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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 4th day of April 1996.

O.A. No. 17 of 1990.

HON. MR. JUSTICE B.C. SAKSENA, V.C.

Babu Ram Vaish aged about 69 years, son of late Shri Lal Nathu Lal, resident of E-I/658, Vinay Khand-I, Gomti Nagar, Lucknow.

Applicant.

By Advocate Shri A. Moin.

versus

1. Union of India Ministry of Railways, through General Manager, Northern Railways, Baroda House, New Delhi.

2. The Divisional Railway Manager, Moradabad.

Respondents.

By Advocate Shri A.K. Chaturvedi,.

O R D E R

HON. MR. JUSTICE B.C. SAKSENA, V.C.

Through this O.A. the applicant a retired employee of the Northern Railway seeks a direction to be issued to the respondents to pay him full amount of gratuity with 15% compound interest per annum from 1.8.79 to the date gratuity is finally paid.

2. The brief facts are that the applicant after serving for about 37 years, retired as Station Master on the 31st of July, 79. All the post retiral benefits have been paid to him but ~~the~~ gratuity was not paid. The applicant preferred an application, as per advice tendered to him, under section 15 of the Payment of Wages Act, 1936 before the prescribed authority (City Magistrate, Shahjahanpur). The same was decided by judgment dated 21.7.89 and the learned Prescribed Authority

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held that the question of gratuity does not fall for decision under section 15 of the Payment of Wages Act. The applicant therefore, has filed this O.A.

3. It has been averred that in paragraph 14 of the written statement filed by the respondents before the prescribed authority, it has been indicated ~~in the said written statement~~ that Wagon No. No. NR-24490 was fraudulently diverted from Mughalsarai and delivered at Safipur, the station where the applicant was working, on forged railway receipts dated 20.5.77 by the applicant. It was also indicted that three more wagons were also delivered by the forged Railway receipts by the plaintiff, resulting the loss of about 21,400 to the Central Government. it was also disclosed in the said written statement that the payment of gratuity of Rs 13,411.20 has been withheld on the advice of Superintendent of Police, Railways, Lucknow. In the O.A. the applicant, therefore, took the plea that the order for withholding the applicant's gratuity had been passed without holding any enquiry under the Railway Servants (Discipline and Appeal) Rules.

4. The respondents have filed a Counter Affidavit in which they have indicated that the applicant had effected delivery on forged railway receipts which resulted in loss of Central Government to the tune of Rs 21,400. It has been stated that the matter was investigated by the Outstanding Inspector, Moradabad and the applicant was held responsible for delivery of the above wagons on forged railway receipts, therefore, Senior Commercial Officer, Headquarter, Baroda

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House, New Delhi ordered for the withholding of payment of gratuity of the applicant. It has also been pleaded that the order for withholding of gratuity was passed in the year 1979 and thus this O.A. which was filed in the year 1990 is barred by limitation.

5. The applicant has filed Rejoinder Affidavit reiterating the averments made in the O.A.

6. A supplementary counter affidavit on behalf of the respondents was filed in reply to the rejoinder in which it has been indicated that the actual owners of the wagons have preferred a claim for cost of material and investigation was conducted by the Outstanding Inspector, Moradabad whose report dated 6.11.79 has been filed alongwith the order passed by the competent authority to recover the cost, i.e. Rs21,400 from the settlement dues of the applicant. It has further been pleaded that since the amount of gratuity was less than the amount to be recovered from the applicant the gratuity is not being paid to him. The applicant has filed Supplementary rejoinder.

7. I have heard the learned counsel for the parties. The short question that falls for consideration is whether the investigation or the report made by the Outstanding Inspector could be treated sufficient for ordering withholding ^{of} the gratuity. The learned counsel for the applicant cited a few decisions in support of his submission that an order for forfeiture of gratuity can only be passed by the President of India, hence the order passed by the Senior Commercial Officer was incompetent. The decision cited by the learned counsel for the applicant is reported in

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1989(11) A.T.C. 675, Bimalendra Banerjee vs. Union of India and others. The learned counsel for the respondents in respect of this ~~xxxx~~ decision submitted that it would not apply since in the instant case no order for forfeiture of the gratuity has been passed. He, therefore, submitted that the said decision, in so far as it lays down that the President of India alone was competent to order for forfeiture of gratuity is not attracted to the facts of the present case. There is force in the submission made by the learned counsel for the respondents. In the same context other decision cited by the learned counsel for the applicant reported in 1990 (Supplement) S.C.C. 640 F.R. Jesuratnam vs. Union of India and others also would not be applicable. The question, there was whether gratuity can be forfeited. The Hon'ble Supreme Court took the view that gratuity is no longer a bounty but it is a matter of right of the employee and it can therefore, no longer be regarded as a provision in the discretion of the President as provided in the Pension Regulations. Since there is no legal provision empowering the authorities to forfeit the gratuity payable to an employee, the order passed by the Government forfeiting the gratuity payable to the appellant must be held to be bad and must be set aside." The said decision however, goes to show that the gratuity is no longer a bounty and it is a matter of right of employee. Even forfeiture of the same by the President under the provisions in the Pension Regulation was found to be not legal provision empowering the authorities to forfeit the gratuity payable to an employee. Thus, the withholding of gratuity would also be without authority of law.

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8. The next question that arises ^{is} as to whether the investigation by the outstanding Inspector was sufficient to warrant the order for withholding the gratuity. The learned counsel for the applicant cited a few decisions on this aspect of the matter. They are:

- i) Ram Shiromani vs. Union of India and others vs. Union of India reported in (1995) 30 A.T.C. 330.
- ii) Barindra Kumar Ghosh vs. Union of India reported in (1991) 5 ATC, 83.
- iii) S.S. Poley vs. Union of India and others reported in 1989(11), AT.C. 699.

9. Under the Railway Pension Rules, there is a provision in rule 2308 (CSR 351-A) which reads as under:

"The President further reserves to himself the right of withholding or withdrawing a pension or any part of it , whether permanently or for a specified period and the right of ordering the recovery from a pension or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pension is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement."

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In the definition clause in rule 2302(10) (CSR 41) pension has been defined as follows:

"Except when the term "pension" is used in contradistinction to Gratuity, "Pension" includes Gratuity."

Thus, even ~~xx~~ under rule 2308 of the Pension Rules withholding of pension would also include gratuity with a view to recover the pecuniary loss caused to the government can only be passed after departmental or judicial proceedings in which pensioner is found guilty of misconduct or negligence during the period of his service. No departmental enquiry as contemplated under rule 9 of the Railway Servants (Discipline and Appeal) Rules has admittedly been held. Therefore, the order passed by the Senior Commercial Officer for withholding of the gratuity is clearly illegal. In the aforesaid two decisions it has been held where no charge sheet has been issued, D.C.R.G./commutation of pension could not be withheld unless a formal charge sheet was issued in a departmental proceedings or filed in a court of criminal trial. In the first case, on intimation of the C.B.I. the order for withholding D.C.R.G. /commutation of pension was passed and it was held that withholding of D.C.R.G./commutation of pension on the basis of said intimation of C.B.I. alone was incompetent.

10. In the second case only fact finding enquiry was held and recovery was ordered. It was held that the recovery was illegal.

11. The learned counsel for the respondents

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submitted that since the order for withholding gratuity was passed in the year 1979, and the O.A. was filed in the year 1990, the same is highly belated and barred by limitation. It is very well settled that gratuity is no longer a bounty and the right to pension is ^a recurring cause of action. ^{am} I, therefore, not impressed with the submission.

11. In view of the above, the O.A. succeeds. The order for withholding of gratuity as passed by the Senior Commercial Officer through his letter dated 22.11.79, copy of which has been filed as Annexure -1 to the Counter Affidavit is quashed. The respondents are directed to pay to the applicant the amount of gratuity payable to him with interest at the rate of 12% per annum from the date it became payable till the date it is actually paid. The payment of the gratuity ^{and interest} may be made within three months from the date of communication of this order to the respondents. It is further provided that in the event of failure to comply with the above directions, the respondents would be liable to pay to the applicant amount of gratuity along with interest at the rate of 15% per annum from the date it became payable till the date of actual payment. No order as to costs.

B. Saksena

VICE CHAIRMAN

~~MEMBER (2)~~ *Shakeel*

Lucknow; Dated: 4.4.96

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