

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 420 of 2011

This the day of April, 2013

Hon'ble Sri Navneet Kumar, Member (J)

Mohd. Shafi, aged about 67 years, son of late Shri Mohd. Nabi,
Resident of D-53, Sarvoday Nagar, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. The General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway,
Ashok Marg, Lucknow.
3. The Divisional Personnel Officer, North Eastern Railway,
Ashok Marg, Lucknow

Opposite Parties

By Advocate : Sri D. B. Singh

ORDER

BY HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)

The present original application is preferred by the applicant under Section 19 of AT Act 1985 with the following relief/s:-

(1) To quash the impugned order dated 28.03.2010 contained as Annexure no. A-1 to this OA with all consequential benefits while extending the benefits of the judgments passed by this Hon'ble Tribunal in the matter of Shri Ramakant and Shri S.D. Pandey.

(2) To release the DCRG amounting to Rs. 191786/- along with interest @ 12% PA.

(3) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(4) Cost of the present case, as the applicant has unnecessarily been dragged into litigation.

2. The facts of the case are:

That the applicant retired from services of the respondents organization while working on the post of Commercial Superintendent-II and except DCRG his entire retiral dues was paid and when the said was not paid the applicant made representation and thereafter filed OA. 230/2004. After that the applicant again submitted the detailed representation and respondents rejected the representation which was challenged and in OA. 168/2010. The said original application was allowed to be withdrawn with liberty to file a fresh. The learned counsel for the applicant has also relied upon two decisions of this Tribunal in OA 426/06 and OA 340/06 and one of those judgments was challenged before the Hon'ble High Court and the Hon'ble High Court dismissed the writ petition preferred by the respondents. Apart from this, the learned counsel for the applicant has categorically pointed out that on the basis of order dated 23.03.2006, the recovery from the applicant was made.

3. The learned counsel for the respondents have filed their counter reply and through counter reply it is pointed out that due to pendency of the commercial dues the benefits of the petitioner in regard to DCRG payment was withdrawn. The learned counsel for the respondents has failed to indicate any good grounds for withdrawing the DCRG without any notice to the applicant. The respondents also failed to indicate that prior to the issuance of the order, the respondents ever issued notice upon the applicant for withdrawing the said amount of DCRG. Apart from this, the learned counsel for respondents also failed to indicate any discrepancy to the earlier order passed by this Tribunal.

4. The learned counsel for the applicant has filed the rejoinder and in the rejoinder mostly the averment made in the original application are reiterated.

5. Heard learned counsel for parties and perused the records.

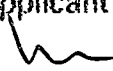


6. It may be mentioned at the outset that there is no dispute that the dues due from an employee can be recovered/adjusted from the gratuity payable to such Railway employee as pleaded by the respondents. However, it is subject to some conditions. Either the Department makes an enquiry and/or pass an order fixing the responsibility of the employee after due show cause notice on the employee directly or indirectly admits the liability. In the instant case no such facts appears on record. Rather the applicant vehemently denies his responsibility. No show cause notice has been issued to him. The respondents have also failed to plead that an enquiry was made or show cause notice has been given to the applicant. The amount in question was withheld temporarily as mentioned in the order dated 23.03.2006. What further action was taken by the respondents has not been disclosed. It appears that the respondents had no cause for fixing the responsibility as pleaded by the applicant.

7. The respondents have observed complete silence. In any case, sufficient time has elapsed. The applicant retired in 2004. Under the Railway Service (Pension) Rules, 1993, the competent authority is mandated to assess/adjust dues within 3 months of retirement of Railway Servant.


The gratuity is paid on satisfactory completion of service. The railways can recover an outstanding amount but that it should be ascertained and assessed. The word 'assessment' requires a notice and hearing to the person concerned, and an order giving reasons before the amount may be recovered. In the present case there is no material to show that a show cause notice was given to the respondent. He had taken specific plea in the original application that no show cause notice was given to him before recovering the amount arbitrary and illegally from his gratuity.

8. Finally the judgment in OA 426 of 2006, Ramakant vs. UOI and others has been brought to the notice of Tribunal. The facts of the said case were exactly same and relief was granted to the applicant of that case. The order of



the Tribunal was upheld by the Hon'ble High Court in writ petition no 15(S/B) of 2010. Therefore, bases on the analogy of the aforesaid case, it is appropriate to grant the same relief to the applicant of the instant OA.

9. In view of the above discussion of facts and rules, I am of the opinion that the respondents are liable to release the withheld amount of gratuity with interest. Accordingly, respondents are directed to pay recovered amount of gratuity amounting to Rs. 1,91,786/- to the applicant with interest thereon @ 9% form the date of his retirement till the date of payment as per the OA is allowed. No order as to costs.


(Navneet Kumar)
Member (J)

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