

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 170/2008

This, the ^{11th} day of February, 2009

Hon'ble Dr. A. K. Mishra, Member (A)

Uma Shanker Bajpai aged about 63 years son of late Banarsi Lal r/o E-3427, Rajajipuram, Lucknow (U.P.)

Applicant.

By Advocate: Sri R.C. Saxena

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. Senior Divisional Mechanical Engineer, North Central Railway, Jhansi.
3. Financial Advisor & Chief Accounts Officer, North Central Railway, Allahabad.
4. Divisional Railway Manager, North Central Railway, Jhansi.
5. Sri Rishi Raj Verma, Crew Controller, Juhi Kanpur, Central Railway, Kanpur.
6. Additional Divisional Railway Manager, Central Railway, Jhansi.

Respondents.

By Advocate: Sri N.K.Agrawal

ORDER

By Hon'ble Dr. A.K.Mishra, Member (A)

This is an application challenging the order of recovery of Rs.1,28,980 by respondent No.6 (impugned order as Annexure No.1) which was implemented in the impugned order dated 13.10.2005 and the order dated 20.10.2006, in which the representation of the applicant on this recovery was rejected and the position was explained to the applicant by the respondent No.4 in a personal interview granted for the purpose.

2. Brief facts of the case are as follows:

The applicant was placed under suspension on 28.9.2000 which was vacated w.e.f. 25.11.2000. The applicant was incharge of Stores of Crew Controller, Juhi under the control of respondent No. 5. A special verification of Stores was conducted during 17.11.2000 to 25.11.2000. The applicant was called when the keys of the Store room



and almirah were opened. He also signed the final verification report on the basis of which a shortage of items of the value of Rs. 1,28,980/- and excess material of Rs. 10,940/- was noticed. The applicant was asked to explain about the shortage but there was no explanation from him till the date of his retirement. Therefore, the impugned orders at Annexure No.1 and 2 were issued directing for recovery of this amount from his retiral dues.

3. The main grievance of the applicant is that no formal disciplinary proceeding was initiated against him and the administrative order for recovery was meted out to him without considering his point of view. I see from the documents filed along with application that a formal notice was issued on 12.9.2002 vide Annexure -10 asking him to show cause why the recovery should not be made. In reply, he has filed his representation which was submitted on 10.10.2002 in which following points were raised by him:-

- i) that he was under suspension during the period 22.9.2000 to 25.11.2000 and the special verification of the Stores at CCOR, Juhi was made in his absence and therefore, the results of this verification could not be utilized against him;
- ii) that full charge in respect of Stores of CCOR at Juhi had been taken over form the applicant before verification was conducted and as such the applicant could not be held responsible for any shortage;
- iii) that he was called on 25.11.2000 by serving a false memo on him at 12.15 P.M. and his signature on the verification statement was taken under duress holding out the promise to him that his suspension order had been cancelled and he could join his duties only after he put his signature on the verification statement.

4. He represented that no regular inquiry was conducted and he had not been given any opportunity to establish his defence plea and requested that a full-fledged inquiry be taken up where he should be given opportunity to put forward his case effectively. He made another



representation on 20.10.2000 (Ann. 12) requesting for reopening of the case and proper inquiry in view of his allegation that the Crew Controller ,GMC Kanpur CR (Respondent No. 5), who was Store custodian during the relevant period was responsible for the Stores as the real incharge and he should be made answerable for any shortage / irregularity; that at the time of his suspension, the charge of Stores should have been taken over by an employee of the Railway as per the circular of the Railway Board dated 6.10.96, which was not followed in his case.

5. The respondent No. 5 ,Crew Controller issued a notice to him (Ann. 14) asking him to present himself for an inquiry in respect of appeal filed by him in the matter of recovery of Rs. 1,28,980/- from his retiral dues. But the results of this inquiry are not available. Further, it is seen that he was given an opportunity of personal hearing by respondent No. 2 vide notice dated 10.7.2007 (Ann. 16). The impugned order at Ann. 3 also refers to a personal interview granted by the respondent No. 2 on 23.7.2007 when the position was explained to him.

6. The fact remains that although no formal disciplinary proceeding had been initiated against him yet he had been given due notice to explain the shortage of store items. It is not the case that no opportunities had been given to him to explain the shortage noticed during special verification conducted. In fact, he had submitted his explanation in this regard. It cannot be denied that the applicant was the real incharge of store, although the over all control lay with respondent No.5; therefore, he cannot shift his responsibility being the immediate person -in-charge of store items.

7. It is a fact that the applicant was under suspension during this period and was reinstated only on the last date i.e. 25.11.2000. It is also a fact that keys of the Almirah and stores had been taken on 17.11.2000 from him when the verification process began. In

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consideration of his appeal, a notice was issued to him (Ann. 14) asking him to present himself for an inquiry but the results of his inquiry are not available. Therefore, it cannot be said that his submissions contained in the appeal against the fixation of responsibility to him for the shortage have been disposed of, although, he was given a personal hearing later on.

8. Therefore, in the interest of justice, this case is remitted back to the competent authority to dispose of the representation of the applicant by a reasoned order dealing with all the contentions which he had advanced in his defence plea. Since the applicant had already retired from service, it would be deemed that regular proceedings had been started on the basis of the notice issued to him while he was in service and the proceedings would be taken up from that particular stage. It is also made clear that in case, the respondents decided to effect any recovery from the retiral dues after giving due opportunity to the applicant and after considering all his pleas, the approval of the President under Rule 9 of the Railway Service (Pension) Rules, 1993 has to be obtained before any recovery is finally made.

9. The Original Application is disposed of with the foregoing observations. No costs.


(Dr. A. K. Mishra)
Member (A) 11/02/07

HLS/-