 21.9.97 submitted to the 3rd and 4th respondents. |
| 5. | Annexure A8 | True copy of the inventory note No.nil dated 10.4.91 issued by the Inventory Committee. |
| 6. | Annexure A9 | True copy of the representation dt. 17.3.93 submitted to the fourth respondent. |
| 7. | Annexure R1 | True copy of letter No.W.412/P.Way/Surplus dated 16.8.93 of the Executive Engineer(Construction), Southern Railway,Ernakulam Jn. addressed to the applicant. |
| 8. | Annexure R2 | True copy of letter dated 20.9.93 submitted by the applicant to the Executive Engineer(CB), Southern Railway,Ernakulam Jn. |

9. Annexure R3 True copy of letter
No.W.412/P.Way/Surplus dated
25.2.1993 of the Executive Engineer
(Construction), Southern Railway,
Ernakulam Jn. to the applicant.
10. Annexure R4 True copy of letter No.W.208/I/1/CN
dated 14.5.96 of the 4th respondent
issued to the applicant.