

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 452/2002

Friday this the 18th day of July, 2003

CORAM

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

M. Ramachandran Nair,
aged 63 years,
Retd. Senior Section Engineer,
residing at L3/3,
Talap Housing Colony,
PO. Pallikunnu,
Kannur-670 004.Applicant

(By Advocate Mr.T.C.Govindaswamy)

V.

1. Union of India, rep. by the
General Manager,
Southern Railway, Headquarters Office,
Park Town Po,Chennai.3..
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town PO,Chennai.3.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat.
4. The Deputy Chief Engineer (Cosntruction)
Southern Railway,
Calicut Division,
Calicut.
5. Divisional Engineer,
Southern Railway,
Palghat Division, Palghat.
6. Divisional Railway Manager,
Southern Railway,
Palghat Division,
Palghat.Respondents

(By Advocate Mrs.Sumati Dandapani)

The application having been heard on 15.5.2003, the Tribunal
on 18.7.2003 delivered the following:

O R D E R

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

The applicant a retired Senior Section Engineer has filed this application aggrieved by withholding of a sum of Rupees One lakh sixty eight thousand eight hundred and ninety nine from his retirement gratuity. The details of fact necessary to understand the dispute can be stated as follows. The applicant while working as Section Engineer Permanent Way in the Construction Organization at Mangalore was relieved on secondment to Malaysia on 26.9.1992. In terms of Annexure.A1 order dated 22.9.1992 he was directed to handover the charge of all the stores to Sri Rajasekharan, Chief Clerk (Store) and accordingly he handed over all the stores items in the presence of Stock Verifier during a period spread over one week. On return from Malayasia the applicant joined the post of Section Engineer, Permanent Way, Kasargode in the open line on 15.9.1994. He was then transferred to Mangalore and finally superannuated from service on 28.2.1997. After his relief from construction organisation on 26.9.1992 he never worked in that organisation thereafter. The applicant had taken a House Building Advance of Rs. 45,000/-. By a letter dated 4.12.1992 he requested the competent authority to inform him the balance due so that he could close the advance outstanding. He was informed by Annexure.A2. letter that the advance outstanding was Rs. 12,140/- and interest at prescribed rate. He remitted the entire balance principal and Rs. 850/- only towards interest. An amount of Rs.

U

21,134/- was due towards interest as indicated in Annexure.A3 letter dated 23.7.1995. The applicant did not accept that anything further was due, but did not hear anything from further on that. Thereafter the applicant retired from service on 28.2.1998. Although the GPF and other amounts were paid to the applicant on 1.3.1997 his gratuity calculated at Rs. 1,13,768/- at pre-revised rate the same was not paid and he himself averred that there was some communication regarding the payment of the same would be delayed for a week. The applicant had received a D.O.letter dated 24.2.1997 issued by the fourth respondent stating that the applicant had not handed over the work closed statement and was directed to contact one Sri G.R.Vijaykumar, Junior Engineer and finalise the same and was informed that his gratuity would be withheld (A4). He also received a letter from Divisional Engineer to prepare work closed statement and hand over the same to Sri Vijayakumar and that his settlement dues would be withheld. As Vijayakumar had refused to take charge in 1992 the applicant had already handed over the charge of everything to Rajasekharan. As the applicant had already left the construction organisation in 1992 and finally retired in 1997, and was a retired employee who had nothing to do with the work of Section Engineer, Construction Organisation after his secondment although he was prepared to cooperate with the railways for finalisation of the records on account of inaction at the departmental level he could not do anything as regarding handing over work close statement after such a long time. By Annexure.A9 order the applicant

(W)

was informed that a sum of Rs. 1,68.899/- would be recovered from a sum of Rs. 1,88,892/- payable to him towards retirement gratuity and an opportunity was given to him to make a representation within two weeks. The applicant submitted Annexure.A.10 representation explaining as to how he is not liable to pay any amount on account of the Stores or as House Building Advance and claiming payment of the DCRG without any deduction and delay. After receiving the above representation Annexure.A15 order dated 6.12.01 issued saying that a sum of Rs. 29,080/- as cost of non returned T&P items, Rs. 1,18,685/- as cost of items of PW materials and a sum of Rs. 21,134/- being interest on HBA totalling Rs. 1,68,899/- was due to him and no further amount is payable to him. In Annexure.A12 order dated 2.11.2000 also the applicant was advised accordingly and he was also informed that a sum of Rs. 3450/- having already been paid to him towards packing allowance on retirement on 9.5.97 he was not entitled to any amount on that score. Aggrieved by that the applicant has filed this application for the following reliefs:

(a) Call for the records leading to the issue of Annexure.A9, A12 and A15 and quash the same;

(b) Declare that withholding applicant's retirement gratuity is arbitrary, discriminatory and illegal.

(c) Direct the respondents to pay the withheld gratuity amount of Rs. 1,68,899/-

(d) Direct the respondents to pay interest @ 18% per annum on the amount of Rs. 1,13,768/- with effect from 1.3.97 upto the date of full and final settlement of the same.

(e) Direct the respondents to pay interest @ 18% per annum on the balance amount of Rs. 75,124/- w.e.f. 1.1.98 upto the date of full and final settlement of the same.

(f) Award costs of and incidental to this application.

(g) pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The applicant has stated that as any amount if due from the applicant had not been assessed within three months after the retirement of the applicant in terms of the provisions of Rule 15 of the Railway Service (Pension) Rules, 1993 the Railway Administration is not entitled to recover any amount from him.

3. The respondents contend that the applicant was informed by Annexure.A3 that an amount of Rs. 21,194/- was due to the Raiway Adminsitration from the applicant as interest on House Building Advance and therefore this being an ascertained sum, the action for recovering the said amount from the DCRG is well within the rules. Regarding the amount of Rs. 29,080/- and 1,18,665/- on account of alleged non-return of T&P items and cost of four items of PW materials the respondents contend that as the applicant has not handed over the said items the Railway Adminsitration is entitled to recover the same.

4. I have carefully gone through the pleadings and materials placed on record and have heard the learned counsel on either side. The learned counsel of applicant

4

argued that in terms of Rule 15 of the Railway Service (Pension) Rules, 1993 any amount due to the Railway administration has got to be ascertained within three months of the retirement and that since that has not been done, the Railway administration is estopped from making any deduction from the gratuity or pension of the applicant. In support of this contention, learned counsel of the applicant relied on an order of the Tribunal in C.I. Andrew Luiz Vs. Government of India through General Manager, Southern Railway, Madras and others (O.A.No.44/96) wherein it was observed as follows:

"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)(1) 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. The learned counsel of the respondents on the other hand argued that the Railway having suffered a loss on account of non-handing over of the materials by the applicant when he was sent on secondment in the year 1992 the administration is well within its powers to recover the amount which are due to the Railway Administration from his gratuity. He further argued that in so far as the recovery of an amount of Rs. 21,134/- which represents the interest on House Building Advance being an amount ascertained even prior to the retirement of the applicant the applicant is estopped from contending that this amount cannot be recovered from the gratuity. It is evident from the pleadings and all the materials brought on record that Railway Administration has not quantified after a due process of enquiry within a period of three months with which the applicant was associated the amount due to the Railway Administration on account of loss caused to it by the applicant's alleged not handing over of the stores and materials. In view of the provisions contained in Rule 15(4)(1) of the Railway Service (Pension) Rules, quoted supra the Railway Administration is not entitled to recover the amount representing the alleged loss caused to the administration on account of alleged non-handing over of the stores which are not admitted. Apart from that recovery of

loss sustained by the Railway Administration on account of misconduct or negligence of its employees while in service can be recovered from the gratuity of the Railway Servant even on retirement. However, such a recovery can be made only in terms of the Railway Service (Pension) Rules after holding an enquiry in the manner prescribed. Recovery of pecuniary loss is a penalty to be imposed on a railway servant. It can also be recovered from a retired government servant provided an enquiry in that regard was held giving the employee a reasonable opportunity to vindicate his innocence in regard to the alleged misconduct or negligence. Further such an enquiry in terms of the rules if not instituted before the retirement of the applicant it cannot be instituted after his retirement if the event on the basis of which the enquiry is to be initiated had taken place beyond four years from the date of retirement. In this case, the applicant having retired in the year 1997 and the alleged failure on his part to hand over the charge of stores occurred in the year 1992 and as no enquiry at all has been held I am of the considered view that the respondents are not entitled to make any deduction from the DCRG of the applicant as cost of non-returned T&P items or cost of four items of P.W. materials not returned to the Railways. If the applicant had not complied with the directions contained in Annexure A1 he should not have been relieved on secondment on 26.9.92. Even after the applicant returned from secondment in the year 1994 no step was taken till the retirement of the applicant in that regard. The applicant who remained outside the construction organisation ever

since 1992 could not be after his retirement in 1997 held responsible for the loss if any without due process in terms of the rules as mentioned above. Regarding the recovery of Rs. 21,134/- from the DCRG of the applicant I am of the considered view that this is exceptionable as this is an ascertained amount due from the applicant to the railway administration as is evident from Annexure.A3 and therefore, could be recovered from the gratuity as per rules.

6. In the light of what is stated above, the impugned orders Annexure.A9, A12 and A15 are set aside declaring that the withholding the retirement gratuity of the applicant other than Rs. 21,134/- towards unpaid interest on House Building Advance is illegal and arbitrary. The respondents are directed to disburse to the applicant the entire retirement gratuity minus Rs. 21,134/- with interest from due date namely 1.3.97 and 1.1.98 respectively till the date of payment at the rate of six percent per annum. The above directions shall be complied with within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

Dated this the 18th day of July, 2003



A.V. HARIDASAN
VICE CHAIRMAN

(s)