

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 193 of 2001.

Dated this Monday, the 24th day of September, 2001.

Noormohammad Ibrahim Shaikh, Applicant.

Shri R. D. Deharia, Advocate for the  
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri K. R. Yelwe for Advocate for  
Shri V. S. Masurkar, Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other No  
Benches of the Tribunal ?
- (iii) Library. No

  
(B.N. BAHADUR)  
MEMBER (A).

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ORIGINAL APPLICATION NO.: 193 of 2001.

Dated this Monday, the 24th day of September, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Noormohammad Ibrahim Shaikh,  
Retired Station Manager,  
Central Railway,  
Hotgi Station (Group 'C')

Resident of 37, Priyadarshani,  
Nagar, Kumtha Naka,  
Solapur (M.S.) Pin - 413 003.

.... Applicant.

(By Advocate Shri R. D. Deharia)

VERSUS

1. Union of India through  
The General Manager,  
Central Railway, C.S.T.,  
Mumbai - 400 001.

2. The Divnl. Railway Manager,  
Divisional Office,  
Central Railway,  
Solapur (M.S.) Pin - 413 001.

... Respondents.

(By Advocate Shri K.R. Yelwe for  
Shri V. S. Masurkar)

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to the Tribunal seeking the relief, in substance, that it be held that the withholding of post-retiral benefit amounting to the tune of

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Rs. 48,916/- by the Respondents is wrong and that the amount withheld should be ordered to be released to the Applicant alongwith interest thereon. This is the sum and substance of the grievances/prayers in the case.

2. Learned Counsel on both sides, Shri R. D. Deharia for the Applicant and Shri K.R. Yelwe for Shri V.S.Masurkar on behalf of Respondents, have been heard and the papers in the case have been perused. The arguments made on behalf of respective sides have been carefully considered.

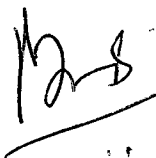
3. The facts of the case, as brought out by the Applicant, lie in a short compass, in that, the Applicant sought and was granted voluntary retirement with effect from the afternoon of 05.07.1999. At that time, he was working as Station Manager at Hotgi Station. The application seeking voluntary retirement and the order granting it are at pages 39 and 40 of the Paper Book, respectively. It is further stated that other retiral dues were released at the time of his retirement/shortly thereafter. The following amounts were withheld, namely - Rs. 37,504.00 towards Encashment of Leave Salary, Rs. 4,192.00 towards Productivity Link Bonus for the year 1998-99 and Rs. 7,220.00 towards Composit Transfer Grant. The total of these three is Rs. 48,916.00 as claimed by the Applicant and as described by him with break ups at para 4.10 of the O.A.



4. The Respondents have filed a Written Statement of Reply where the claims of the Applicant have been resisted and that it has been found, as pointed out by the Accounts Section, that the Applicant was involved in certain wrongful action, as described in para 9 of the reply of the Respondents. This relates, statedly, violation of Rules by the Applicant while he was Station Manager, Hotgi in regard to placement of rakes in two lots due to which the owner of siding was put to undue benefits and the Railways to undue loss. It is stated that this act of the Applicant has caused loss of about Rs. 6.55 Lakhs to the Railway Revenue. In view of this position, the aforesaid amount of over Rs. 48,000/which had not been paid by the time of discovery of fact have been withheld and have been withheld correctly as per rules. Certain other clarifications and allegations have been made out in the reply where parawise response to the averments in the O.A. have been made.

5. Arguing the case on behalf of the Applicant, the Learned Counsel, Shri Deharia, first took me over the fact and made the point that the Applicant had taken certain stand regarding the allegation being made now and that he was in no way responsible in the allegations made. Shri Deharia took the ground that this was casting of stigma and that there was no charge-sheet and no action initiated against applicant nor even a show cause notice and that the amounts withheld cannot be withheld in the background of the above facts, without such enquiry/show cause

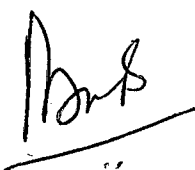
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notice. He also referred to various contentions/grounds taken in his O.A. specially para 5.2, where he has made the point as per the relevant Railway Servants (Pension) Rules, 1993 that Government dues on account of commercial debit are required to be assessed and adjusted within a period of three months from the date of retirement of Government servant. Shri Deharia depended on the grounds detailed out in para 5.1 to 5.11 of his O.A.

6. Learned Counsel for the Respondents also depended on his Written Statement of reply and drew special attention to certain grounds taken. Para 13 of the reply was first referred to to make the point that in view of the negligent action of applicant, the full facts and responsibility are yet to be finalised. Learned Counsel stated that the extent of responsibility, etc. can be found out only after the enquiry was completed and that prima facie that Applicant seems to be responsible. It is also argued that the Applicant had some how managed to obtain 'No Due Certificate' from the concerned authorities. This point is made at para 15 of the Written Statement. Shri Yelwe also drew my attention to the letter at Annexure A-3 annexed by the Applicant (page 15) to say that in fact this letter amounts to acceptance of the fact that the sums of money withheld and for the reasons that the allotment of rake siding is being enquired into. It was contended that it amounts to admission.

7. I have seen all papers in the case and also carefully considered the various contentions raised by the Learned Counsel



on both sides. In the first place, it is clear that due to a debit being raised - in other words, a objection being raised by the Accounts Department, the matter in regard to placement of rakes is being looked into. Also that the amount has been withheld on the ground that there are responsibilities of negligent behaviour and violation of rules by the Applicant. Now once this point has been raised, admittedly, it becomes clear that certain stigma is attached squarely at a particular conduct of the Applicant. It is not a mere recovery, as envisaged in Railway Rules, say like certain missing items not being handed over at the time of retirement or certain clear cut dues pending recovery on account of housing being retained, etc. In such cases, where amounts are clear from record, there is no perhaps need of any enquiry to establish any recovery. For instance, in the case of non-release of Government accomodation, it has been held that no show cause notice is necessary, depending on facts of the case (Ram Poojan's case).

8. In the present case, however, a clear allegation is levelled against the Applicant for violation of rules in the matter relating to placement of rakes and causing of heavy loss to Government alleged. Thus, it is an attachment of clear stigma and allegation against the Applicant. This clearly, therefore, calls for an enquiry before any dues are recovered or even withheld. In the background of these facts of the case, no recovery could be made and no amounts withheld without proper

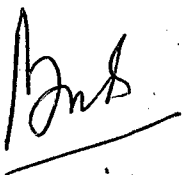
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proceedings not being taken against the Applicant for violation of rules, as alleged. In the case of Dilip Baburao Pawar V/s. Divnl. Railway Manager reported at 2000 (1) ATJ 553 decided by this Bench in O.A. No. 917/97, it was infact held that recovery ordered even on the report of fact finding enquiry committee without resorting to disciplinary action was wrong. Here there is no evidence of any fact finding enquiry report available although I was told orally during arguments that certain enquiry was going on in the matter. In the matter of G.D. Dixit decided by this Bench of the Tribunal on 05.09.2001 (O.A. No. 206/2001) the case law in this regard has been discussed at some length. In fact, the role of fact finding enquiry committee has also been examined and it has been held that there has to be a proper enquiry under Discipline & Appeal Rules and without which recoveries cannot be made. In any case, this position will certainly hold good where a clear cut stigma has been attached.

9. We also find some strength in the provisions of the Railway Servants (Pension) Rules, 1993 quoted by the Applicant in para 5.2 of the O.A. The sub-rule 4(i) indeed provides that recoveries of various types, including those resulting from negligence or fraud have to be recovered within three months. In any case, where a specific discovery has been made later, which points to negligence or violation of rules, the Respondents are not precluded to take note of this and take appropriate action depending on the facts of the case. However, such action for

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recovery, etc. will have to be determined only through the departmental enquiry.

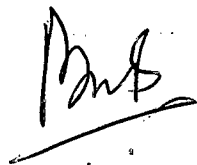
10. I have also considered the other arguments made on behalf of Respondents, like the Applicant "managing" to take 'No Due Certificate'. This kind of argument will not help the Respondents at all. In fact, a kind of collusion is being alleged, which is a serious matter but which cannot be ascribed to the Applicant without its being proved in a regular enquiry. So these arguments of the Respondents also hold no water.

11. In view of the above discussions, I have no hesitation in holding that the withholding of the amount of post retiral benefits on account of Encashment of Leave Salary, Productivity Link Bonus and Composit Transfer Grant are arbitrary, and not justified. The amounts, as due to the Applicant on these counts shall have to be paid to the Applicant.

12. The O.A. is, therefore, allowed to the extent and in terms of the following orders :

The amounts of Post retiral benefits on account of Encashment of Leave, Productivity Link Bonus for the year 1998-99 and Composit Transfer Grant shall be paid to the Applicant as early as possible and not later than within two months from the

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date of receipt of a copy of this order. No interest will be given on these amounts.

There will be no order as to costs.

*B. N. Bahadur*

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(B. N. BAHADUR)  
MEMBER (A).

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