

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.44/96

Friday, this the 15th day of March, 1996.

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR SP BISWAS, ADMINISTRATIVE MEMBER

CI Andrew Luiz,
Retired Depot Store Keeper,
(Construction), Southern Railway,
Ernakulam.
(residing at Steve Villa,
Perumanoor, Cochin-15) - Applicant

By Advocate Mr K Padmanabhan

Vs

1. Union of India through
General Manager,
Southern Railway,
Madras-3.
2. The Executive Engineer
(Construction),
Southern Railway, Ernakulam.
3. The Financial Advisor &
Chief Accounts Officer
(Construction),
Southern Railway,
Egmore, Madras-8.
4. The Chief Engineer(Construction),
Southern Railway,
Egmore, Madras-8. - Respondents

By Advocate Mr TPM Ibrahimkhan, Senior Central Government
Standing Counsel

By Advocate Mr TC Govinda Swamy as Amicus Curiae

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant who retired as a Depot Store Keeper on 31.5.95
from the Railways, seeks a direction to effect payment of gratuity
due to him with interest thereon at 18%.

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2. On retirement on 31.5.95 applicant was paid full pension. It is so stated in paragraph 5 of the application, and it is not denied by respondents. However, no reply statement has been filed. We checked up the records and find that the assertion of counsel that a reply statement has been filed is not correct. Pension is sanctioned only on issue of a 'No event and no demand certificate'. Therefore applicant retired with no liability and no demand against him, on 31.5.95.

3. Thereafter respondent-Railways took the view that they sustained loss on account of applicant. The loss alleged to be sustained is due to loss of ironrods stocked somewhere near the premises of the office of applicant.

4. Even after retirement an official can be proceeded against under certain circumstances. We are only concerned with one of those, as far as this case is concerned. Rule 15 4(i) of the Railway Services(Pension) Rules 1993 reads:

"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;.."

According to the Railways the loss sustained by the Railways by the theft of the rods falls squarely under the rule aforementioned. But then, one condition has to be satisfied before resorting to this provision. That condition is found in Rule 15

4(iv)(b). It reads:

"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."

Though there is a provision to recover a loss sustained by the Railways, the power of recovery is subject to the condition that the loss should be assessed and adjusted within a period of three months from the date of retirement. Applicant retired on 31.5.95 and it is nobody's case that any liability was assessed within the time of three months. It is not as if, there is a vague and general power of recovery, and it is not as if such power can be exercised at will.

5. Original Application is allowed and we direct respondent-Railways to pay the amount of gratuity withheld with 12% interest thereon from 1.6.95 till date of payment which in no event shall be beyond two months of today. Parties will suffer their costs.

Dated, the 15th March, 1996.


SP BISWAS
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN