

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

Original Application No.232/2006

This the ^{30th} Day of March 2007

HON'BLE MR. M. KANTHAIAH, MEMBER (J).

Suchi Kant aged about 61 years. Ex. SEE/S/TPP, 4/10, Vikash Khand, Gomti Nagar, Lucknow.

...Applicant.

By Advocate: Shri M. Sayeduddin.

Versus.

1. The Union of India through the General Manger, Northern Railway, Baroda House, New Delhi.
2. The General Manager (Engineering) North Rly, Baroda House, New Delhi.
3. The Divisional Superintendent Engineer (Co-ordination) Northern Railway. Moradabad.
4. The GMT/TPP, Thermal Portion Plant, Northern Railway, Charbagh, Lucknow.

...Respondents.

By Advocate: Shri Praveen Kumar for Shri M.K. Singh.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER (J).

The applicant has filed this Original application against the respondents for recovery of an amount of Rs.6,79,625/- which was deduction from his pensionary benefits stating as unlawful and for recovery of it with interest @ 12 % per annum.

2. Respondents have filed their Counter-Affidavit opposing the claim of the applicant.
3. Heard both sides.
4. The point for consideration is whether the applicant is entitled for the relief as prayed for.
5. The admitted facts of the case are that the applicant while holding the charge of PWI, Northern Railway, Bareilly at Moradabad Division in the year 1998 there was shortage of stock for considerable amount. Without complying the said deficiencies in the stock, the applicant took voluntary retirement with effect from 30.6.2004. It is also an undisputed fact that the 4th Respondent issued a notice Dt. 6.8.2004, informing due of total amount of Rs. 5,78,959.85 paisa from the applicant and requested to arrange clearance within 15 days, for final settlement of payment. Annexure-1 dated 6.8.2004 is the copy of the said notice. When there was no clearance of payment of due amount, the respondents have deducted a total amount of Rs. 6,79,629/- i.e. Rs. 3,82,237/- from 40 % commutation of pension, and Rs. 2,97,389/- from DCRG, while making payment of pensionary benefits to the applicant.

Against which the applicant made representations stating that such recoveries are unlawful. He made, first representation on 12.12.2004 (Annexure-2) and the applicant also made representations



on 31.3.2005, 20.6.2005, 20.09.2005 covered under Annexure 6 to 8, but there was no response from the respondents. Thereafter, this Original application has been filed on 12.5.2006, against recoveries of Rs. 6,79,625/- made from his pensionary benefits. It is also not in dispute that the applicant neither questioned the claim of the respondents for recovery of outstanding amount of Rs.5,78,958.85 paisa as claimed under Annexure-4 dated 6.8.2004 nor the action of respondents for recovery of an amount of Rs.6,79,629/-

6. The main contention of the applicant is that the respondents had recovered the outstanding amounts from his pensionary benefits without following the procedure and his paid amount of Rs. 90,387/- by cheque was not taken into account and further claimed excess amount of Rs.10,279.15, without giving any prior notice. He also further contended that none of his representation were considered by the respondents and recoveries made after lapse of 4 years is illegal and thus questioned the action of the respondents for deduction of an amount of Rs.6,79,626/- from his pensionary benefits and claimed for its recovery with interest thereon.

7. The respondents have opposed the claim of the applicant on the ground that the claim of the applicant is not maintainable without challenging the orders covered under Annexure-1 dated 6.8.2004 and further the claim is also barred by limitation. They further stated that only the outstanding dues have been recovered from the payments of the applicant as per Rules embodied in Railway Services Pension Rules, 1993, when there was no response for their demands.



8. The main argument of the applicant is that the respondents have not followed Rule-9 of Railway Service Pension Rules, 1993 and thus questioned the legality of recovery made from his pensionary benefits. The respondents have denied the said arguments of the applicant stating that the said Rule is applicable where major penalty charge sheet was issued to a retired employees and in the instant case, no charge sheet has been issued. Rule 09 of Railway Service Pension Rule 1993 says as follows:-

9. From the reading of Rule-9 of Railway Service Pension Rules, 1993, it is clear that the said provision is applicable in the case of major penalty, a charge sheet was issued to a retired employee. But in the instant case no charge sheet was issued for any major penalty and as such the said provision is not at all helpful to the applicant, for questioning recoveries of outstanding dues made from his pensionary benefits. Further Rule-15 of Railway Service (Pension) Rules 1993 gives such right to the authorities for recovery and adjustment of railway dues from pensionary benefits. In view of the said provisions, it is not open to the applicant to make any objections for recovery or adjustment of dues from his pensionary benefits.

10. Coming to the second ground he have made payment of Rs.90,387/- through a cheque and the same has not been given credit- and also further claimed excess amount of Rs. 10,279-15 paisa. The applicant has not furnished the details of payments and also particulars of cheque and its encashment. Without furnishing such details, it is not open to the applicant to agitate on such amounts.

2

11. Admittedly, the respondents have made claim of Rs. 5,78,969.85 paisa from the applicant under Annexure-1 dated 6.8.2004. But subsequently they have recovered an amount of Rs.6,79,626/- i.e. Rs. 3,82,237/- from 40 % of commutation of pension and Rs. 2,97,389/- from DCRG and thus recovered an excess amount without giving any prior notice. The respondents have not given any clarification or explanation for recovery of such excess amount from his pensionary benefits of the applicant and none of the documents are placed to substantiate the deduction of an amount of Rs.6,79,626/- from the amount of pensionary benefits of the applicant. When they made claim of Rs. 5,78,968.85 paisa under Annexure-1 dated 6.8.2004 deducting an amount of FRs.6,97,626/- which clearly shows that the respondents have made excess claim from the pensionary benefits of the applicant.

12. It is also the contention of the applicant that after the respondents have issued Annexure-1 notice dated 6.8.2004 demanding recovery, he made a representation to the respondents. Annexure-2 is the office copy of the representation dated 12.12.2004 and subsequently also made further representations under Annexure-6 to 8. Annexure -8 is the last representation dated 20th September 2005. In all those representations the applicant requested the department to consider their demand for deduction of due amount from his pensionary benefits. Admittedly, the applicant has filed this OA on 12.5.2006. none of his representations were consider by the respondents and no reply has been issued from their side.

13. But the learned counsel for the respondents argued that the claim of the applicant is barred by limitation on the ground that he

2

has not filed the O.A. immediately after 6 months of expiry of his 1st representation dated 12.12.2004 (Annexure-2). He also further argued that continuance of such representation does not save limitation. Admittedly the applicant has not filed the OA immediately after expiry of 6 months from the date of his 1st representation dated 12.1.2004 (Annexure-2) and filed on 12.5.2006, which clearly shows that the claim of the applicant is barred by limitation.

14. It is also the main objection of the respondents that the applicant without questioning the legality or validity of impugned order Annexure-1 dated 6.8.2004 his claim is not at all maintainable. It is the case of the applicant that though the applicant has issued a Notice dated 6.8.20004 Annexure-1 demanding clearance of Rs. 5,78,959.85 paisa, they deducted an amount of Rs.6,79,625/- without furnishing notice and in such circumstances questioning of Annexure-1 does not serve the purpose of his claim and thus stated that there is no illegality in not challenging Annexure-1 dated 6.8.2004. The respondents also not filed any document to substantiate that they have made claim of Rs. 6,79,626/- by issue of any separate notice or proceedings to the applicant and in such circumstances, the applicant is justified in challenging the deduction of Rs. 6,79,626/- made by the respondents from the pensionary benefits of the applicant and as such there is no justification in the objections of the respondents in not challenging the demand notice dated 6.8.2004 Annexure-1 issued to the applicant.

15. In view of the above discussions, though there are merits in the claim of the applicant in respect of recovery of excess amount out of Rs. 6,79,626/- from out of his pensionary benefits against the claim of

7

Rs. 5,78,959.85 paisa made by the respondents under Annexure-1 dated 6.8.2004, the claim of the applicant is barred by limitation and in such circumstances, he is not entitled for recovery of such excess amount. Thus the OA is liable for dismissal mainly on the ground of limitation.

In the result, Original application is dismissed. No costs.


(M. KANTHAIAH)
30.3.07
MEMBER (J)

/ak/