

This the <sup>14</sup> day of February, 2010

**Hon'ble Ms.Sadhna Srivastava, Member (J)**

Swami Dayal Pandey aged about 61 years son of late Tribhuwan Prasad Pandey, r/o 357, Civil Line, Balrampur (U.P.).

Applicant

By Advocate: Sri Praveen Kumar

**Versus**

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. The Divisional Railway Manager, N.E.Railway, Ashok Marg, Lucknow.
3. The Divisional Personnel Officer, N.E. Railway, Ashok Marg, Lucknow.

Respondents

By Advocate: Sri V.K.Srivastava

**ORDER**

**Hon'ble Ms. Sadhna Srivastava, Member (J)**

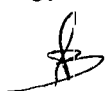
The applicant seeks a direction upon the respondents to release amount of Rs.2,32,688/- withheld from gratuity along with interest thereon.

2. The facts, in brief, are that the applicant, on selection by Railway Service Commission, was appointed as Goods Clerk in the year 1965. Thereafter, he was selected in Commercial apprentice in the year 1989 and was promoted as Commercial Superintendent Grade-I. He retired on attaining the age of superannuation w.e.f. 31.5.2005 from the post of Commercial Superintendent Grade I from Gonda Goods Shed. He received Rs. 13,60,571/- towards entire pensionary benefits on 31.5.2005, but Rs. 2,32,688/- was temporarily withheld from gratuity amount due to him. Annexure A-1 shows that Rs.2,32,688/- was temporarily withheld on account of Commercial debit.

3. The applicant filed various representations for release of gratuity amount but no order has been passed, hence this O.A.

4. The respondents have filed counter reply stating therein that Railway Service (Pension) Rule 1993 and Indian Commercial Manual Volume II provides that the admitted commercial debit can be realized from the DCRG of the retiree.

5. Heard the counsel for parties and perused the record.



6. The applicant has challenged the action of the respondents mainly on the ground that before withholding the amount of gratuity, no notice or opportunity of hearing has ever been given to the applicant.

7. 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, or the employee, directly or indirectly admits the liability. In the instant case, no such facts appear 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 31.5.2005 (Annexure A-1), whereby the pensionary benefits were disbursed. 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.

8. This fact has not been denied by the respondents in the counter reply. The respondents have observed complete silence. In any case, sufficient time has elapsed. The applicant retired in 2005. Under the Railway Service (Pension) Rules, 1993, the competent authority is mandated to assess/ adjust dues within 3 months of retirement of Railway Servant.

9. The judgment in **O.A. No. 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. Therefore based on the analogy of the aforesaid case, it is appropriate to grant the same relief to the applicant of the instant O.A.

10. 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.2,32,688/-to the applicant with interest thereon @ 9% from the date of his retirement till the date of payment as per rules. The O.A. is allowed with no order as to costs.

  
(Ms. Sadhna Srivastava)  
Member (J)

HLS/-