

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:206/2001
DATED THE 5 OF ~~AUG.~~ ^{Sept.} 2001

CORAM:HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri Govind Dattatraya Dixit,
Retired Office Supdt.I(Linen)C.Rly,
Mumbai C.S.T.
R/o 494/16, 'Gurukul', Bhawani Chowk,
Opp. Ashok Nagar Police Chowki,
Satpur, Nasik Pin 422 007(M.S.)

... Applicant

By Advocate Shri R.D.Deharia

V/s.

1. Union of India, Through
The General Manager, C.Rly,
C.S.T.Mumbai, Pin-400 001.
2. The Divisional Railway Manager,
Divisional Office, Central Railway,
C.S.T.Mumbai, Pin - 400 001.
3. Senior Divisional Mechanical,
Engineer(Coaching), C.Rly,
C.S.T., Mumbai Pin - 400 001.

... Respondents

By Advocate Shri Suresh Kumar

(O R D E R)

Per Smt.Shanta Shastry, Member(A)

The applicant has challenged the impugned order dated 2/9/98 in which the respondents held the applicant responsible for the loss of linen and crockery items amounting to Rs.98,680/- and further proposed to recover the said amount from his pending dues. Further, the applicant had challenged the impugned fact finding enquiry report dated 18/8/98 sent to him on 21/10/98. The final decision to recover R.98,680/- from the withheld settlement dues towards the Stores Debit for the alleged loss of linen and crockery items was communicated to him on 7/1/99

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advising that the said amount has been recovered from the DCRG of the applicant.

2. The applicant was working as Office Superintendent Grade-I. He retired from service on 30/6/96. He received all the retirement benefits except the Gratuity amount. The applicant submits that he made several representations to the respondents but the Gratuity was not paid to him. After protracted correspondence after two years from the date of retirement for the first time the applicant was informed on 2/9/98 that as per the fact finding enquiry he had been held responsible for the loss of linen and crockery items amounting to Rs.98,680/- and the shortages had taken place during the applicant's tenure as Office Superintendent (linener, CST, Mumbai) and it was proposed to recover the said amount from his pending settlement dues. This was followed by the impugned letter dated 21/10/98 forwarding a copy of the fact finding report to the applicant asking him to submit his explanation by 2/11/98. The applicant submitted his representation on 10/11/98 and also requested for inspection of relevant documents. Thereafter, according to the applicant, the respondents arbitrarily decided and recovered the amount of Rs.98,680/- from the Gratuity amount which was withheld. Thereafter, the applicant being aggrieved approached this Tribunal by way of OA-138/99 for directions to respondents to pay the withheld amount alongwith interest of 18%. The Tribunal vide order dated 25/4/2000 directed that the applicant shall submit a representation to the respondents after taking inspection of relevant documents and thereafter the respondents shall look into the representation of the applicant.

Accordingly, the inspection of the relevant documents was taken by the applicant on 6/11/2000 to 8/11/2000 and he submitted his representation on 2/12/2000 giving full legal defence. Thereafter, the applicant submitted a reminder on 5/2/2001 and 22/2/2001. The reply was awaited.

3. The respondents submit that the applicant was not paid the gratuity amount as there was to be recovery on account of shortage of linen items during the tenure of the applicant as Office Superintendent. The amount was assessed on retirement and the Gratuity was not paid to the applicant as the same was adjusted. An enquiry committee was constituted to assess the actual amount. The committee submitted its report on 18/8/98 but applicant was intimated about the shortages on 2/9/98 and was asked to make representation if any. The applicant did not make any representation against the report of the Fact Finding Committee and thereafter on 7/5/99 he was intimated about the exact amount of recovery. As directed by the Tribunal in OA-138/99, the respondents allowed the applicant to inspect the relevant documents. The applicant completed the inspection in November, 2000 and he was supposed to make a representation thereafter. He made it only on 2/12/2000. The representation was disposed of vide order dated 16/5/2001 and was duly communicated to the applicant. The applicant received and acknowledged the same. In his representation, the applicant did not show any meritorious grounds as to how the amount assessed was wrong and how the shortages had not taken place during his tenure. He only raised legal questions which were also replied to.

4. The grounds taken by the applicant are that though he had retired on 30/6/96, the respondents took two years to tell him that they were going to adjust his Gratuity against the amount to be recovered from the applicant for shortages of linen and crockery. According to sub rule 4(1)(iv)(b) of Rule (15) of the Railway Servants Pension Rules 1973, the Government dues on account of stores debits are required to be assessed and adjusted within three months from the date of retirement of the railway servant concerned. Therefore, recovery of store debits from the pensionary benefits of the Railway servant cannot be made after three months after the date of retirement of the employee. The action of the respondents was taken after a lapse of two years and six months after retirement of the applicant, thus violating Pension Rules, 1973. The applicant was not issued any charge sheet as required under the Railway Servants Discipline and Appeal Rules, 1968 to establish that he was guilty of the charges. The respondents failed to adhere to Rule 6(3)(iii) of the Railway Servants (Discipline and Appeal) Rules 1968 which inter alia spells that any recovery from the pensionary benefits can be effected only after conducting mandatory disciplinary proceedings. The respondents ordered the recovery based merely on the recommendations of the Fact Finding Enquiry Committee. It is not a proper enquiry. The applicant further submits that no office order specifying the duty list of Office Superintendent(Linen) was issued to him by his predecessor nor any directions given to him by any officials conferring responsibility of the linen section to the applicant. There was no handing over of the then

existing stores made out by the then outgoing O.S. or staff. He was neither asked for a copy of the handing over note from the applicant's predecessor when the applicant resumed the post of O.S. The applicant had taken due care and when he found that he had no control over the section and the section was in disarray, he made a note on 13/5/95 and submitted to the Sr.D.M.E., i.e. respondent no.3. No action was taken on this note. In view of this the applicant states that he is entitled to get the amount of Gratuity of Rs.98,680/recovered from him with interest @ 18% per annum till the date of payment. There has been an inordinate delay of four years in the payment of Gratuity on account of administrative lapses.

5. The applicant has relied upon a few judgements of the Supreme Court, High Court as well as the Tribunal. He has also produced copies of judgements in some of these cases.

- i) Case Laws of various C.A.T. H.C. and S.C. of India
- ii) Vijay L Mehrotra V/s. State of U.P.
(2000)2 LLJ 253, 2000 LUB I C 2663 (2000) 2 SLR 686
- iii) Punjab and Haryana High Court(Division Bench)
Kirat Gopal V/s. Haryana Vidyut Parsaran Nigam Ltd. 2000 (2) ATJ - 482.
- iv) ATJ 2000 (1)553 - CAT Mumbai (Division Bench)
Dilip Baburao Pawar V/s. D.R.M. W., Rly, BCT.
- v) (1992)21 ATC 257 A.Ramchandran V/s. U.O.I & Ors.
- vi) 1998 (3) ATJ 444 Vol-26 CAT PB (New Delhi)
- vii) O.A. No.603/1993, Sritra Dhar Patra V.s U.O.I & Ors. Date of Judgement 8/12/94 CAT, Patna

- viii) O.A.No.792/96, Shripad Narayan Joshi V/s. U.O.I and D.R.M. BSL (C.Rly) Date of Judgement 15/4/97 CAT, Bombay.
- ix) O.A.No.1094/93, G.U.Attar V/s. U.O.I and D.R.M. C.Rly, Solapur, Date of Judgement 22/2/94, CAT, Bombay Bench
- x) AIR 1987 A II - 108
Deoki Nandan Agarwal V/s. U.O.I. & Ors.

In particular the applicant has relied on OA.917/97 decided on 31/1/2000 in the matter of Dilip Baburao Pawar V/s. D.R.M., wherein it was held that the action of the respondents to effect recovery of the loss on the basis of the findings of the joint investigation committee cannot be legally upheld and therefore, the impugned orders therein were quashed and recovery if any made already was directed to be refunded to the applicant. In the case of Gurubachan Singh V/s. U.O.I. & Ors in OA-940/94 before Calcutta Bench of the Tribunal, the Tribunal held that the respondents had failed to assess any recoverable dues within 15 months from the date of retirement and they had allowed the petition. In another OA-1094/93, G.U.Attar V/s. U.O.I & Ors, this Tribunal clearly Ruled that it was not permissible in the absence of a proper departmental enquiry ending with a finding of guilty, to recover the amount from the applicant's DCRG. The DCRG should have been paid within three months of the retirement of the applicant. The Tribunal also granted 18% interest on the amount of DCRG paid belatedly. In short, it is the contention of the applicant, that without conducting a proper departmental



enquiry as envisaged under Rule (6) of the Railway Servants Discipline and Appeal Rules, it was not proper on the part of the respondents to have adjusted the recovery on account of shortages of linen and crockery against the Gratuity amount. Also the gratuity amount should not have been withheld when the respondents could not assess the loss within three months after the retirement of the applicant.

6. The respondents tried to justify their action by submitting that the Fact Finding Enquiry Committee had clearly established the shortages and had attributed the loss to the applicant. Since it was an admitted debit, there was no need to conduct any enquiry. The respondents were within their rights in adjusting the gratuity against the recovery as per Rule 15(2) of the Railway Service Pension Rules 1973. Government dues can be recovered from the Gratuity in accordance with the provisions of sub rule(4) of Rule 15 of the Railway Services (Pension) Rules 1973. As per Rule 15(4)(ii) if the Railways want to recover the dues from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871. In this rule, there is no bar to deduct the amount from Gratuity. In their reply to the representation of the applicant dated 2/12/2000, the Railways have stated that a regular departmental enquiry was conducted into the shortages of linen and crockery items by two Gazetted Officers. The applicant was found responsible for shortage of items. The findings were accepted after careful consideration of all facts and record and therefore it was not necessary to conduct any enquiry under the discipline and appeal rules.


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7. I have heard the learned counsel for both the parties and have perused the relevant pleadings as well as the rules and judgements. In my considered view, the respondents ordered the recovery on account of shortages based on the recommendations of the fact finding committee. It is true that the Railway Rules do provide for recovery on account of shortages of stores etc from the pensionary benefits. However, these rules, namely Rule-15 of the Pension Rules only gives liberty to the authorities concerned to effect the recovery from pensionary benefits. It is nowhere stated that no enquiry should be conducted under the Discipline and Appeal Rules before ordering such recovery. The disciplinary¹ appeal rules do prescribe conducting of a regular enquiry under Rule-6 and therefore to say that it was not considered necessary to conduct a regular enquiry cannot be accepted. Secondly, any assessment of the recoveries to be made has to be done within a period of three months and maximum of 15 months in cases of commercial dues. Even if we take a limit of 15 months, the same has been exceeded in the present case as the applicant was informed for the first time about the shortage and recovery only in 1998 i.e. after two years and two months of retirement of the applicant. On this ground also, the action of the respondents cannot be said to be in order. As rightly pointed out by the learned counsel for the applicant, the claim of the applicant that the shortages cannot be assessed after a period of three months of the retirement of the concerned Railway servant does have force, ~~is~~ rightly supported by the judgement in OA-608/93 in the case of Sritra Dhar Patra V/s. U.O.I. and Ors decided by the Patna Bench of the CAT. Similarly, it has been clearly held by

this Tribunal in OA-917/97 that it is not enough to go by the recommendations of the fact finding enquiry committee. There has to be a proper enquiry under the discipline and appeal rules. This being the position, I have to hold that the respondents are not justified in ordering the recovery of amount of Rs.98,680/- against shortages two years after the applicant had retired and that too without initiating proper disciplinary proceedings under the discipline and appeal rules. The impugned orders therefore dated 2/9/98 and 7/1/99 are quashed and set aside. The respondents are directed to release to the applicant the DCRG amount which was adjusted against the recovery of Rs.98,680/- within a period of three months from the date of receipt of a copy of this order and also simultaneously pay interest @ 10% p.a. for the period from 1/7/96 till the date of actual payment. The respondents shall however be at liberty to finally assess their claims of commercial nature if any against the petitioner according to other available due process of law.

8. In the result, the OA is allowed. No costs.


(SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Contempt Petition No.3/2002
in
Original Application No.206/2001

Dated this Friday the 22nd Day of March, 2002.

Coram : Hon'ble Shri S.L. Jain, Member (J)
Hon'ble Smt. Shanta Shastri, Member (A).

Shri Govind D. Dixit,
R/o.494/16, "Gurukul",
Bhawani Chowk, Opp. Ashok
Nagar Police Chowkie,
Satpur, Nasik-422007.

.. Applicant

(By Advocate Shri R.D. Deharia)

Versus

1. Shri B.S. Sudhir Chandra,
General Manager, Central
Railway, Mumbai CST-400001.

2. Shri Vivek Sahai,
Divisional Railway Manager,
Central Railway,
Mumbai CST-400001.

.. Respondents.

(By Advocate Shri Suresh Kumar)

Order (Oral)
{ Per : S.L. Jain, Member (J) }

Learned Counsel for respondents stated that
Cheque of Rs.1,55,174/- dated 21.3.2002 has been issued
in favour of Bank of Baroda, Nasik City and the said
cheque has been delivered to the Applicant's Counsel.
Applicant's Counsel admits the said fact. In view of the
Order of the Hon'ble High Court dated 27.2.2002, matter
does not survive, as such Contempt Petition stands
dismissed. Notices issued to the respondents stand
discharged. No order as to costs.

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(Smt. Shanta Shastri)
Member (A)

S.L. Jain
(S.L. Jain)
Member (J).

order/judgment despatched
to Applicant/Respondent(s)
on 24.4.2002

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