CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.13/2008
Dated the 18th day of July, 2008.

CORAM :
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

A Albert
(Retd. Station Master Gr.I,
Southern Railway, Madurai Division,
Kundara) Residing at
"BAIJU BHAVAN",
Thathampalli, Koduvila P.O.,
(Via)East Kallada, Quilon District. ... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

1 Union of India represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town,
Chennai

2 The Senior Divisional Operations Manager,
Southern Railway, Madurai Division
Madurai.

3 The Assistant Divisional Railway Manager,
Southern Railway, Madurai Division
Madurai

4 The Divisional Railway Manager,
Southern Railway, Madurai Division
Madurai.

5 The Divisional Personnel Officer,
Southern Railway, Madurai Division
Madurai. ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

This application having been heard on 18th July, 2008, the Tribunal on the same day delivered the following

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The applicant is aggrieved by the Annexure A-1 order dated 21.12.2006 issued by the 2nd respondent, namely, the Senior Divisional Operations Manager, Southern Railway, Madurai Division, stating that the applicant was found responsible for the shortage of Kerosene Oil at KUV station as per the TI/SCT's report and directing the 4th respondent, namely, the Divisional Personnel Officer, Southern Railway, Madurai Division, to recover an amount of Rs.11,470/- which constitutes an amount of Rs.10,720/- as the cost of the loss caused by shortage and 7% of it as incidental charges amounting to Rs.750/-. He is also aggrieved by Annexure A-5 letter dated 3.4.2007 by which the 5th respondent, namely, the Divisional Personnel Officer, Madurai informed him that the competent authority considered his representation dated 1.2.2007 and held that he could not absolve himself from the shortage of Kerosene Oil resulted due to carelessness "even though there is no malafide intention on his part,".

2 The brief facts of the case are that the applicant retired as Station Master Grade-I of the Southern Railway, Madurai Division on 31.1.2007. Just one month before his retirement, the 2nd respondent informed him vide Annexure A-1 note dated 21.12.2006 that an amount of Rs.11,470/- will be recovered from his salary for the shortage of Kerosene Oil at KUV Station as per the report of the Traffic Inspector. Simultaneously, the Annexure A-2 charge memo was also issued to him under Rule 11 Railway Servants (Discipline & Appeal) Rules 1968. The charge against him was as under:-

"During TI/SCT's surprise night inspection at KUV Station on 30.3.2006 the following irregularities were noticed from K.Oil register.

1 Shri A.Albert, SM I/KUV (in charge of KUV Station) has maintained two different accounts for a same period.

2 Even though the gate signals were provided with LED lamp with solar panel from 02/3/2003, and the same is in working condition till date, the K.Oil consumption was shown for 02/3/03 to 31/3/06 by Shri A Albert, SMI /KUV. No excess was shown on any day.

3 Most of the days the gate lamps were not lit but consumption of 400ml for both the traffic LCs No.527 & 528 were shown.

4 Two separate records were maintained by Shri A.Albert SM I/KUV during August 2005 for K.Oil consumption. He has shown opening balance as 223.550lrs in one register and as 55.700lrs in another register.

Thus he has violated the provisions of rule 3. (1)(iii) of the Railway Services (Conduct) Rules 1966."

3 The applicant gave the Annexure A-3 representation to the Senior DOM/MDU (2nd respondent) denying the charge and after considering the same, the 2nd respondent informed him, vide Annexure A-4 letter dated 24.1.2007, that there was no malafide intention on his part but he could have avoided the net shortage of 22 liters of K.Oil. The 2nd respondent has, therefore, issued him a "warning". Thereafter, applicant made a representation dated 1.2.2007 to refund the amount of Rs.11,470/- deducted from his gratuity. However, the respondents informed the applicant vide Annexure A-5 letter dated 3.4.2007 as under:-

"In the penalty advise it was mentioned that "No malafide intention". This does not absolve him from the shortage of K.Oil resulted due to carelessness."

4 In the reply statement also the respondents have maintained

the aforesaid position justifying the recovery of amount of Rs.11470/- from the DCRG of the Applicant. They have also stated that the recovery has been made only after issuing a notice to the applicant and thereby complying with the principles of natural justice

5 I have heard Advocate Mr.T.C.Govindswamy for the applicant and Advocate Mr.Thomas Mathew Nellimoottil for the respondents. It is seen that the Annexure A-2 memorandum of charges and the Annexure A-3 reply of the applicant have culminated in the Annexure A-4 "warning" dated 24.1.2007 issued to the applicant by the 2nd respondent who at the same time held that there was no malafide intention on the part of the applicant but he could have avoided the net shortage of 22 litres of K.Oil. The matter should have ended there.

6 On the contrary, the 5th respondent took a different view and held that even though there was no malafide intention on the part of the applicant it does not absolve him from the shortage of Kerosene Oil resulted due to his carelessness and accordingly the 2nd respondent ordered for the recovery of Rs.11,470/- from his salary. Since the amount could not be recovered from his salary as he had retired from service on 31.1.2007, the respondents withheld the said amount from his Gratuity.

7 In my considered opinion, the aforesaid action of the respondents is absolutely unwarranted and arbitrary. Once .the Competent Authority has found that there was no malafide on the part of the applicant, the respondents should not have recovered the amount of Rs.11,470/- from his DCRG. Moreover, there is no provision in the rules to recover the amount from the DCRG. The Apex Court in Union of India & Ors V/s.

Madan Mohan Prasad SC SLJ 2002(2) 217 held that only admitted dues can be recovered from the applicant's gratuity. Para-2 & 3 of the aforesaid judgment reads as under:-

> "2 The learned counsel for the appellants relied upon the decisions of this Courts in Union of India v. Sisri Kumar Deb (1991(1)SCC L&S 781), Director of Technical Education v. K.Sita Devi (1991Supp (2) 386) and Wazir Chand v. Union of India & Ors (JT 2000 (Suppl 1) SC 515). In none of these decisions the actual import or the effect to the relevant rules regarding payment of DCRG has been considered. In that view of the matter, these decisions cannot be of much help to the appellants. The relevant rule applicable so far as the respondent is concerned is rule 323 which is available in the manual of Railway Pension Rules, 1950. It is made clear therein that claim against the railway servant may be on account of three circumstances.
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> > "(a) losses (including short collection in freight charges shortage in stores) caused to the government as a result of negligence or fraud on the part of the railways servant while he was in service.
> > (b) other government dues such as overpayment on account of pay and allowances or admitted and obvious dues such as house rent, post office, life insurance prima, outstanding advance, etc.
> > (c) non-government dues."
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> 3 It cannot be said that the case put both on behalf of the appellants can be brought in any one of these categories. The claim made on behalf of the appellant is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated therein is "admitted" and "obvious" dues. The payment resulting in penal damages is neither "admitted" nor "obvious" dues apart from the fact that determination has to be made in such a matter. It is also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either 'admitted, or 'obvious'. Hence, we do not think that the view taken by the tribunal calls for any interference. However, it is made clear that while the appellants have to disburse the DCRG to the respondent the normal house rent inclusive of electricity and water charges, which are 'admitted' or 'obvious' dues can be deducted

out of the same, if still due."

8 In the above facts and circumstances of the case, I am of the considered view that the respondents were not competent to recover the amount of Rs.11,470/- from the DCRG of the applicant. Resultantly, I quash and set aside the Annexure A-1 note dated 21.12.2006 and the Annexure A-5 letter dated 3.4.2007 and direct the respondents to refund the amount of Rs.11,470/- to the applicant forthwith at 9% interest. The interest is payable from the date of recovery i.e. 1.2.2007 till the date of refund of the amount. The above order shall be complied with within a period of three months from the date of receipt of copy of this order. There shall be no orders as to costs.

GEORGE PARACKEN
JUDICIAL MEMBER

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