

4/76

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION no. 400/90

Surendra Nath Mishra

Applicant

versus

Union of India through Chairman,
Railway Board and others

Respondents.

HON. MR. S.N. PRASAD, JUDICIAL MEMBER.

The applicant has approached this Tribunal for quashing the impugned order No. C/409/5/LNJ/Misc. 187/1 dated nil (Annexure A-2) passed by the respondent No. 2 withholding 50% of the Death-Cum-Retirement-Gratuity of the applicant and for directing the respondents to release the 50% Death-Cum-Retirement-Gratuity in favour of the applicant at the earliest.

2. Briefly stated, the facts of this case, inter alia, are that the applicant retired as Station Superintendent, Risia Station, N.E. Railway, under D.R.M. Lucknow Junction, and in the year 1985 his last pay drawn was Rs 2525/- per month. In the Risia Station two other Assistant Station Masters were also posted to assist the applicant in his day to day work, but somehow or the other they were very irregular in their duties and to this effect several reports were also sent to the higher authorities ; and as such both of them were annoyed with the applicant and wanted to somehow harass him in his day to day functioning as Station Superintendent in the Risia Station. It has further been stated that while the applicant was posted in the Risia Station, 1000 Tickets (Four Bundles each Bundle contain 250 tickets) of Second Class, from Risia Station to Behraich Station were found missing and a report to this effect was immediately sent to the

higher authorities as per Indian Railway Commercial Mannual, Para 229, Volume-I; and subsequently ,when the applicant was retiring from railway service, it was found on 6.8.1986 when he was making over charge of tickets, 500 tickets(Two bundlers, each bundle contains 250 tickets) of Second class from Risia Station to Bombay V.T. Station and 250 Tickets(one bundle ech bundle contains 250 tickets) ~~for~~ Risia Station to Palia-Kala Station missing, and this matter was also reported to the higher authorities of the Department; and as such the Chief Commercial Superintendent N.E.Rly., Gorakhpur, notified the aforesaid missing in the fortnightly Gazettee in the year 1987 for the checking of fraudulent use of the said missing tickets as per rules and as a result of enquiry and as per D.O. letter of Divisional Railway Manager (Commercial) dated 26-12-86 it revealed that the missing tickets were not collected at the destination stations and as such the missing tickets were found not to have been sold to anybody (vide Annexure A-1). It has been further stated that though the applicant had submitted his representation dated 12-5-88 to the respondent No.2 for holding enquiry but without holding any enquiry the respondent No.2 passed the impugned order (Annexure A-2) which is illegal and invalid and against the principles of natural justice and has been passed by the respondent No.2 without affording any opportunity to the applicant and whereby 50% Death-cum-Retirement-Gratuity of the applicant has been withheld.

3. The respondents in their Counter-Affidavit have, inter-alia, contended that the applicant retired on attaining the age of superannuation w.e.f. 31-7-1986 while working as Station Superintendent at Risia Station

under the respondents; and while the applicant was working as Station Superintendent at Risia Station there occurred loss of Railway Tickets and the sale which could only be detected immediately after the retirement of the applicant and accordingly a preliminary enquiry was conducted and it was found that the tickets were lost due to the negligence of the applicant. ^{~ further ~} ~~Therefore, it~~ has been contended that as per the provisions contained in paragraph 2308 of the Indian Railway Establishment Code Vol.II, there is a right of withholding or withdrawing pension or any part of it whether partly or for specified period and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the ^{Govt.} ~~Government.~~ ^{Relevant portion of the said paragraph 2308 reads as under:-} The President further reserves to himself the right of withdrawing or withholding the pension or any part of it whether permanently or for a specified period and the right ^{of} ~~for~~ ordering recovery from pension of the whole or part of any pecuniary loss caused to ⁱⁿ Government, if, ⁱⁿ any departmental or judicial proceedings the pensioner is found guilty of gross misconduct or negligence during the period of his ^{~ medical service ~} service rendered upon re-employment after retirement. ^{~ ~ ~ ~ ~}

4. It has further been contended that the above impugned order (Annexure A-2) has been passed legally and validly and in view of the ^{above facts and} circumstances the application of the applicant is liable to be dismissed.

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5. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

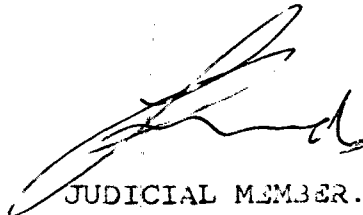
6. This is noteworthy that from the perusal of para 18 to 20 of the counter reply of the respondents it becomes clear that upto the date of retirement of the applicant ^{or even many years after his retirement} no inquiry or no disciplinary proceedings were going on against the applicant.

7. A perusal of Annexure A-2 reveals that though this impugned order Annexure A-2 does not show ^{any} ~~any~~ date, but a careful perusal thereof reveals that this was passed after the retirement of the applicant, and from the scrutiny of the entire material on records it is apparent that the above impugned order was passed by the respondent No.2 without the sanction or approval of the President of India which is not only against the mandatory provisions of relevant rules and procedures but also is violative of the ^{the} ~~pro~~ principles of natural justice.

8. Thus, from the foregoing discussions and after considering all view points and all aspects of the matter, I find that the impugned order (Annexure A-2), as referred to above, is not sustainable and as such the same is hereby quashed.

9. In the result, the application of the applicant is allowed and the impugned order (Annexure A-2) whereby 50% of the death-cum-retirement gratuity of the applicant has been withheld by the respondent No.2, is hereby quashed.

10. The application of the applicant is decided as above. No order as to costs.



JUDICIAL MEMBER.

25.2.94

Dated: 25/2/1994, Lucknow.

(tgk)