

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 220/ 2009.

this the 10 th day of September, 2009

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K. Sasidharan Pillai S/o Kesasva Pillai
Retd. Ambulance Van Driver
Railway Hospital, South Western Railway
Mysore Division
residing at Babu Bhavanam
Edavattam, Charumoodu
Vellimon PO, Kollam District.

.. Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

1 Union of India represented by
the General Manager
South Western Railway
HQrs Office, Hubli
Dharwar District, Karnataka.

2 The Divisional Railway Manager
South Western Railway
Mysore Division: Mysore

3 The Divisional Finance Manager
South Western Railway
Mysore Division: Mysore

4 The Financial Adviser & Chief Accounts Officer
South Western Railway
Headquarters Office, Hubli
Dharwar District., Karnataka

5 The General Manager,
Southern Railway, HQrs Office
Park Town PO, Chennai-3

Respondents

By Advocate Thomas Mathew Nellimoottil

The Applications having been heard on 21.8.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a retired Ambulance Van Driver of Railway Hospital, Mysore Division, South Western Railway, is aggrieved by the arbitrary and illegal withholding of Rs. 89,300/- from his retirement gratuity without assigning any reason.

2 The applicant while working as an Ambulance Van Driver of Railway Hospital, Mysore Division, retired on superannuation on 31.12.2007. He submitted that while he was in service, there was a road accident resulting in Award by the MACT, Mysore (A-3) in which the applicant, the Chief Medical Superintendent and the General Manager, Southern Railway were found jointly and severally liable to pay compensation of Rs. 84,300/- with interest @ 6% per annum to the petitioner in the MVC. It is also submitted that in a Criminal Appeal No. 9/03 with reference to the same incident, by judgment dated 10th May, 2004 the Fast Track Court-IV, Mysore held that the Driver was not guilty of any rash and negligent driving. It was also held that the accident was on account of contributory negligence on the part of the original petitioner before the MACT and no personal liability could be fastened on the accused Driver (A-4). According to the applicant, the order of the MACT is under challenge before the High Court of Karnataka by the original petitioner. The grievance of the applicant is that, out of the retirement gratuity an amount of Rs. 89,300/- was withheld by the railway authorities without any order or reason. As his representation was not answered, he filed this Application to declare that withholding of the amount from his retirement gratuity is without any authority of law and the respondents may be directed to refund the same with 12% interest.



3 The respondents in the reply statement submitted that the recovery has been effected in accordance with the Railway Service Pension Rules, 1993 according to which it is permissible to make recovery of Govt. Dues from the retiral benefits without obtaining consent. They submitted that the MACT in MVC No. 33/02 by its judgment dated 19.1.2006 held that the applicant was responsible for rash and negligent driving. The MACT incidentally mentioned that though the applicant was found guilty of the charges in the Trial Court, he was acquitted of the charges in the Criminal Appeal by the Fast Track Court, Mysore. It is further submitted in an eventuality of the appeal preferred against the MACT award ended in granting higher compensation, the amount withheld shall be inadequate.

4 The applicant filed rejoinder reiterating the averments in the O.A.

5 I have heard learned counsel appearing for the parties and perused the documents produced.


6 It is an admitted fact that the applicant was involved in an accident case and that the conviction and sentence passed in the Criminal Case No. 726/2001 was set aside in Appeal by the Fast Track Court, Mysore. But the claim before the MACT was allowed partly with cost. The petitioner therein was entitled to recover compensation of Rs. 84,300/- with interest at the rate of 6% p.a. from the date of petition till the date of entire realisation from respondents 1 to 3. Not satisfied with the award of the MACT, the petitioner in the MACT has gone on appeal to the High Court and the matter is pending final disposal. The applicant in this O.A. is only one of the three respondents in the MACT claim. Therefore, all the three respondents are liable to pay the amount. The respondents Railways have not quantified the Government dues payable by the applicant in accordance with the rules and communicated to him.



7 I do not see any logic in the stand of the respondents in recovering the entire amount from the 1st respondent alone. The finding of the MACT is that all the three respondents are jointly and severally liable to pay the compensation of Rs. 89,300/- with interest. Moreover, the respondents have not informed the applicant that he alone is liable to pay the compensation awarded by the MACT. The proper course of action would have been to issue a show cause notice to him about the proposed recovery and in the event of his refusal to credit the amount willingly, to issue a chargesheet to recover the same. Natural justice demands that the respondents should have informed the applicant about their intention to recover the entire amount from his retirement gratuity. The applicant was denied an opportunity to put forth his objections. Hence, I am of the view that the withholding of Rs. 89,300/- from the retirement gratuity of the applicant is without any authority of law and is opposed to the principles of natural justice. In the light of the acquittal of the applicant in the Criminal Case, the Railways being the owner of the vehicle is liable to pay the entire amount.

8 In the circumstances, I am of the view that the O.A. is to be allowed. Accordingly, the O.A. succeeds. The respondents are directed to release the amount of Rs. 89,300/- withheld from applicant's gratuity within two months from today. There shall be no order as to costs.

Dated 10th September, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER