

CAUSE FILED

T. A 210/92 (T. L.)

NAME OF PARTY

in O-A 970/90

Moham N. Nigam

U. S. & others,

PART (1)

Check List

A-1 to A-2

Final Judgment

A-3 to A-5

Final Judgment

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Petition for writ

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PART (2)

B-1 to B-39

PART (3)

C-1 to C-4

DATED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

23-A THORNHILL ROAD ***

ALLAHABAD U.P. ***

REGISTRATION No.

77C OF

1990

APPLICANT (S)

Nallesh Narain Nigam

RESPONDENT (S)

UCH 2066

(N/L)

PARTICULARS TO BE EXAMINED

ENDORSEMENT AS TO

RESULT OF EXAMINATION.

1 * Is the appeal competent? :

2* (A) Is the application in the prescribed form?

(B) Is the application in paper book form?

(C) Have complete sets of the Application been filed?

3 * (A) Is the appeal in time?

(B) If not, by how many days it is beyond time?

(C) Has sufficient case for not making the application in time, been filed?

4* Has the document of authentication: Vakalatnama been filed?

5* Is the application accompanied by:

B.D./Postal Order for Rs. 50.- (Fifty).

6* Has the certified copy/copies of the order(s) against which the application is made been filed:

7* (A) Have the copies of the Documents/raised upon the applicant and mentioned in the application, been filed?

(B) Have the documents referred to: in (a) above duly attested by a Gazetted officer and numbered accordingly?

(C) Are the documents referred to in (a) above neatly typed in double space?

yes

yes

yes

yes

yes

-

-

yes

yes

5253/883 dt 17/11/90 Rs 50/-

yes

yes

yes

yes

PARTICULARS TO BE EXAMINED

2

ENDORECEMENT AS TO
RESULT OF EXAMINATION

A-2

- 8* Has the index of documents been filed and paging done properly?
- 9* Have the chronological details of representation made and the outcome of such representations been indicated in the application?
- 10* Is the matter raised in the application pending before any court of law of any other Bench of Tribunal?
- 11* Are the application/duplicate copy/ spare copies signed?
- 12* Are extra copies of the application with annexures filed?
- (A) Identical with the Original?
- (B) Defective?
- (C) Wanting in Annexures?
- NOS. /PAGES NOS. ?
- 13* Have file size envelopes bearing full addresses of the respondents been filed?
- 14* Are the given addresses, the registered addresses?
- 15* Do the names of the Parties in the copies tally with those indicated in the application?
- 16* Are the translations certified to be true or supported by an affidavit affirming that they are true?
- 17* Are the facts of the case mentioned in item No.4 of the application?
- (A) Concise ?
- (B) Under distinct heads ?
- (C) Numbered consecutively?
- (D) Typed in double space on one side of the paper?
- 18* Have the particulars for interim order prayed for indicated with reasons?
- 19* Whether all the remedies have been exhausted?
- 20* Classification of case:
- 21* Cause of Action:

Yes

No Yes

No

Yes

Yes

Yes

-

-

No

Yes

Yes

QNA.

Yes

Yes

Yes

Yes

Yes

Dismissal from Service

No

Yes

Bench Case

Dismissal from Service

21/11

Register as O.A. and list this case before Hon'ble Court on 19/12/90.

Prankaj/
28.9.90

30/11/90
D.A. Q

ORDER - SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(ALLAHABAD)

A3

OA No. 970 OF 1990
M. N. Nigam VERSUS UOI & Others

| Sl. No. | Date | OFFICE REPORT | ORDER |
|---------|--------|--|--|
| 1 | 2 | 3 | 4 |
| | 8/4/90 | OR In compliance with Hon'ble Bench's Order dated 10.12.90, notices issued to 2 respondents by Regd Post on 13.12.90. Neither any reply nor any undelivered cover has been received back so far. Alk 8/4/91 OR-13-6-91 Reply has been filed & kept on record. ms 13/6/91 O.R. Office report dt- 13-6-91 is re-submitted ms 28/8/91 OR No. RA has been filed so far R 6/11/91 | 9/4/91 Seen office Report dt. 8/4/91. vacablat name has been filed today. let the counter be filed by 5/6/91. pe DR. 24-6-91 DR Seen office report. Put up today as the case was listed during vacation. Reply has not been today. let the same be filed by 29.8.91 pe DR J. DR (7) 29.11.91 Seen the office report. CA is on record. RA has not been filed today. let it be filed by 7.11.91 pe DR (7) |

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH : LUCKNOW

AU

TA 210/92 TL
in

ORDER SHEET NO.

O.A./T.A No 970/90

OFFICE REPORT

DATE /

ORDER

1.

30/9/92

O.R.

Register the case on TL.
This file has been received
after transfer from the
Allahabad C.A.T. Issue
Notice to ~~both~~ ^{both} the parties
list for orders before the
Honble Bench on 4/12/92.

Noted & issued
on 13-11-92

91

Date

4/12/92

Honble Mr. S N Bhasu, J.M.

Ad received
of Applicant
counsel

8

7/12/92

case called out. A perusal of
records reveals that notices were
issued to the ~~respondents~~ ^{applicant}
for both the parties. Shri R.K. Nigam
has not appeared for the applicant & is
present, but counsel for the respondent
is not present from the period
of records, it is not clear as to
whether notice was served by the
court for the respondents or not.
In this case for hearing & final
disposal on 7/1/93 before single
member Bench.

J.M.

MANISH
4/11/93

A-8

7.1.93

Hon'ble Mr. S.N. Prasad, J.M.

Case called out several times for intervals.
Non-response on behalf of the either of the parties.

List this case for hearing on ^{admission} ~~disposal~~ /
final disposal on 28.1.93.

J.M.

(Jlw)

28.1.93 Case not reached adj. to.

11-3-93.

B.O.C.

11.3.93 Case not reached adj. to
20.3.93

Pro

(AB)

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 970 of 1990

Mahesh Narayan Nigam Applicant

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

The applicant has approached this tribunal praying that a direction in the nature of mandamus commanding the respondents may be issued to release the balance amount of gratuity i.e. Rs. 2223.20 together with interest which was calculated to Rs. 4011.00 @ 12% and also to pay interest pendentilite and future till actual payment is made to him.

2. The applicant was retired on 30.9.1975 as Station Master Vyas Nagar, N. Railway. On his retirement, a sum of Rs. 9240/- was worked out as D.C.R.G., but he was paid only a sum of Rs. 7216.80. Thus, the balance amount of Rs. 2232.20 was not paid to the applicant. The applicant filed an application under section 33-C(2) of the I.D. Act before the Central Govt. Industrial Tribunal cum-Labour Court, which vide its award dated 28.5.1990 dismissed the application and computation made even in favour of the applicant. Against this order, the applicant has approached this tribunal. The applicant has questioned ^{the deduction} of a sum of Rs. 29.20 for a loss of station earning, debits and a sum of Rs. 88/- on account of coaching debits and a sum of Rs. 70/- on account of shortage of store items. These are said to be in possession of the applicant.

3. According to the applicant, he was only paid a sum of Rs. 4496.80 + a sum of Rs. 2520/- i.e. total

Contd..2/-

amount of Rs. 7116.80 only.

4. In the written statement, a sum of Rs. 7116.80 ~~only~~ has been admitted and it has been stated that before making deduction of 10% in the death cum-retirement gratuity, which could have been done under the rules, the applicant was given a show cause notice and the applicant submitted his reply and it was thereafter, the said order was passed. The admissible death cum-retirement gratuity was reduced to 10%.

5. The Industrial tribunal was of the view that deduction in gratuity was made on account of loss of station earning etc. The tribunal came to the conclusion that as a matter of fact the total amount payable was Rs. 8,120/- and thus balance remained 1103/-. It is true that 10% deduction has been made. As the tribunal has taken the view that dispute remains only in respect of Rs. 1103/- and as such the application was dismissed on the ground that order may be legal or illegal, the same can not be questioned in precluding under section 33(C)(2). The view taken by the tribunal is quite correct, but factually it appears that the tribunal had committed mistake and that's why this application is allowed to the extent that the deduction so made will to the extent of Rs. 1103 only and not to Rs. 2223.20 and the respondents will pay back the said amount to the applicant within a period of three months alongwith interest as payable under the rules. No order as to costs.


Vice-Chairman

Lucknow Dated: 20.3.1993.

(RKA)

B/C I

THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

10/12

COMPILATION
APPLICATION PAPER BOOK

O.A. No. 970 ~~1989~~ 1990

Mahe. Sh. Narayan Nigam PETITIONER

VS

U. U. India RESPONDENT


R. K. NIGAM
ADVOCATE

A-8

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH AT ALLAHABAD.

O.A. No. 970 /1990

Mahesh Narayan Nigam

..... Petitioner

Versus

Union of India and another

..... Respondents

COMPILATION BOOK

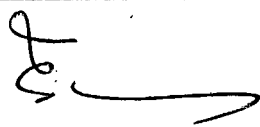
| S.No. | Description of documents | Pages |
|-------|--------------------------|-------|
|-------|--------------------------|-------|

Ist Compilation

- | | | |
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| 1. | Petition. | 1 - 10 |
| 2. | <u>Annexure A-III</u> - Impugned judgment of CGIT Kanpur. | 11 - 13 |
| 3. | Postal order. | 14 |
| 4. | Vakalatnama. | 15 |

2nd Compilation

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| 1. | <u>Annexure A-I</u> - Application filed before the CGIT Kanpur. | 16-18 |
| 2. | <u>Annexure A-II</u> - WS filed by the Respondents. | 19-20 |


(RAM KUMAR NIGAM)
COUNSEL FOR THE PETITIONER

Central Administrative Tribunal
Additional Bench At Allahabad
Date of Filing... 15/11/90

(15)

Date of Receipt
By Post

OR

15/11/90

By Registrar.

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

O.A. No. 970 /1990.

~~Central~~ Narayan
Mahesh Kumar Nigam aged about 72 years son of
Shri Shambhoo Saran Nigam, R/O 45 Duprapur,
Unnao (U.P.)

..... Petitioner

Versus

Filled Today
Mated
for 10/12/90

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Lucknow.

..... Respondents

15/11/90

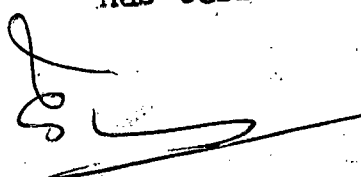
1. DETAILS OF THE PETITION:

This petition is being directed for release
of part of the gratuity amount which is admittedly
with-held by the Respondents without any reason
or rhyme and for no fault of the petitioner.

2. JURISDICTION:

The humble petitioner retired as Station
Master, Vyasnagar, Northern Railway from 30-9-75.
~~On his retirement he was entitled to Rs. 9240/- as gratuity~~
~~and Rs. 2000/- as death gratuity.~~ and
the Respondent No. 2 is headquartered at Lucknow,
hence it is declared that this Hon'ble Tribunal
has territorial jurisdiction to try this petition.

.....2/-

 Mahesh Narayan
Nigam

A-13

- 2 -

3. LIMITATION:

Since the impugned order was passed by the Central Govt. Industrial Tribunal-Cum-Labour Court, Kanpur on 28-5-90 thereby dismissing the ~~appeal of~~ ~~the~~ petitioner under Sec. 33 C (2) of the I.D. Act, hence it is declared that this petition is within time.

4. FACTS OF THE CASE:

4.1 That the humble petitioner retired as SM Vyas Nagar, N.Rly. on 30-9-75. On his retirement a sum of Rs. 9240/- was worked out as DCRG (Death-Cum-Retirement gratuity).

4.2 However, the Respondent No. 2 only paid the gratuity amount as follows:-

Amount due - Rs. 9240/-

Debits due - NIL


Payment of DCRG actually made - Rs. 7216.80

Balance due - Rs. 2223.20

4.3 That a claim for the above amount was filed under Section 33 -C (2) of the I.D. Act before the Central Govt. Industrial Tribunal-Cum-Labour Court, Kanpur where the Respondents filed their WS also. The true copy of the claim application as well as the reply filed by the Respondents are being filed and marked as Annexure A-I and A-II to the 2nd compilation.

4.4 That in the instant case, provision of IREM (1235, 1236 and 1237) applies and while deducting

Contd....3/-

 Mahesh Narain Mehta

AM

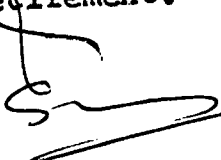
- 3 -

the amount, the Respondents have honoured the above statutory and mandatory provisions with total breach inasmuch as the humble petitioner has been given no opportunity of being heard for any deduction out of the DCRG payable to the petitioner and, therefore, the deductions made by the Respondents are totally without jurisdiction, arbitrary, illegal and non-est and the petitioner is entitled not only to the principal amount but also to the recurring interest as per law.

4.5 That it is needless to mention that the gratuity is not a bounty so that the Respondents could deduct a sumptuous amount ~~xxx~~ out of the same at their own free-will and in any case it is submitted most respectfully that the humble petitioner has rendered quite un-impeachable servicew~~it~~ with utmost honesty and integrity and there was no occasion to forfeit any part of the gratuity amount nor there was any liability for which the amount could have been attached or deducted out of the DCRG.

4.6 That in the State of Kerla and other Vs. M. Padmanabhan Nair (AIR 1985 Supreme Court - page 356) ~~the~~ it was held that over the Govt. dues which have been delayed, abnormal interest should be awarded at market rates and the same commence from the expiry of 2 months from the date of retirement.

Contd..4/-

 Mahesh Narain
Neha

A-12

- 4 -

4.7 That the humble petitioner retired on 30-9-75 and, therefore, to much period expired from ~~30-9-75~~ 30-11-75 (and it is this date from which the humble petitioner is entitled for interest on the amount of DCRG balance (Rs. 2223.20) which comes to Rs. 4011/- approximately and, therefore, the total amount due to the humble petitioner is now Rs. 6234.20 paise.

4.8 That from the WS filed by the Respondents before CGIT Kanpur, it would be clear that the balance amount of DCRG i.e. Rs. 2223.20 paise is fully admitted to the Respondents but they have justified the deductions by quite arbitrary action of deduction on various heads. The humble petitioner begs to submit that the deductions out of the DCRG are quite arbitrary, illegal and without taking the petitioner into confidence at any stage. and it is also one of the pleas taken that the petitioner's services were not satisfactory and on this account 10% of the DCRG was deducted. This is absolutely a false plea taken in the WS. The service book of the petitioner may kindly be summoned before this Hon'ble Tribunal and the same will be observed to be quite un-blemished.

4.9 Further the deduction of Rs. 29.20 for the alleged loss of station earning and Rs. 88/- on account of coaching debits and Rs. 70/- on account of shortage of stores items which are said to be in the possession of the petitioner, are undoubtedly

Mallesh Narain Mehta

AB

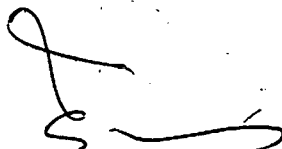
- 5 -

quire arbitrary, illegal and without following the principles of natural justice.

4.10. It is admitted in para 3 of the WS that the petitioner was only paid an amount of Rs. 4496.80 + Rs. 2520/- and the actual payment made till 1985 vide CO7 No. 050375 dated 2-7-85 comes to Rs. 7116.80, whereas the amount due to the petitioner as calculated by the Administration was Rs. 9240/- as admitted in para 1 of the WS.

4.11 That the humble petitioner is quite a poor man with liabilities over his head because of his eldest son having expired in a very serious accident who was in a very lucrative Managerial service of a big concern and after his death, he is badly in shattered condition and had his son alived he would not have claimed this paltry amount and he would not have continued for his claim in CGIT or before this Hon'ble Tribunal. He is filing this petition with high hopes that justice shall be awarded to him looking the diplorable conduct of the Railway Administration inasmuch as it is feeling proud of having deducted a substantial part of the gratuity amount of the humble petitioner without any show cause notice or even without taking him into confidence for the deductions made and in this view of the matter, the deductions are tantamount to

Contd...6/-

 Mahesh Narayan
Narayan

nothing less than robbery and the humble petitioner is, therefore, fully entitled to the interest @ 12% per annum as already held in the State of Kerla and others Vs. P.M. Padmanabhan Nair (AIR 1985 Supreme Court page 356).


4.12 That the humble petitioner further claims interest pendentilite and future also till the payment is actually made by the Respondents in addition to the amount claimed and the arrear of interest due so far and likely to further fall due.

4.13 That the above case law (AIR 1985 Supreme Court page 356) has been relied upon by the Railway Board in their letter No. F (E) III/79/PNI/15 dated 23-1-87 (NR Sr.No. 9168) and excerpt condensed in B.S.Mene's Railway Establishment Rules and Labour laws is reproduced below:-

" The Supreme Court in its judgment reported in AIR 1985 at page 356, held that Pension and Gratuity are no longer bounty to be distributed by the Govt. to its employees on their retirement but have become, under the decision of the court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment".

4.14 That since the Railway Board's letter dt. 23-1-87 and which has the force of law also, the applicability of para 313 of the Railway Pension Rules is not attracted/in any case no law permits that the deductions out of the retiral benefits

Contd....7/-

 Mahesh Narain
Migani

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without show cause notice and following the principles of natural justice.

4.15 That the judgment dt. 28-5-90 given by the Learned CGIT is erroneous as the Learned Tribunal seems to have been mis-led due to misleading pleadings by the Railway Administration. In the instant case the application under Section 33 C (2) was for an admitted claim of the DCRG amount and there is no question of framing any industrial disputes. Moreover, the Assistant Labour Commissioner (Central) does not entertain any application for framing industrial disputes individually as per Govt. instructions and such dispute can only be raised when it is expoused by registered and recognised Unions. The true copy of the judgment dt. 28-5-90 is being filed and marked as Annexure A-III to the 1st compilation.

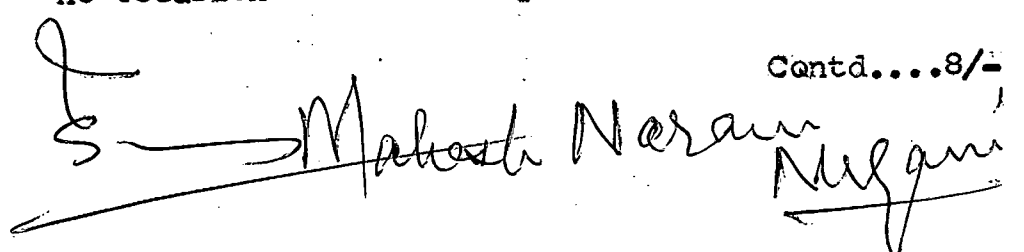
5. GROUNDS:

5.1 Because the action taken by the Respondents is arbitrary.

5.2 Because the principles of natural justice have not been followed.

5.3 Because the petitioner does not owe any liabilities towards the Railway Administration and his services were quite satisfactory and there was no occasion for arbitrary cutting through the DCRG.

Contd....8/-

 Mahesh Narain Nigam

5.4 Because the mandatory provisions of IREM have not been followed.

6. DETAILS OF THE REMEDIES EXHAUSTED:

The humble petitioner has already filed a claim under Section 33 C (2) before CGIT Kanpur in LCA case No. 234/89 which was decided on 28-5-90 which has given the cause of action for this petition.

7. MATTER NOT PENDING WITH ANY OTHER COURT ETC:

The humble petitioner declares that the matter regarding which this petition has been made is not pending before any court of law or any other authority or any other bench of the Tribunal.

8. RELIEF (S) SOUGHT FOR:

In view of the facts mentioned in paras 4 & 5 above, the humble petitioner prays for the following relief (s):-

- (a) to issue a writ, order or direction in the nature of MANDAMUS thereby commanding the Respondents to release the balance amount of gratuity i.e. Rs. 2223.20 together with interest which is calculated to Rs. 4011.00 (@ 12%) - and also to pay interest pendente lite and future till actual payment is made to the petitioner.

Contd...9/-



Mahesh Narayan
Nigam

9-

ATU

- 2 -

(b) to issue further order in favour of the humble petitioner which this Hon'ble Tribunal may deem fit as per facts and circumstances of the case.

(c) Award cost of the petition in favour of the humble petitioner.

(9) INTERIM ORDER IF PRAYED FOR:

At present no interim relief is being sought for.

10. PARTICULARS OF POSTAL ORDER IN RESPECTION OF THE APPLICATION FEE:

- | No. | |
|-----|---|
| (a) | Name of Indian Postal order. - DD 531883 Rs. 50/- |
| (b) | Name of Issuing Post Office. - H.C.P.O. ALD. |
| (c) | Date of issue of Postal order. - 15/11/90 |
| (d) | Post office at which payable. - H.C.P.O. ALD. |

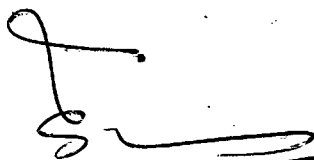
11. DETAILS OF COMPILATION BOOK:

A compilation book containing the details of the documents to be relied upon is enclosed.

12. LIST OF ENCLOSURES:

- (a) Details of compilation book.
- (b) Documents detailed in the compilation book.
- (c) Indian Postal order No. Dt.
- (d) Vakalatnama.

13. This petition is being processed through
Shri Ram Kumar Nigam, Advocate.

Contd..10/-,
 Mahesh Narain Nigam

A-18

- 10 -

In verification:

I, Mahesh Narayan Nigam aged about 72 years son of Shri Shambhoo Saran Nigam, R/O 45 Duprapur, Unnao, do hereby verify that the contents from para 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts. The copies of the documents annexed are true to their respective originals.

Mahesh Narayan Nigam

PETITIONER

Dt. 23/10/96

To

The Registrar,
Central Administrative Tribunal,
Allahabad.

ANNEXURE III

Before Shri Arjan Dev Presiding Officer
Central Government Industrial Tribunal
cum Labour Court Pandu Nagar, Kanpur.

L.C.A.No. 234 of 1989

Shri Mahesh Narain Nigam

And

The D.R.M. LUCKNOW DIVISION
NORTHERN RAILWAY LUCKNOW.

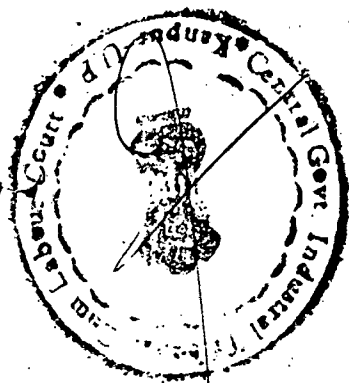
Respondent

ANNEXURE NO. III

Order

1. This is a petition under sec.33C(2) I.E.Act, for computation of money benefits amounting to Rs.3623.30 paisa and for payment of interest on the amount so computed. The applicant's case in short is that he retired as Station Master Northern Railway Lucknow division on 30.9.75 with unblemished career. As per Rules a sum of Rs.8120/- was payable to him as LCRG but out of ~~which~~ the respondent had paid him only Rs.4496.80 paisa leaving a balance of Rs.3623.20 paisa. He has, therefore, prayed that the said amount of Rs.3623.20 paisa be computed in his favour and respondent be ordered to pay him interest on the said amount.

2. The case is contested by the respondent. The respondent while admitting the fact that the applicant retired as Station Master on 30.9.75 plead that the sum of Rs.9240/- was worked out as LCRG payable to the applicant but as per Rules prevalent at that time two months emoluments were deducted on account of family pension payments. Thus the amount payable to the applicant as LCRG came to Rs.8120/-. The respondent further pleads that as per Rules full payment of LCRG is done to an employee on his good faithful and satisfactory service. Since the services of the applicant were not satisfactory, an amount equal to 10 percent of LCRG viz Rs.924/- was deducted on the order of General Manager (P) Head Quarters Office Baroda House New Delhi. Besides a sum of Rs.29.20 paisa on account of loss of station earning, Rs.80 on account of Coaching Debits and Rs.70/- on account of shortage of store items under applicant's possession were deducted from the amount of LCRG payable to him. After deducting the amounts by means of order dt.26.4.85, the applicant was advised to collect the balance amount of LCRG in the presence of Station Sup



Signature
Mahesh Narain Nigam

The applicant had never made any representation regarding the non receipt of the said amount. As such the applicant is entitled to no relief.

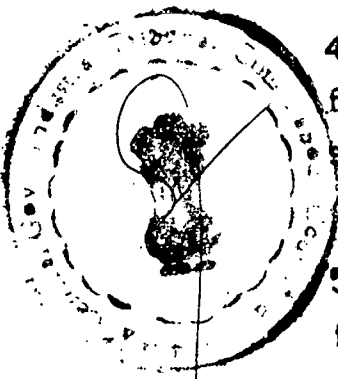
3. In this case, the applicant also filed a rejoinder in which he admitted the receipt of Rs.7016.80 paisa towards DCRG. Treating the total amount of DCRG as Rs.9240/- he had worked out the balance amount payable to him as Rs.2223.20 paisa. He has denied that ~~the~~ ^{his} services were not satisfactory. He has also challenged the order of GM(P) on the ground that there is no speaking order nor any show cause notice was issued to him before ordering such ~~deductions~~ from the amount of his DCRG.

4. In support of his case, the petitioner has filed his own affidavit. On the other hand, in support of his case, the respondent has filed two documents.

5. From the main petition and the rejoinder, filed by the applicant it appears that after looking to the defence set up by the respondent in para 1 of his written statement, the applicant ~~clearly~~ ^{he} enhanced the amount of DCRG to Rs.9240/-. He cannot be allowed to do so in view of the specific case set up by him in the petition under sec.33C(2) I.D. Act, ^{that} as per Rules, upon his retirement, Rs.8120/- were payable to him as DCRG. The respondent in para 1 of the written statement has shown how under Rules, the amount of Rs.9240/- came ~~out~~ ^{to} to Rs.8120/-. Therefore, I treat the total amount of DCRG that was payable to the applicant on his retirement as Rs.8120/-. In his main petition the petitioner admitted to have received Rs.4496.80 paisa towards DCRG but in the light of the defence set up by the respondent in his rejoinder he admitted to have received Rs.7016.80 paisa towards DCRG as has been pleaded by the respondent in his ~~written~~ ^{written} statement.

6. In his cross examination also he has admitted the fact that the amount of DCRG payable to him was Rs.8120/- out of which he had received Rs.7016.80 paisa.

7. Thus the dispute is left with regard to the



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Handwritten signature

Mahabir Narayan Narayan

Handwritten signature



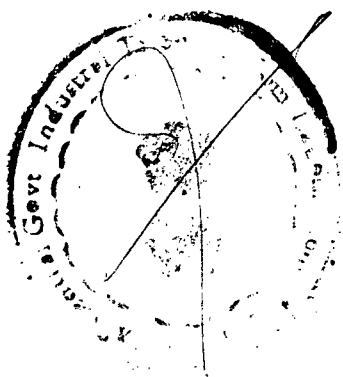
balance amount of B.1103.20 paisa.

8. The respondent has filed the copy of para 313 of the Railway Pension Rules according to which if the service of a railway employee has not been thoro satisfactory the authority sanctioning the pensionary benefits could make such deductions in the amount of pensionary benefits as it thinks proper. The respondent has further filed the copy of letter dated Oct, 1977 from GM(P) to DRM Northern Railway Lucknow, informing him that the General Manager had given sanction for deduction of 10% of the dues payable to the applicant by way of pensionary benefits. Whether the order is legal or illegal cannot be questioned in proceedings under sec.33C(2) I.L.Act. Similarly the legality of the deductions made on account of station earning, coaching debits and shortage of store items cannot be examined in proceedings under sec.33C(2) I.L.Act. The applicant should better raise an industrial dispute in respect of all these. It is therefore, clear that no amount is due towards LORG. As observed above in respect of the amounts withheld he may raise an industrial dispute by challenging the orders under which these amounts were deducted from the amount of his LORG.

9. The petition under sec.33C(2) I.L.Act, is therefore, dismissed and the computation is made zero in favour of the applicant.

34/-28-5-90
(Arjan Dev)
Presiding Officer

dt.28.5.90



CERTIFIED COPY

(S. S. SHARMA)

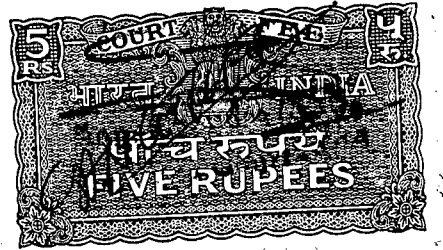
Secretary

Central Government Industrial
- Cum - Labour Court - Kanpur

Manohar Narayan Mehta

C. A. T. A. L. D. - 14 (An)

इन दी हाई कोर्ट आफ एट इलाहाबाद



[अभिभाषक पत्र वकालतनामा]

अपील नं० ११० सन् १९९०
निगरानी Mahesh Narain Nigam वादी/प्रतिवादी
अपीलान्त

बनाम

वादी/प्रतिवादी
रेसान्डेन्ट

म
कि
हम

U. O. J. ...

Mahesh Narain Nigam S/O Sambhar
Narain Nigam P/O Damparapur Linnao

उपरोक्त प्रकरण (मुकदमा) में—अपना पक्ष समर्थन हेतु
हम

कानूनी R. K. Nigam Adv करता है
—शुल्क (केहनताना) नियत करके अपना/हमारा अभिभावक (वकील) नियुक्त—और यह स्वीकार
निश्चित करता है करता है

—कि उक्त सज्जन हमारी ओर के वाद-बत्र (अर्जीदावा), प्रतिवाद-पत्र (बयान तहरीरी) बाद स्वीकार
पत्र, विवाद पत्र, पुनरवलोकन एवं पुनर्निर्णय प्रार्थना पत्र (दरखास्त) शापथिक कयना (हलफनामा)
प्रवर्तन-पत्र (दरखास्त इजराय) मुजबात अपील निगरानी इत्यादि हर प्रकार के अन्य प्रार्थना पत्रादि एवं
लेखादि की प्रतिलिपियां अपने हस्ताक्षर करके न्यायालय में प्रस्तुत करें अथवा किसी पत्र पर आवश्यक-
रानुसार शापथिक पुष्टीकरण करे और आवश्यक जवाब करे और लेखादि की प्रतिलिपियां एवं हमारे
प्राप्त घन को अपने हस्ताक्षरों पावती देकर प्राप्त करे हमारी ओर से किसी को मध्यस्थ तथा साथी
(गवाह) माने और उससे सम्बन्धित प्रार्थना पत्र प्रस्तुत करे तथा उसका समर्थन करे तथा तसदीक करे
वाद पत्र उठावे छोड़े अथवा समझौता करे तथा सुलहनामा दाखिल करे तथा उसके सम्बन्ध में प्रार्थना पत्र
दाखिल करके उनका समर्थन करे अर्थात् प्रकरण से सम्बन्ध रखने वाली कुल कार्यवाही डिग्री ये भर पाई
होने के समय तक स्वतः या संयुक्त करे आवश्यकता होने पर किसी अन्य वकील महोदय को करे।

उक्त सभी कार्यवाही जो उक्त सज्जन कसैने प्रत्येक दशा में अपने किये मांति—सर्वथ स्वीकार
हम को मुक्त को

मैं कानूनी
होगी। अगर—शुल्क तथा विशेष शुल्क आखिरी बहस के वक्त उक्त सज्जन को न दूँ/देँ तो उसको
हम निश्चित
अधिकार होगा कि यह हमारी ओर से मुकदमा को पैरवी करें उपरोक्त दशा में उक्त सज्जन का
कोई उत्तरदायित्व न रहेगा।

अतएव यह अभिभावक पत्र लिख दिया कि प्रमाण रूप से समय पर काम आये।

तिथि

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10

सं० 1990

Mahesh Narain Nigam

A23

Compilation 2

ANNEXURE I

ANNEXURE NO. I

BEFORE THE PRESIDING OFFICER CENTRAL GOVT.
INDUSTRIAL CONCILIATION TRIBUNAL-CUM-LABOUR COURT KANPUR.

L.C.A. No. 234 /89.

Maheesh Narayan Nigam son of Shri Shambhoo Saren
Nigam, resident of 45 Duprapur, Unnao.

..... Applicant

Versus

Divisional Railway Manager, Northern Railway,
Lucknow.

..... Opposite Party.

APPLICATION UNDER SECTION 33(2) OF THE INDUSTRIAL
DISPUTES ACT.

The applicant is entitled to receive gratuity
to the tune of Rs. 8120/- from the OP while the latter
has only paid Rs. 4496.80, thereby leaving a balance
of Rs. 3623.20.

Contd...2/-

attested

for
[Signature]
[Signature]

Maheesh Narayan Nigam

2. The applicant further states that he served the OP with a demand notice dt. 28-9-80 followed by several reminders, personal requests and personal visits in the DRM's Office, but the remaining amount of gratuity has not been released. The details of the amount and the facts of the case are stated in the accompanying annexure.

3. As a matter of fact the applicant has been making persistent efforts to find the reasons of withholding of his gratuity amount by the OP and the other officials have done nothing in the matter so far. As a matter of fact there is no liability against the applicant nor any debits are outstanding against him. His retirement is quite clean and there was no order as to withholding of gratuity under the rules nor any opportunity was ever given on the subject for any reason whatsoever.

4. The other counter-parts have received the payment of full gratuity. It is, therefore, prayed that the aforesaid sum may kindly be recovered from the OP and paid to the applicant.



APPLICANT

Mohabir Nadeem Nadeem

The applicant retired as Station Master, Vyas Nagar, Northern Railway, Lucknow Division on and from 30-9-1975 with un-damaged career. As per DGRG (Death-in-retirement Gratuity) Rule an amount of ₹. 8120/- was payable to the applicant towards which the OP paid only ₹. 3623.4496.80 leaving a balance of ₹. 3623.20 under the carb of future debits.

There are no debits against the applicant outstanding against him nor the OP has ever disclosed as to what was the future debit.

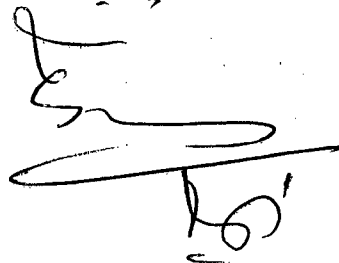
The amount of ₹. 3623.20 is thus treated as admitted wages and the OP cannot deny this fact.

The applicant is, therefore, entitled to the principal amount of ₹. 3623.30 along with interest.

31-5-89.

APPLICANT

Attested by



Mehar Singh Vyas Nagar

ANNEXURE II
ANNEXURE NO. II

BEFORE THE PRESIDING OFFICER CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR.

L.C.A. No.234 /89

Mahesh Narayan Nigam son of Sri Shambhoo Saran
Nigam, resident of 45 Durgapur, Unnao.

Applicant.

Verous

Divisional Railway Manager, Northern Railway,
Lucknow.

Opposite party.

WRITTEN STATEMENT ON BEHALF OF THE Opp. PARTY.

The Opposite party submits as under:-

- Para. I. That the contents of para I of the application are denied. It is submitted that Shri M.N. Nigam was retired from service on 30.9.75 as Station Master, Varanagar. On his retirement a sum of Rs.9240/- was worked out on account of D.C.R.O. (Death Cum-retirement Gratuity) but as per rules prevalent at that time the two months emoluments were made less on account of family pension payments and thus the amount of D.C.R.O. comes to Rs.8120/-. The relevant para 3703 of Railway Pension Manual is enclosed as Annexure I of the
- Para 2. That the contents of Para II are denied. It is submitted that the applicant filed a case in the Court of City Magistrate, Jhansi for the same relief in the year 1981 which was contested by the Railway Administration and the same was dismissed by the City Magistrate, Jhansi. Hence the present application is not legally maintainable and barred by the principle of Res. Judicata.
- Para 3. That the para contents of Para III are denied. The applicant has failed to explain the delay in filing the present application. Thus the same is barred by the principle of Laches. It is further submitted that as per prevalent rules the full payment of D.C.R.O. is done to an employee on his good, faithful and Satisfactory services. Since the services of Sri M.N. Nigam were not found entirely satisfactory an amount equal to 10% of the D.C.R.O. viz. Rs.924/- was deducted on the order of General Manager (P), Headquarters Office, Baroda House, New Delhi. Thus 90% of the D.C.R.O. became due to him instead of 100%. The extract of para 343 of Railway Pension Manual is annexed at the N.S. It is further submitted that the D.C.R.O. payable was worked out to Rs.8120/- (-) Rs.924/- viz. Rs.7196/- (As per Annexure II) a sum of Rs.29.20 was recovered for loss of station

Cont-2.

Mahesh Narayan Nigam
M.N.

earning, Rs.50/- on account of Coaching debits and Rs.70/- on account of shortage of Store Items under his possession and Rs.4496.00 Paisa (Paid as admitted by him) Rs.2520/- was paid under CO/ No.0500373 dated 2.4.85 for payment which he was advised through a registered letter No.7203/Pen/IR dated 26.4.85 to receive the same in presence of Station Superintendent Lucknow. The applicant had never made any representation regarding the nonreceipt of the aforesaid amount and thus it appears that the said amount has been received by him. The recovered amount mentioned above were adjusted from the D.C.R.C. and the payment was made to him i.e. Rs.4496.00 Paisa minus Rs.2520.00 = Rs.7016.00 Paisa and therefore no amount are due against the Railway administration.

Para 4. That the allegations contained in the Para 4 are baseless and as such denied.

That the amounts are not admitted as Alleged, It is submitted that the recoveries shown in the para (3) have fully in the knowledge of the applicant and the adjustment were made as per rules.

Para 5. That the present application is not legally maintainable because under this proceeding the Court can not adjudicate the matter without the reference order under sec.16 of the I.D. Act.

That the applicant has intentionally concealed the facts regarding the case which was decided by the City Magistrate, Jhansi and as such he is not entitled to get any relief by this Court.

Para 6. That the application is not maintainable under Sec.33(4)(II) of I.D. Act and the Honourable Court has no jurisdiction to decide the present application.

In view of the above the application of the applicant which is based on false and baseless allegation are liable to be dismissed with cost.

Opposite Party.

कृते मंडल रेलवे प्रबन्धक

उत्तर रेलवे, कानून

VERIFICATION.

I J.N. Srivastava, A.P.O. do hereby verify that the contents of Para 1 to 6 are true to my knowledge on the basis of the official records and also on the basis of the legal advice.

Signed and verified this on _____ at Lucknow.

Opposite Party.

कृते मंडल रेलवे प्रबन्धक
उत्तर रेलवे, कानून

Counsel for the Opp. Party.

Michael & Michael
13/7/88

A-30

Recd
PS
7/5/91

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

Written Statement on behalf of Respondents.

IN

O. A. NO. 970 OF 1990.

Maresh Narayan Nigam. - - - - - Petitioner.

Versus

Union of India and others. - - - - - Respondents.

Written Statement on behalf of

Rajiv Keshav

Serving as Ass. H Personnel Officer

Northern Railway, Lucknow.

1. That I am serving as Ass. H Personnel Officer

Northern Railway, Lucknow and have been authorised

and deputed to file the present written statement

on behalf of the respondents.

2. That the contents of paragraph nos. 1, 2, and
3 of the petition are not admitted.

3. That in reply to the ~~averments~~ averments
made in para 4(1) of the petition it is stated that
the averments made therein are admitted to the
extent that the petitioner retired on 30.9.1975 on

[Signature]
Asstt. Personnel Officer
N. R. Lko.

L O (T)

Recd
Union of India
Yin tunc
6/5
JR

Received
copy H. B. Nigam
A. S. R. K. Nigam
Acl

6/5/91

A-50

-3-

Thus no amount on account of death cum retirement gratuity is left to be paid to the petitioner.

5. That the averments made in para 4(3) of the petition are matter of record and hence no specific reply is needed.

6. That in reply to the averments made in para 4(4) of the petition, it is stated that the averments made therein are based on misconception of facts and law and hence the same are denied. It is further relevant to point out that in terms of para 313 of Railway pension manual the amount of death cum retirement gratuity/pension can be reduced by the competent authority for unsatisfactory services. Thus the reduction made @ Rs.10% in death cum retirement gratuity by the competent authority viz General Manager (P) Northern Railway, is within the rules.

7. That the averments made in para 4(5) of the petition are denied. It is further relevant to point out that before making deduction of 10% in the death cum retirement gratuity the petitioner was given a show cause notice. A photostat copy of the show cause notice dated 19.4.1977 is being filed herewith and is marked as Annexure 'C.A.I' to this Written Statement. That in reply the petitioner also

[Handwritten signature]

ABM

-5-

to the facts and circumstances of the instant case.

9. That the contents of paragraph no. 4(7) of the petition are denied. No further reply is needed as the position has already been explained in the earlier paragraph of this written statement.

10. That the averments made in para 4(8) of the petition are denied. No further reply is offered as the position has been explained in the earlier paragraph, of this written statement.

7-
11. That the contents of paragraph no. 4(9) of the petition are denied. It is further stated that the information regarding deduction of Rs.29,90 is well within the notice of the petitioner. It is further stated that as ~~xx~~ regards the recovery of Government dues it is not necessary to inform the retired employees regarding the recovery.

12. That the averments made in para 4(10) of the petition as they stand are denied. As already pointed out the petitioners Death Cum Retirement Gratuity worked out to be Rs.9240.00 (16, 1/2 months pay) but from this amount 10% i.e. Rs.924-00 was reduced due to unsatisfactory service and two months pay i.e. Rs.1120.00 was made less on account of admissibility of family pension. Besides a sum of Rs.179.20 was recovered from the petitioner as the

Asstt. Personnel Officer
N. B. Bho.

AS

attaining the age of superannuation. It is further stated that the death cum retirement gratuity for 16.1/2 months pay was calculated to the extent of Rs.9,240-00 but as per rules prevailing at that time two months emolument (pay last drawn @ Rs.560 per month) were made less on account of Family pension payment, thus Rs.9,240-00 -Rs.1120.00 i.e. Rs.8,120.00 worked out as payable amount towards death cum retirement gratuity.

4. That the averments made in para 4(2) of the petition are denied. It is further stated that the petitioner has been paid death cum retirement gratuity as under :-

Death cum retirement gratuity- worked out Rs.9,240.00 but the same was made less by two month emoluments on account of admissibility of family pension in terms of Railway pension rules. The details are as under :-

D.C.R.G. Amount admissible due Rs.8,120.00

(1) On account of out standing Commercial coaching, outstanding ~~deposits~~ debits against the petitioners. (-) Rs. 109.20

(2) Loss of 35 burners (stove items) Rs. 70.00

(3) For future of 10% of admissible D.C.R.G. Rs. 924.00

D.C.R.G. Net paid. Rs.7,016.80

Personnel Officer

738

-6-

said Government dues were outstanding against the petitioner.

13. That in reply to para 4(11) of the petition it is stated that the averments made. therein ~~are~~ if correct, may call for sympathy but such factors are wholly irrelevant for the adjudication of the matter. No further reply is needed as the position has already been explained in detail in earlier paras of this written statement.

75
14. That the contents of paragraph no. 4(12) of the petition are denied. No further reply is needed, as the position has already been explained in paras 4 and 8 of this written statement.

15. That the contents of paragraph no. 4(13) of the petition as they stand are not admitted. It is submitted the decision of Hon'ble Supreme Court referred to in the para under reply, is not at all applicable in reference to the facts and circumstances of the present case. It is further stated that the petitioner retired in 1975 ~~or~~ and at the relevant time i.e. in 1975 the payment of 100% Death Cum Retirement Gratuity was to be done on good, efficient, faithful and satisfactory services.

16. That the contents of paragraph no. 4(14)

Asst. Personnel Officer
P. Bko.

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-7-

of the petition are not admitted.

17. That in reply to the contents of paragraph no. 4(15) of the petition, it is stated that the judgement dated 28.5.1990 is perfectly valid and suffers from no infirmity whatsoever. The averments made to the contrary are wrong and the same are denied.

18. That in reply to the contents of paragraph no. 5 of the petition, it is stated that none of the grounds are tenable.

19. That in reply to paragraph no. 6 of the petition, it is stated that the matter has been finally adjudicated upon by the ~~Board of~~ C.G.I.T. Kanpur and the present petition is likely to be dismissed summarily on this ground alone.

20. That the contents of paragraph no. 7 of the petition needs no reply.

21. That in reply to paragraph no. 8 of the petition it is stated that the petitioner is not entitled for any relief. The petition is devoid of merits and is likely to be dismissed.


Asst. Personnel Officer
N. R. Eko.

A27

-8-

22. That the contents of paragraph nos. 9, 10, 11, 12 and 13 of the petition need no comments.

Ranjiv Keshav
Signature

Verification:-

I, Ranjiv Keshav ----- Serving as
Asst. H. Quail Officer Northern Railway, Lucknow,

do hereby verify that the contents of para 1 of this written statement are true to my personal knowledge, those of paras 2 to 12, 14, 15(partly), 16, 20, and 22 are verified from record, those of paras 13, 15(partly), 17, 18, 19 and 21 are verified on the basis of legal advice.

Date:- 2-5-1991

place. Lucknow

Ranjiv Keshav
Signature
Asst. Personnel Officer
N. R. E. O.

Ranjiv Keshav
Asst. Personnel Officer
N. R. E. O.

Annexure CA 'I' II.

Spare copy.

Northern Railway

Head. A/D.

No.720E/Pen/1B

Dated: 13/4/77

Divisional Supdt.'s Office, (Issuing Office)
Northern Railway, Lucknow:

Lucknow - (Place of issue).

MEMORANDUM

Whereas Shri Mahesh Narain Nigam S/o Sri S.S. Nigam who was employed as Stn. Master/VIN at station VIN in Lucknow Division, is Pension optee and has ceased to be in Railway service w.e.f. 30.9.75 due to retirement on superannuation.

And Whereas the General Manager, N.Rly., New Delhi on a careful consideration of the case has come to the conclusion that the services of the said Shri Mahesh Narain Nigam have not been thoroughly satisfactory on account of "Booking against restriction and infringement of priority during 1972" and therefore, proposed to with-hold 10% percent DCRG.

NOW therefore, in pursuance of Proviso(1) below Rule 1314(4) RI/Proviso (1) below sub-para (ii) of para 313 of HRPR-1950, the said Shri M.N. Nigam, SM/VIN is hereby given an opportunity of making any representation, which he may wish to make, against the proposed with-holding of 10% percent SC to PF/DCRG for consideration by the General Manager/Northern Rly., New Delhi provided such representation is made in writing and submitted through his immediate officer under whom he was working within fifteen days of the receipt of this Memorandum.

2. Shri Mahesh Narain Nigam is informed that in case no representation as aforesaid, is made within the stipulated period of fifteen days, it will be presumed that no representation is intended to be made and action to finalize the case will be processed accordingly.

Signature: *Dr. Sunder Lal Pandey*

Name & Designation
of Issuing Authority.

To

Shri Mahesh Narain Nigam,
G/o Dr. Sunder Lal Pandey,
Rami Naka, Mauranipur,
Jhansi.

ACKNOWLEDGEMENT

Received Memorandum No. _____ dated _____ from
the _____, N.Rly, Lucknow.

Signature -

Design. -

Date -

Station.

rm/19.4.

3/4/91

Dr. Sunder Lal Pandey

N. Nigam

Rail Station Master

Yasnagar N.R.

Co. In Sunder Lal Pandey

Raoni Naka,

Mauranipur Dist. - Thanesar

No. M/3/77 dt. 15/5/77 To, The General Manager

N. Rly.
New Delhi

(Through:- The S.W. Suball, N. Rly, Tucknaw)
An Appeal of Merit.

Your no. 720 E/PEN/1 B dt. 19/4/77

Gracious Sir,

Referring to your above quoted memo-
randum, received on 28/4/77, I beg to lay down
the following few points for your kind consi-
deration & careful action:-

1. That I am sorry to learn that up to
3rd of Service and being a loyal worker
(worked as Son V.P.N. during strike - 3/5 to
28/5/74) is being rewarded by withholding
of J.R.G.

2. That this is a case of 1972, which could
not be finalized up to 1975 during my
Service period & even up till now, when I
am completing 2 yrs of my post retirement
period despite my repeated humble repre-
sentations that in all took place in the then
prevailing circumstances.

3. That the Railway Administration
could earn the heavy weight on account
of my so called irregularity, whereas I am

Attested

Asstt. Personnel Officer

N. R. Lka. 3/4/91

Asstt. Personnel Offi.
N. R. Lko.

I

being deprived of my life long privilege
of J.P.G. 37A. (10)

4. That the infringement of priority in 1972 as reported by T.1(A) B.S.B. in 1974, could not have been tolerated, by the Sunders, if it would not have been on operational grounds as already explained.

5. That as a matter of fact, my J.P.G. should have been paid on my retirement in 1975, which has not been paid up to date even after having completed 2 yrs of my retirement. Thus I have incurred a loss of Rs 1500/-, which I would have earned as interest.

6. That J.P.G. is meant for the post retirement liabilities of an old employee & the payment of which is at the mercy of my honourable officers :-

(1) Two months salary, detained for the family pension.

(2) 10% of J.P.G. is proposed to be withheld in this connection, when I have already suffered a loss of 20% as interest.

(3) A sum of Rs 400/- has been debited against me through an Error Sheet towards forfeiture of Registration Money on wagons whose priority was infringed as reported by T.1(A) B.S.B. received after my retirement & is running as objectionable debt.

(4) Cash Office Debits :-
Shah acknowledged by J.P.M./Lko @ 17/-
Total Deductions comes to Rs 2254/-

Attested

[Signature]

Asstt. Personnel Officer

N. R. Lko.

3/4/91

Asstt. Personnel Off

N. R. Lko

AM

7. That the marriages of my two grown up daughters is kept in abeyance for want of financial crisis after retirement.

8. To Err is human

" + forgiveness is a greatest blessing.
ॐ नमो भगवते वासुदेवाय
ॐ नमो भगवते वासुदेवाय

With above facts in view, I would in the last request you to kindly excuse me considering my pitiable plight in my old age.

For this act of kindness, I shall ever pray for your long life & prosperity.

Mauram PNR
18th May - 1977.

Respectfully yours,
Mabesh Narain
Nagpur,
Rajd. Station, Madhya Pradesh

Attested

[Signature]

Asstt. Personnel Officer
N. R. Lko.

3/4/91

Annexure CA "III"

Annex-3
(45)
A.M.

उत्तर रेलवे, प्रधान कार्यालय,
बडोदा हाउस, नई दिल्ली।

सं०: 342-ई/ 4280

(पूजा-ब)

दिनांक:-

10.1.1978

मंडल अधीक्षक/ उप मुख्य यांत्रिक इंजीनियर,

उत्तर रेलवे।

लखनऊ

विषय:-

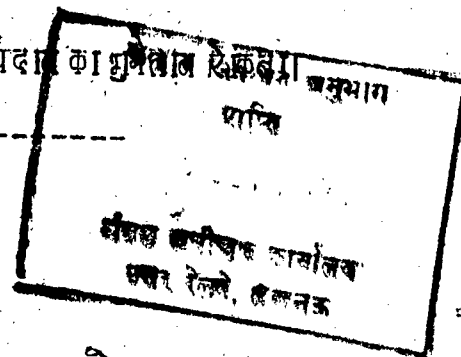
अधिव्य निधि में विशेष अंशदान/ मृत्यु एवं सेवा निवृत्ति त उपदान का भुगतान रोकना

संदर्भ:-

आप का पत्र संख्या नं०- 720 ई/ वी/ 100

दिनांक:-

29-9-77



श्री महेश नारायण निगम

भूत पूर्व स्टेशन नगर-22 - उदयपुर/उदयपुर

को देय भाग्य निधि में विशेष अंशदान के

10

देसी

प्रतिशत)

का भुगतान रोकने के लिए महा प्रबन्धक द्वारा अग्रिम/ अग्रिम मंजूरी दे दी गई है।

कर्मचारी का सेवा रिकार्ड इस कार्यालय से प्राप्त कर लिया जाए।

* इसको कृपया "अग्रिम" मंजूरी
समझे।

र. वि. नगर
कृते महा प्रबन्धक (कार्मिक त्रै)

Attested

Asstt. Personnel Officer

N. B. Bho.

3/4/91

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

O.A. No. 970/90

Killed.
Today

5/2/92

Mahesh Narayan Nigam

.... Petitioner

Versus

Union of India and another.

.... Respondents.

I_N_D_E_X

| <u>S.No.</u> | <u>Description of documents</u> | <u>Pages</u> |
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| | | |
|----|--|-------|
| 1. | Rejoinder on behalf of the petitioner. | 1 - 4 |
|----|--|-------|

5/2/92

Date 28/1/92

Dts. 8-1-1991.

(RAM KUMAR NIGAM)
COUNSEL FOR THE PETITIONER

S.O. 51

Keep on record

DRG
05/2/92

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

REJOINDER

In

O.A. No. 970/90

Mahesh Narayan Nigam

..... Petitioner

Versus

Union of India and others.

..... Respondents.

The humble rejoinder of the petitioner
abovenamed MOST RESPECTFULLY SHOWETH:

1. That the contents of para 1e of the reply do not need any comments.
2. That the contents of para 2 of the reply need no comments.
3. That the contents of para 3 of the reply need no comments being the matter of record.
4. That sofaras the contents of para 4.1 of the reply are concerned, the same are admitted the reset of the contents are not admitted. It is emphatically denied that no amount of DCRG is left to be paid to the petitioner.
5. That the contents of para 5 of the reply need no comments. However, it is stated that all the

Contd...2/-



Mahesh
Nigam
Nigam

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DCG
5/2/92

records are available with the Respondents and it is wrong to say that the record is not available.

6. That the contents of para 6 of the reply are not admitted and the earlier allegations are re-iterated. In spite of protracted litigation on the subject, it was nobody's case that the petitioner has been subjected to cut in the DCRG to the tune of 10% and, therefore, this stand taken at this belated stage by the Railway Administration is not acceptable. However, it is stated that the petitioner has submitted his representation dated 19-4-77 (Annexure CA 2) and the same has not been decided so far.

7. That the contents of paras 7 & 8 of the reply are not admitted. The humble petitioner is ~~fx~~ entitled to the full gratuity as admissible to him.


8. That the contents of para 9 of the reply are not admitted.

9. That the contents of para 10 of the reply are not admitted.

10. That the contents of para 11 of the reply are not admitted.

11. That the contents of para 12 of the reply are not admitted and the same are emphatically denied. The earlier allegations are re-iterated.

Contd...3/-

 Mahesh
Narayan

12. That the contents of para 12 of the reply are not admitted.

13. That the contents of para 14 of the reply are not admitted.

14. That the contents of para 15 of the reply are not admitted. The petitioner was retired in 1975 and the order in relation to the so called cut from the DCRG has been admittedly issued on 19-4-77 i.e. after much delay on the part of the Railway Administration. As a matter of fact, the humble petitioner is entitled to 100% DCRG and it was quite arbitrary on the part of the Railway Administration to issue the order dated 19-4-77 without any application of mind or following the rules of statutes.

14.1 It is, however, stated that the petitioner has rendered most efficient, dedicated and honest service to the Railway Administration and heavy burden lines on the Respondents to prove that his services were un-satisfactory.

15. That the contents of para 16 of the reply are not admitted.

16. That the contents of para 17 of the reply are not admitted.

AMT

- 4 -

17. That the contents of para 18 of the reply are not admitted.

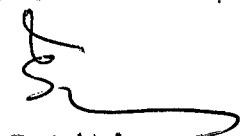
18. That the contents of para 19 of the reply are not admitted. The matter has not been finally adjudicated by C.G.I.T. and the final word has to come from this Hon'ble Tribunal because the humble petitioner has come in a case involving the service matter and that too by exhausting remedies which were open to him in C.G.I.T. etc.

19. That the contents of para 20 of the reply are not admitted.

20. That the contents of para 21 of the reply are not admitted.

21. That the contents of para 22 of the reply are not admitted.

I, Mahesh Narayan Nigam, do hereby verify that the contents of paras 1 to 21 of this rejoinder are true to my personal knowledge and nothing material has been concealed.


Petitioner.
Mahesh Narayan
Nigam

Se No: 26

पेश
निपटा

Before The Central Administrative Tribunal
Allahabad.

9/4/91

बं अदालत श्री मान

वादी

मुद्दई

O.A No: 970

7/1990

प्रतिवादी मुद्दालय का कालतनामा

Mahesh Narain Migam vs Uman

वादी मुद्दई

प्रतिवादी मुद्दालय

नं० मुकदमा

सन 19 पेशी की तारीख

19

ई०

अमर लिखे मुकदमा में अपनी ओर से भी

D. C. Saxena Railway Advocate एडवोकेट
महोदय

वकील

S.O. 21
Keep record
K
21/4
DR

को अपना वकील नियुक्त करके प्रतिज्ञा इकरार करता हूँ। लिखें देता हूँ। इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पेरवी व जवाब देडी व प्रश्न करेगा अन्य कोई कागज दाखिल करें या लौटा दें हमारी ओर से डिक्री जारी करावें और रुपया वसूल करेगा मुद्दामा इकबाल दावा अपील व निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करे या मुकदमा उठावें या कोर्ट में जमा करें या हमारी या विपक्ष फरीकसानी का दाखिल किया रुपया अपने या हमारे हस्ताक्षर युक्त दस्तखती रसीद से लेवेगा पंच नियुक्ति करें वकील महोदय द्वारा की गई वड कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं भी यह कहता हूँ। कि मैं हर पेशी स्वयं या किसी अपने फेरकार को भेजता रहूंगा अगर मुकदमा अदम पेरवी में एक तरफा मेरे खिलाफ फैला हो जाता है उसकी जिम्मेदारी मेरी वकील पर न होगी।

इसलिये यह कालतनामा लिख दिया कि प्रमाण रहें और समय पर काम आवें।

साक्षी गवाड

दिनांक महीना

हस्ताक्षर

साक्षी गवाड Divisional Railway Manager

नाम अदालत Lucknow.

नं० मुकदमा

नाम फरीकन

Accepted
D. C. Saxena
Railway Advocate
for respondent
9.4.1991

(31)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

O.A. No. 970 /1990

Mahesh Narayan Nigam Petitioner

Versus

Union of India and another Respondents

COMPILATION BOOK

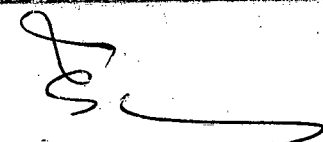
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1st Compilation

- | | | |
|----|---|---------|
| 1. | Petition. | 1 - 10 |
| 2. | <u>Annexure A-III</u> - Impugned judgment of CGIT Kanpur. | 11 - 13 |
| 3. | Postal order. | 14 |
| 4. | Vakalatnama. | 15 |

2nd Compilation

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|----|---|-------|
| 1. | <u>Annexure A-I</u> - Application filed before the CGIT Kanpur. | 16-18 |
| 2. | <u>Annexure A-II</u> - WS filed by the Respondents. | 19-20 |


(RAM KUMAR NIGAM)
COUNSEL FOR THE PETITIONER

B/C II

THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

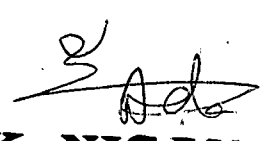
COMPILATION
APPLICATION PAPER BOOK

O.A. No. 970 / ~~1989~~ 1990

Mareshh Narayan Nigam PETITIONER

VS

U. O. Jndia RESPONDENT


R. K. NIGAM
ADVOCATE

31

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

O.A. No. 970/1990

Mahesh Narayan Nigam Petitioner

Versus

Union of India and another Respondents

COMPILATION BOOK

| S.No. | Description of documents | Pages |
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1st Compilation

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|----|--|---------|
| 1. | Petition. | 1 - 10 |
| 2. | Annexure A-III - Impugned judgment of CGIT Kanpur. | 11 - 13 |
| 3. | Postal order. | 14 |
| 4. | Vakalatnama. | 15 |

2nd Compilation

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|----|--|-------|
| 1. | Annexure A-I - Application filed before the CGIT Kanpur. | 16-18 |
| 2. | Annexure A-II - WS filed by the Respondents. | 19-20 |


(RAM KUMAR NIGAM)
COUNSEL FOR THE PETITIONER

Central Administrative Tribunal
Additional Bench At Allahabad
Date of Filing.....15.11.90

OR
Date of Receipt
by Post

15/11/90
Dy Registrar.

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

O.A. No. 990/1990.

General Naranjan
Mahesh Kumar Nigam aged about 72 years son of
Shri Shambhoo Saran Nigam, R/O 45 Duprapur,
Unnao (U.P.)

..... Petitioner

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Lucknow.

..... Respondents

1. DETAILS OF THE PETITION:

This petition is being directed for release
of part of the gratuity amount which is admittedly
with-held by the Respondents without any reason
or rhyme and for no fault of the petitioner.

2. JURISDICTION:

The humble petitioner retired as Station
Master, Vyasnagar, Northern Railway from 30-9-75.
~~and his retirement was governed by the Railway Retirement~~
~~and Pension Rules, 1925 and the Railway Retirement~~
~~and Pension Rules, 1925 and the Railway Retirement~~
and the Respondent No. 2 is headquartered at Lucknow,
hence it is declared that this Hon'ble Tribunal
has territorial jurisdiction to try this petition.

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- 2 -

3. LIMITATION:

Since the impugned order was passed by the Central Govt. Industrial Tribunal-Cum-Labour Court, Kanpur on 28-5-90 thereby dismissing the appeal of the petitioner under Sec. 33 C (2) of the I.D. Act, hence it is declared that this petition is within time.

4. FACTS OF THE CASE:

4.1 That the humble petitioner retired as SM Vyas Nagar, N.Rly. on 30-9-75. On his retirement a sum of Rs. 9240/- was worked out as DCRG (Death-Cum-Retirement gratuity).

4.2 However, the Respondent No. 2 only paid the gratuity amount as follows:-

Amount due - Rs. 9240/-

Debits due - NIL


Payment of DCRG actually made - Rs. 7216.80

Balance due - Rs. 2223.20

4.3 That a claim for the above amount was filed under Section 33 -C (2) of the I.D. Act before the Central Govt. Industrial Tribunal-Cum-Labour Court, Kanpur where the Respondents filed their WS also. The true copy of the claim application as well as the reply filed by the Respondents are being filed and marked as Annexure A-I and A-II to the 2nd compilation.

4.4 That in the instant case, provision of IREM (1235, 1236 and 1237) applies and while deducting

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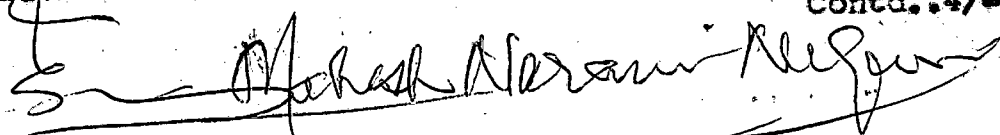
- 3 -

the amount, the Respondents have honoured the above statutory and mandatory provisions with total breach inasmuch as the humble petitioner has been given no opportunity of being heard for any deduction out of the DCRG payable to the petitioner and, therefore, the deductions made by the Respondents are totally without jurisdiction, arbitrary, illegal and non-est and the petitioner is entitled not only to the principal amount but also to the recurring interest as per law.

4.5 That it is needless to mention that the gratuity is not a bounty so that the Respondents could deduct a sumptuous amount ~~out~~ out of the same at their own free-will and in any case it is submitted most respectfully that the humble petitioner has rendered quite un-impeachable service with utmost honesty and integrity and there was no occasion to forfeit any part of the gratuity amount nor there was any liability for which the amount could have been attached or deducted out of the DCRG.

4.6 That in the State of Kerala and other Vs. M. Padmanabhan Nair (AIR 1985 Supreme Court - page 356) ~~the~~ it was held that over the Govt. dues which have been delayed, abnormal interest should be awarded at market rates and the same commence from the expiry of 2 months from the date of retirement.

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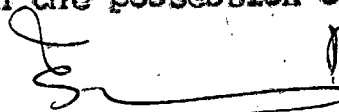


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4.7 That the humble petitioner retired on 30-9-75 and, therefore, to much period expired from ~~28-05-75~~ 30-11-75 (and it is this date from which the humble petitioner is entitled for interest on the amount of DCRG balance (Rs. 2223.20) which comes to Rs. 4011/- approximately and, therefore, the total amount due to the humble petitioner is now Rs. 6234.20 paise.

4.8 That from the WS filed by the Respondents before CGIT Kanpur, it would be clear that the balance amount of DCRG i.e. Rs. 2223.20 paise is fully admitted to the Respondents but they have justified the deductions by quite arbitrary action of deduction on various heads. The humble petitioner begs to submit that the deductions out of the DCRG are quite arbitrary, illegal and without taking the petitioner into confidence at any stage. and it is also one of the pleas taken that the petitioner's services were not satisfactory and on this account 10% of the DCRG was deducted. This is absolutely a false plea taken in the WS. The service book of the petitioner may kindly be summoned before this Hon'ble Tribunal and the same will be observed to be quite un-blemished.

4.9 Further the deduction of Rs. 29.20 for the alleged loss of station earning and Rs. 89/- on account of coaching debits and Rs. 70/- on account of shortage of stores items which are said to be in the possession of the petitioner, are undoubtedly

 Mahesh Narain
N. Narain

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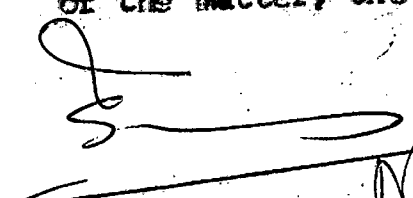
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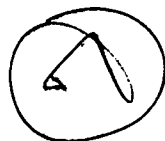
quire arbitrary, illegal and without following the principles of natural justice.

4.10. It is admitted in para 3 of the MS that the petitioner was only paid an amount of Rs. 4496.80 + Rs. 2520/- and the actual payment made till 1985 vide CO7 No. 050375 dated 2-7-85 comes to Rs. 7116.80, whereas the amount due to the petitioner as calculated by the Administration was Rs. 9240/- as admitted in para 1 of the MS.

4.11 That the humble petitioner is quite a poor man with liabilities over his head because of his eldest son having expired in a very serious accident who was in a very lucrative Managerial service of a big concern and after his death, he is badly in shattered condition and had his son alived he would not have claimed this paltry amount and he would not have continued for his claim in CGR or before this Hon'ble Tribunal. He is filing this petition with high hopes that justice shall be awarded to him looking the diplorable conduct of the Railway Administration inasmuch as it is feeling proud of having deducted a substantial part of the gratuity amount of the humble petitioner without any show cause notice or even without taking him into confidence for the deductions made and in this view of the matter, the deductions are tantamount to

Contd...6/-


Mahesh Narain
Nigam




nothing less than robbery and the humble petitioner is, therefore, fully entitled to the interest @ 12% per annum as already held in the State of Kerala and others Vs. P.M. Padmanabhan Nair (AIR 1985 Supreme Court page 356).

4.12 That the humble petitioner further claims interest pendentilite and future also till the payment is actually made by the Respondents in addition to the amount claimed and the arrear of interest due so far and likely to further fall due.

4.13 That the above case law (AIR 1985 Supreme Court page 356) has been relied upon by the Railway Board in their letter No. F (E) III/79/PNI/15 dated 23-1-87 (NR Sr.No. 9168) and excerpt condensed in B.S.Mene's Railway Establishment Rules and Labour laws is reproduced below:-

" The Supreme Court in its judgment reported in AIR 1985 at page 356, held that Pension and Gratuity are no longer bounty to be distributed by the Govt. to its employees on their retirement but have become, under the decision of the court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment".

4.14 That since the Railway Board's letter dt. 23-1-87 and which has the force of law also, the applicability of para 313 of the Railway Pension and Rules is not attracted/in any case no law permits that the deductions out of the retiral benefits

Contd....7/-
 Mahesh Narayan
Negam

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- 7 -

without show cause notice and following the principles of natural justice.

4.15 That the judgment dt. 28-5-90 given by the Learned CGIT is erroneous as the Learned Tribunal seems to have been mis-led due to misleading pleadings by the Railway Administration. In the instant case the application under Section 33 C (2) was for an admitted claim of the DCRG amount and there is no question of framing any industrial disputes. Moreover, the Assistant Labour Commissioner (Central) does not entertain any application for framing industrial disputes individually as per Govt. instructions and such dispute can only be raised when it is expoused by registered and recognised Unions. The true copy of the judgment dt. 28-5-90 is being filed and marked as Annexure A-III to the 1st compilation.


5. GROUNDS:

5.1 Because the action taken by the Respondents is arbitrary.

5.2 Because the principles of natural justice have not been followed.

5.3 Because the petitioner does not owe any liabilities towards the Railway Administration and his services were quite satisfactory and there was no occasion for arbitrary cutting through the DCRG.

Contd....8/2

 Mahesh Narayan Nigam

5.4 Because the mandatory provisions of IREM have not been followed.

6. DETAILS OF THE REMEDIES EXHAUSTED:

The humble petitioner has already filed a claim under Section 33 C (2) before CGIT Kanpur in ICA case No. 234/89 which was decided on 28-5-90 which has given the cause of action for this petition.


7. MATTER NOT PENDING WITH ANY OTHER COURT ETC:

The humble petitioner declares that the matter regarding which this petition has been made is not pending before any court of law or any other authority or any other bench of the Tribunal.

8. RELIEF (S) SOUGHT FOR:

In view of the facts mentioned in paras 4 & 5 above, the humble petitioner prays for the following relief (s):-

- (a) to issue a writ, order or direction in the nature of MANDAMUS thereby commanding the Respondents to release the balance amount of gratuity i.e. Rs. 2223.20 together with interest which is calculated to Rs. 4011.00 (@ 12%) - and also to pay interest pendente lite and future till actual payment is made to the petitioner.

 Mahesh Narain Mehta Contd...9/-

- (b) to issue further order in favour of the humble petitioner which this Hon'ble Tribunal may deem fit as per facts and circumstances of the case.
- (c) Award cost of the petition in favour of the humble petitioner.

(9) INTERIM ORDER IF PRAYED FOR:

At present no interim relief is being sought for.

10. PARTICULARS OF POSTAL ORDER IN RESPECTION OF THE APPLICATION FEE:

- | | |
|------------------------------------|-------------------------|
| No. | |
| (a) Name of Indian Postal order. | - D.D. 5318893 Rs. 50/- |
| (b) Name of Issuing Post Office. | - H.E.P.O. ALP. |
| (c) Date of issue of Postal order. | - 15/11/96 |
| (d) Post office at which payable. | - H.E.P.O. ALP. |

11. DETAILS OF COMPILATION BOOK:

A compilation book containing the details of the documents to be relied upon is enclosed.

12. LIST OF ENCLOSURES:

- (a) Details of compilation book.
- (b) Documents detailed in the compilation book.
- (c) Indian Postal order No. Dt.
- (d) Vakalatnama.

13. This petition is being processed through Shri Ram Kumar Nigam, Advocate.

Contd., 10/-

Mahesh Nigam

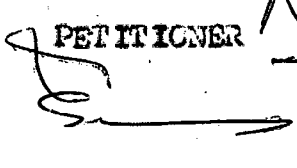
In verification:

I, Mahesh Narayan Nigam aged about 72 years son of Shri Shambhoo Saran Nigam, R/O 45 Duprapur, Unnao, do hereby verify that the contents from para 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts. The copies of the documents annexed are true to their respective originals.

Dt. 23/10/90

To

The Registrar,
Central Administrative Tribunal,
Allahabad.

Mahesh Narayan Nigam
PETITIONER


ANNEXURE III

Before Shri Arjan Dev Presiding Officer
Central Government Industrial Tribunal
cum Labour Court Pandu Nagar, Kanpur.

L.C.A. No. 234 of 1989

ANNEXURE NO. III

Shri Mahesh Narain Nigam

Petitioner

And

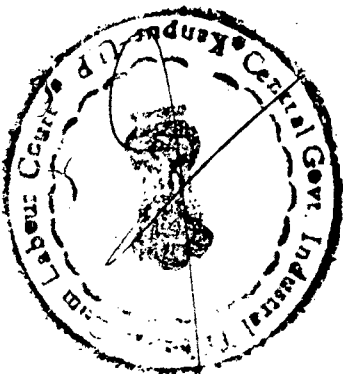
The P.R.M. LUCKNOW DIVISION
NORTHERN RAILWAY LUCKNOW.

Respondent

Order

1. This is a petition under sec.33C(2) I.L.Act, for computation of money benefits amounting to Rs.3623.30 paise and for payment of interest on the amount so computed. The applicant's case in short is that he retired as Station Master Northern Railway Lucknow Division on 30.9.75 with unblemished career. As per Rules a sum of Rs.8120/- was payable to him as LCRG but out of which the respondent had paid him only Rs.4496.80 paise leaving a balance of Rs.3623.20 paise. He has, therefore, prayed that the said amount of Rs.3623.20 paise be computed in his favour and respondent be ordered to pay him interest on the said amount.

2. The case is contested by the respondent. The respondent while admitting the fact that the applicant retired as Station Master on 30.9.75 plead that the sum of Rs.9240/- was worked out as LCRG payable to the applicant but as per Rules prevalent at that time two months emoluments were deducted on account of family pension payments. Thus the amount payable to the applicant as LCRG came to Rs.8120/-. The respondent further pleads that as per Rules full payment of LCRG is done to an employee on his good faithful and satisfactory service. Since the services of the applicant were not satisfactory, an amount equal to 10 percent of LCRG viz Rs.924/- was deducted on the order of General Manager(P) Head Quarters Office Baroda House New Delhi. Besides a sum of Rs.29.20 paise on account of loss of station earning, Rs.80 on account of Coaching Debts and Rs.70/- on account of shortage of store items under applicant's possession were deducted from the amount of LCRG payable to him. After deducting the amounts by means of order dt.26.4.85, the applicant was advised to collect the balance amount of LCRG in the presence of Station Supt.



Mahesh Narain Nigam

The applicant had never made any representation regarding the non receipt of the said amount. As such the applicant is entitled to no relief.

3. In this case, the applicant also filed a rejoinder in which he admitted the receipt of Rs.7016.80 paisa towards DCRG. Treating the total amount of DCRG as Rs.9240/- he had worked out the balance amount payable to him as Rs.2223.20 paisa. He has denied that ^{his} ~~the~~ services were not satisfactory. He has also challenged the order of GM(P) on the ground that there is no speaking order nor any show cause notice was issued to him before ordering such ~~g~~ deductions from the amount of his DCRG.

4. In support of his case, the petitioner has filed his own affidavit. On the other hand, in support of his case, the respondent has filed two documents.

5. From the main petition and the rejoinder, filed by the applicant it appears that after looking to the defence set up by the respondent in para 1 of his written statement, the applicant ^{he} ~~glamorously~~ enhanced the amount of DCRG to Rs.9240/-. He cannot be allowed to do so in view of the specific case set up by him in the petition under sec.33C(2) ID Act, ^{that} ~~as per~~ Rules, upon his retirement, Rs.8120/- were payable to him as DCRG. The respondent in para 1 of the written statement has shown how under Rules, the amount of Rs.9240/- came ~~out~~ ^{out} to Rs.8120/-. Therefore, I treat the total amount of DCRG that was payable to the applicant on his retirement as Rs.8120/-. In his main petition the petitioner admitted to have received Rs.4496.80 paisa towards DCRG but in the light of the defence set up by the respondent in his rejoinder he admitted to have received Rs.7016.80 paisa towards DCRG as has been pleaded by the respondent in his ^{33a} ~~written~~ statement.

6. In his cross examination also he has admitted the fact that the amount of DCRG payable to him was Rs.8120/- out of which he had received Rs.7016.80 paisa.

7. Thus the dispute is left with regard to the

Handwritten signature

Mane Shri Mahajan

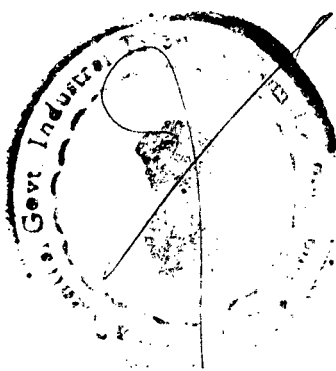
balance amount of B.1103.20 paisa.

8. The respondent has filed the copy of para 313 of the Railway Pension Rules according to which if the service of a railway employee has not been thoro satisfactory the authority sanctioning the pensionary benefits could make such deductions in the amount of pensionary benefits as it thinks proper. The respondent has further filed the copy of letter dated Oct, 1977, from GM(P) to DRM Northern Railway Lucknow, informing him that the General Manager had given sanction for deduction of 10% of the dues payable to the applicant by way of pensionary benefits. Whether the order is legal or illegal cannot be questioned in proceedings under sec.33C(2) I.L.Act. Similarly the legality of the deductions made on account of station earning, coaching debits and shortage of store items cannot be examined in proceedings under sec.33C(2) I.L-Act. The applicant should better raise an industrial dispute in respect of all these. It is therefore, clear that no amount is due towards LORG. As observed above in respect of the amounts withheld he may raise an industrial dispute by challenging the orders under which these amounts were deducted from the amount of his LORG.

9. The petition under sec.33C(2) I.L.Act, is therefore, dismissed and the computation is made zero in favour of the applicant.

dt.28.5.90

sd/- 28-5-90
(Arjan Dev)
Presiding Officer



CERTIFIED COPY

(S. S. SHARMA)
Secretary

Central Government Industrial
Cum-Labour Court-Kanpur

Attested

AC

2

Manesh Narayan Narayan

5

Campfire 2

ANNEXURE I

ANNEXURE NO. 1

BEFORE THE PRESIDING OFFICER CENTRAL GOVT.
INDUSTRIAL DISPUTES TRIBUNAL-CUM-LABOUR COURT KANPUR.

L.C.A. No. 234 /89.

Mahesh Narayan Nigam son of Shri Shambhoo Saren
Nigam, resident of 45 Duprapur, Unnao.

..... Applicant

Versus

Divisional Railway Manager, Northern Railway,
Lucknow.

..... Opposite Party.

APPLICATION UNDER SECTION 33 C 2 OF THE INDUSTRIAL
DISPUTES ACT.

The applicant is entitled to receive gratuity
to the tune of Rs. 8120/- from the OP while the latter
has only paid Rs. 4496.80, thereby leaving a balance
of Rs. 3623.20.

Contd...2/-

attested &c

Mahesh Narayan Nigam

2. The applicant further states that he served the OP with a demand notice dt. 28-9-80 followed by several reminders, personal requests and personal visits in the DDM's Office, but the remaining amount of gratuity has not been released. The details of the amount and the facts of the case are stated in the Accompanying annexure.

3. As a matter of fact the applicant has been making persistent efforts to find the reasons of with-holding of his gratuity amount by the OP and the other officials have done nothing in the matter so far. As a matter of fact there is no liability against the applicant nor any debts are outstanding against him. His retirement is quite clean and there was no order as to with-holding of gratuity under the rules nor any opportunity was ever given on the subject for any reason whatsoever.

4. The other counter-parts have received the payment of full gratuity. It is, therefore, prayed that the aforesaid sum may kindly be recovered from the OP and paid to the applicant.

attested *[Signature]*
[Signature]
APPLICANT
Mohabir Nargan Mehta

-180318

~~CONFIDENTIAL~~

The applicant retired as Station Master, Vyas Nagar, Northern Railway, Lucknow Division on and from 30-9-1975 with un-damaged career. As per DCRG (Death-cum-retirement Gratuity) Rule an amount of ₹. 6120/- was payable to the applicant towards which the OP paid only ₹. 3623.4496.80 leaving a balance of ₹. 3623.20 under the carb of future debits.

There are no debits against the applicant outstanding against him nor the OP has ever disclosed as to what was the future debit.

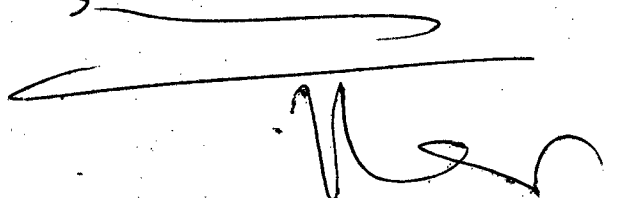
The amount of ₹. 3623.20 is thus treated as admitted wages and the OP cannot deny this fact.

The applicant is, therefore, entitled to the principal amount of ₹. 3623.30 along with interest.

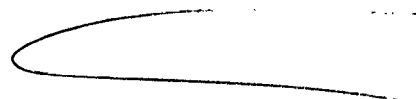
31-5-89.

APPLICANT

STC
attested



Mahabir Narayan Singh



ANNEXURE II
ANNEXURE NO. II
BEFORE THE PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR.

L.C.A. No. 234

/89

Mahesh Narayan Nigam son of Sri Shambhoo Saran
Nigam, resident of 45 Duprapur, Unnao.

Applicant.

Verous

Divisional Railway Manager, Northern Railway,
Lucknow.

Opposite party.

WRITTEN STATEMENT ON BEHALF OF THE Opp. PARTY.

The Opposite party submits as under:-

- Para. I. That the contents of para 1 of the application are denied. It is submitted that Shri M.N. Nigam was retired from service on 30.9.75 as Station Master, Vayasnagar. On his retirement a sum of Rs. 9240/- was worked out on account of D.C.R.G. (Death Cum-retirement Gratuity) but as per rules prevalent at that time the two months emoluments were made less on account of family pension payments and thus the amount of D.C.R.G. comes to Rs. 8120/-. The relevant para 3703 of Railway Pension Manual is enclosed as Annexure I of the
- Para 2. That the contents of Para II are denied. It is submitted that the applicant filed a case in the Court of City Magistrate, Jhansi for the same relief in the year 1981 which was contested by the Railway Administration and the same was dismissed by the City Magistrate, Jhansi. Hence the present application is not legally maintainable and barred by the principle of Res. Judicata.
- Para 3. That the para contents of Para III are denied. The applicant has failed to explain the delay in filing the present application. Thus the same is barred by the principle of Laches. It is further submitted that as per prevalent rules the full payment of D.C.R.G. is done to an employee on good, faithful and Satisfactory services. Since the services of Sri M.N. Nigam were not found entirely satisfactory an amount equal to 10% of the D.C.R.G. viz. Rs. 924/- was deducted on the order of General Manager (P), Headquarters Office Beroda House, New Delhi. Thus 90% of the D.C.R.G. became due to him instead of 100%. The extract para 313 of Railway Pension Manual is annexed of the V.S. It is further submitted that the G. payable was worked out to Rs. 8120/- (-) Rs. 7126/- (As per Annexure II). A sum of Rs. 29.25 was recovered for loss of Station

By 10/89

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28-11-89

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L
Mahesh Narayan Nigam

Cont

earning, Rs. 90/- on account of Coaching debts and Rs. 70/- on account of shortage of Store Items under his possession and Rs. 4496.00 Paisa (Paid as admitted by him) Rs. 2520/- was paid under CO/ No. 0500373 dated 2.4.05 for payment which he was advised through a registered letter No. 7208/Pen/IB dated 26.4.05 to receive the same in presence of Station Superintendent Lucknow. The applicant had never made any representation regarding the nonreceipt of the aforesaid amount and thus it appears that the said amount has been received by him. The recovered amount mentioned above were adjusted from the D.C.R.C. and the payment was made to him i.e. Rs. 4496.00 Paisa Min. Rs. 2520.00 = Rs. 7016.00 Paisa and therefore no amount is due against the Railway administration.

Para 4. That the allegations contained in the Para 4 are baseless and as such denied.

That the annexure are not admitted as Alleged. It is submitted that the recoveries shown in the para (3) have fully in the knowledge of the applicant and the adjustment were made as per rules.

Para 5. That the present application is not legally maintainable because under this proceeding the Court can not adjudge the matter without the reference order under Sec. 16 of the I.D. Act.

That the applicant has intentionally concealed the facts regarding the case which was decided by the City Magistrate, Jhansi and as such he is not entitled to get any relief by this Court.

Para 6. That the application is not maintainable under Sec. 33(4)(ii) of I.D. Act and the Honourable Court has no jurisdiction to decide the present application.

In view of the above the application of the applicant which is based on false and baseless allegation are liable to be dismissed with cost.

Opposite Party.

हुते मंडल रेलवे प्रबन्धक
उत्तर रेलवे, लखनऊ

VERIFICATION.

I J.N. Srivastava, A.P.O. do hereby verify that the contents of Para 1 to 6 are true to my knowledge on the basis of the official records and also on the basis of the legal advice.

Signed and verified this on _____ at Lucknow.

Opposite Party.

Counsel for the Opp. Party.
हुते मंडल रेलवे प्रबन्धक
उत्तर रेलवे, लखनऊ

Mohabir
Mukesh Chandra Mishra

22

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD.

Written Statement on behalf of Respondents.

IN

O. A. NO. 970 OF 1990.

Maresh Narayan Nigam. - - - - - Petitioner.

Versus

Union of India and others. - - - - - Respondents.

Written Statement on behalf of

-- Ravi Kumar --
Serving as ASST Personnel Officer
Northern Railway, Lucknow.

1. That I am serving as ASST Personnel Officer
Northern Railway, Lucknow and have been authorised
and deputed to file the present written statement
on behalf of the respondents.
2. That the contents of paragraph nos. 1, 2, and
3 of the petition are not admitted.
3. That in reply to the ~~averments~~ averments
made in para 4(1) of the petition it is stated that
the averments made therein are admitted to the
extent that the petitioner retired on 30.9.1975 on

.. [Signature]

823

- 2 -

attaining the age of superannuation. It is further stated that the death cum retirement gratuity for 16, 1/2 months pay was calculated to the extent of Rs. 9,240-00 but as per rules prevailing at that time two months emolument (pay last drawn @ Rs. 560 per month) were made less on account of Family pension payment, thus Rs. 9,240-00 - Rs. 1,120.00 i.e. Rs. 8,120.00 worked out as payable amount towards death cum retirement gratuity.

4. That the averments made in para 4(2) of the petition are denied. It is further stated that the petitioner has been paid death cum retirement gratuity as under :-

Death cum retirement gratuity- worked out Rs. 9,240.00 but the same was made less by two month emoluments on account of admissibility of family pension in terms of Railway pension rules. The details are as under :-

D.C.R.G. Amount admissible due Rs. 8,120.00

(1) On account of out standing

Commercial coaching, outstanding

~~expenses~~ debits against the

petitioners.

(-) Rs. 109.20

(2) Loss of 35 burners (stove items) Rs. 70.00

(3) For future of 10% of admissible

D.C.R.G.

Rs. 924.00

D.C.R.G. No. 127

220

-3-

Thus no amount on account of death cum retirement gratuity is left to be paid to the petitioner.

5. That the averments made in para 4(3) of the petition are matter of record and hence no specific reply is needed.

6. That in reply to the averments made in para 4(4) of the petition, it is stated that the averments made therein are based on misconception of facts and law and hence the same are denied. It is further relevant to point out that in terms of para 313 of Railway pension manual the amount of death cum retirement gratuity/pension can be reduced by the competent authority for unsatisfactory services. Thus the reduction made @ Rs. 10% in death cum retirement gratuity by the competent authority viz General Manager (P) Northern Railway, is within the rules.

7. That the averments made in para 4(5) of the petition are denied. It is further relevant to point out that before making deduction of 10% in the death cum retirement gratuity the petitioner was given a show cause notice. A photostat copy of the show cause notice dated 19.4.1997 is being filed herewith and is marked as Annexure 'C.A.I' to this Written Statement. That in reply the petitioner also

Asstt. Personnel Off-
N. B. Lko

2021/11/11 14:00

to the facts and circumstances of the instant case.

9. That the contents of paragraph no. 4(7) of the petition are denied. No further reply is needed as the position has already been explained in the earlier paragraph of this written statement.

10. That the averments made in para 4(8) of the petition are denied. No further reply is offered as the position has been explained in the earlier paragraph, of this written statement.

11. That the contents of paragraph no. 4(9) of the petition are denied. It is further stated that the information regarding deduction of Rs. 29,90 is well within the notice of the petitioner. It is further stated that as regards the recovery of Government dues it is not necessary to inform the retired employees regarding the recovery.

12. That the averments made in para 4(10) of the petition as they stand are denied. As already pointed out the petitioner's Death Cum Retirement gratuity worked out to be Rs. 9240.00 (16, 1/2 months pay) but from this amount 10% i.e. Rs. 924-00 was reduced due to unsatisfactory service and two months pay i.e. Rs. 1120.00 was made less on account of admissibility of family pension. Besides a sum of Rs. 179.20 was recovered from the petitioner as the

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-6-

said Government dues were outstanding against the petitioner.

13. That in reply to para 4(11) of the petition it is stated that the averments made, therein ~~of~~ if correct, may call for sympathy but such factors are wholly irrelevant for the adjudication of the matter. No further reply is needed as the position has already been explained in detail in earlier paras of this written statement.

14. That the contents of paragraph no. 4(12) of the petition are denied. No further reply is needed as the position has already been explained in paras 4 and 8 of this written statement.

15. That the contents of paragraph no. 4(13) of the petition as they stand are not admitted. It is submitted the decision of Hon'ble Supreme Court referred to in the para under reply, is not at all applicable in reference to the facts and circumstances of the present case. It is further stated that the petitioner retired in 1975 ~~at~~ and at the relevant time i.e. in 1975 the payment of 100% Death Cum Retirement Gratuity was to be done on good, efficient, faithful and satisfactory services.

16. That the contents of paragraph no. 4(14) ~~of~~

B.S.

-7-

of the petition are not admitted.

17. That in reply to the contents of paragraph no. 4(15) of the petition, it is stated that the judgement dated 28.5.1990 is perfectly valid and suffers from no infirmity whatsoever. The averments made to the contrary are wrong and the same are denied.

18. That in reply to the contents of paragraph no. 5 of the petition, it is stated that none of the grounds are tenable.

19. That in reply to paragraph no. 6 of the petition, it is stated that the matter has been finally adjudicated upon by the District Commr C. S.I.T. Kanpur and the present petition is likely to be dismissed summarily on this ground alone.

20. That the contents of paragraph no. 7 of the petition needs no reply.

21. That in reply to paragraph no. 8 of the petition it is stated that the petitioner is not entitled for any relief. The petition is devoid of merits and is likely to be dismissed.

Asst. Personnel Off
T. H. K.

829

22. That the contents of paragraph nos. 9, 10, 11, 12 and 13 of the petition need no comments.

[Signature]
Sign. Personnel Office
Asst. Secy. H. E. Bho.

Verification:-

I, - *Rajv. Kumar* - - - - - Serving as
- - - *Asst. H. Bho.* - - - Northern Railway, Lucknow,

do hereby verify that the contents of para 1 of this written statement are true to my personal knowledge, those of paras 2 to 12, 14, 15(partly), 16, 20, and 22 are verified from record, those of paras 13, 15(partly), 17, 18, 19 and 21 are verified on the basis of legal advice.

Date:- 2.5.1991

place. Lucknow

[Signature]
Sign. Personnel Office
Asst. Secy. H. E. Bho.

[Signature]

Annexure CA "I"

330

spare copy.

Northern Railway

Board, A/D.

No. 720E/Pen/LB

Dated: 09/4/77

36A

Divisional Supt.'s Office, (Issuing Office)
Northern Railway, Lucknow:
Lucknow - (Place of issue).

MEMORANDUM

Whereas Shri Mahesh Narain Nigam S/o Sri S.S. Ri who was employed as Stn. Master/VYN at station VYN in Lucknow Division, is Pension optee and has opted to be in Railway service w.e.f. 30.9.75 due to retirement on superannuation.

And Whereas the General Manager, N.Rly., New Delhi on a careful consideration of the case has come to the conclusion that the services of the said Shri Mahesh Narain Nigam have not been thoroughly satisfactory on account of "Bookings against restriction and infringement of priority during 1972" and therefore, proposed to with-hold 10% percent DCRG.

NOW therefore, in pursuance of Proviso(1) below Rule 1314(4) RI/Proviso (1) below sub-para (ii) of para 313 of HRPR-1950, the said Shri M.N. Nigam, SM/VYN is hereby given an opportunity of making any representation, which he may wish to make, against the proposed with-holding of 10% percent SC to PF/DCRG for consideration by the General Manager/Northern Rly., New Delhi provided such representation is made in writing and submitted through his immediate officer under whom he was working within fifteen days of the receipt of this Memorandum.

2. Shri Mahesh Narain Nigam is informed that in case no representation as aforesaid, is made within the stipulated period of fifteen days, it will be presumed that no representation is intended to be made and action to finalize the case will be processed accordingly.

Signature of the officer
Name & Designation
of Issuing Authority.

To

Shri Mahesh Narain Nigam,
C/o Dr. Sunder Lal Pandey,
Rani Naka, Mauranipur,
Jhansi.

ACKNOWLEDGEMENT

Received Memorandum No. _____ dated _____ from
the _____ N.Rly; Lucknow.

Signature
Designation
Date
Station

24/12/4

3/4/91

231

under certificate of Merit

M. Nigam

Public Station Master

Yasvagar N.R.

Sh. Sunder Lal Pandey

Raoni Naka,

Mauranipur Dist. - Thanesar.

No. M/3/77 dt. 17 May-77 To, The General Manager

N. Rly.

New Delhi

(Through: - The Secy, Sdmt, N. Rly, Lucknow)
An Appeal of Merit.

Your No. 720 E/PEN/1 B dt. 19/4/77

Gracious Sir,

Referring to your above quoted memo-
randum, received, on 28/4/77, I beg to lay down
the following few points for your kind con-
sideration & merciful action:-

1. That I am sorry to learn that up to
date of services and being a loyal worker
(worked as Sdmt N. during strike - 3/5 to
28/5/74) is being rewarded by withholding
of D.R.G.

2. That this a case of 1972, which could
not be finalized upto 1975 during my
service period & even up to now, when I
am completing 2 yrs of my post retirement
period despite my repeated humble repre-
sentations that it all took place in the then
prevailing circumstances.

3. That the Railway Administration
could earn the heavy freight on account
of my so called irregularity, whereas I am

Attested

P.T.O.

R. N.

24/4/91

H. R. L. 24/4/91

Asstt. Personnel Officer
H. R. Lko.

727

II

being deprived of my life long privilege of D.P.G. 37A.

4. That the infringement of privacy in 1972 as reported by T-1(A) & B in 1974, could not have been tolerated by the D.P.G. & if it would not have been on operational grounds as already explained.

5. That as a matter of fact, my D.P.G. should have been paid on my retirement in 1976, which has not been paid up to date even after having completed 2 yrs of my retirement. Thus I have incurred a loss of Rs. 100/-, which should have been paid as interest.

6. That D.P.G. is meant for the post-retirement liabilities of an old employee & the payment of which is at the mercy of my honourable officers:-

(1) Two months salary, debited for the family pension.

(2) 10% of D.P.G. is proposed to be withheld in this connection, when I have already suffered a loss of 20% as interest.

(3) A sum of Rs. 400/- has been debited against me through an error & back to-wards forfeiture of Registration Money on grounds whose privacy was infringed as reported by T-1(A) & B received after my retirement & is running as objected Debit.

(4) Cash Office Debits:-
Short acknowledged by D.P.M/400 Rs. 17/-
Total Deductions comes to Rs. 2254/-

Attested

P.T.O

R. B. Lko

Asst. Prisoner Officer

3/4/91

Asst. Prisoner Officer
R. B. Lko.

Annexure CA¹¹ III

(45)

उत्तर रेलवे, प्रशासक कार्यालय,
बडोदा हाउस, बर्ड दिल्ली।

दिनांक: - 10.10.77

नं०: 342-ई/ 4280

(पूजन-ब)

अंश अशीलक/ उप मुख्य वाणिज्यिक इन्स्पेक्टर,

उत्तर रेलवे।

दरमन

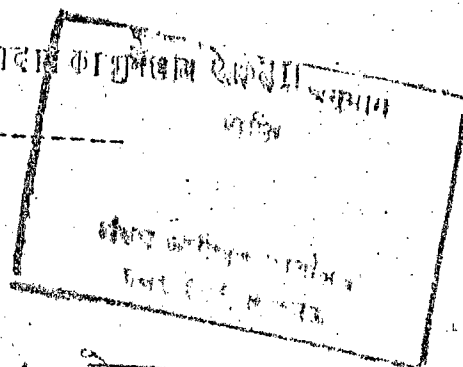
विषय:-

अधिसूचना निधि में विशेष अंशदाता/ मृत्यु एवं सेवा निवृत्ति उपदान का पुनर्निर्माण हेतु।

संदर्भ:-

आप का पत्र संख्या नं०- 720 ई/ वी/ 100

दिनांक:- 29-9-77



श्री महेश नारायण निगम

श्रुत पूर्व स्टेशन मास्टर - जेनरल/ 34315

को-सेवा निधि में विशेष अंशदाता के 10 (दस) प्रतिशत) का पुनर्निर्माण रोकने के लिए महा प्रबंधक द्वारा अतिरिक्त मंजूरी दे दी गई है।

कर्मचारी का सेवा रिकार्ड इस कार्यालय से प्राप्त कर लिया जाए।

इसको कृपया "अंतिम" मंजूरी दें।

र. नि. म. प्र.
प्रति महा प्रबंधक (कार्गो प्र.)

Attested

[Signature]

Asstt. Personnel Officer

3/4/78

Asstt. Personnel Officer
N. B. Ato.



IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

O.A. No. 970/90

Mahesh Narayan Nigam Petitioner

Versus

Union of India and another. Respondents.

I_N_D_E_X

| S.No. | Description of documents | Pages |
|-------|--------------------------|-------|
|-------|--------------------------|-------|

| | | |
|----|--|-------|
| 1. | Rejoinder on behalf of the petitioner. | 1 - 4 |
|----|--|-------|

5/2/92
28/1/92
Dt. -8-1991.


(RAM KUMAR NIGAM)
COUNSEL FOR THE PETITIONER

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IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH AT ALLAHABAD.

REJOINDER

In

O.A. No. 970/90

Mahesh Narayan Nigam

..... Petitioner

Versus

Union of India and others.

..... Respondents.

The humble rejoinder of the petitioner
abovenamed MOST RESPECTFULLY SHOWETH:

1. That the contents of para 1e of the reply do not need any comments.
2. That the contents of para 2 of the reply need no comments.
3. That the contents of para 3 of the reply need no comments being the matter of record.
4. That sofaras the contents of para 4.1 of the reply are concerned, the same are admitted the reset of the contents are not admitted. It is emphatically denied that no amount of DCRG is left to be paid to the petitioner.
5. That the contents of para 5 of the reply need no comments. However, it is stated that all the

Contd....2/-

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Mahesh
Narayan Nigam



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records are available with the Respondents and it is wrong to say that the record is not available.

6. That the contents of para 6 of the reply are not admitted and the earlier allegations are re-iterated. In spite of protracted litigation on the subject, it was nobody's case that the petitioner has been subjected to cut in the DCRG to the tune of 10% and, therefore, this stand taken at this belated stage by the Railway Administration is not acceptable. However, it is stated that the petitioner has submitted his representation dated 19-4-77 (Annexure CA 2) and the same has not been decided so far.

7. That the contents of paras 7 & 8 of the reply are not admitted. The humble petitioner is entitled to the full gratuity as admissible to him.

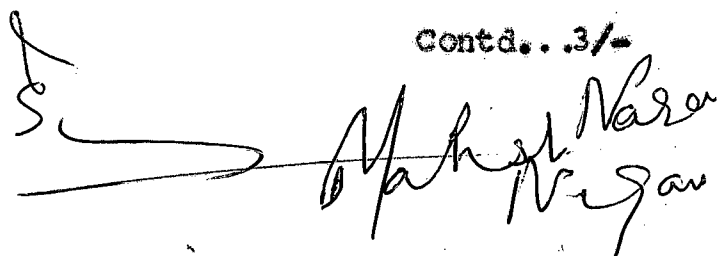
8. That the contents of para 9 of the reply are not admitted.

9. That the contents of para 10 of the reply are not admitted.

10. That the contents of para 11 of the reply are not admitted.

11. That the contents of para 12 of the reply are not admitted and the same are emphatically denied. The earlier allegations are re-iterated.

Contd...3/-



Mahesh Narayan



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12. That the contents of para 12 of the reply are not admitted.

13. That the contents of para 14 of the reply are not admitted.


14. That the contents of para 15 of the reply are not admitted. The petitioner was retired in 1975 and the order in relation to the so called cut from the DCRG has been admittedly issued on 19-4-77 i.e. after much delay on the part of the Railway Administration. As a matter of fact, the humble petitioner is entitled to 100% DCRG and it was quite arbitrary on the part of the Railway Administration to issue the order dated 19-4-77 without any application of mind or following the rules of statutes.

14.1 It is, however, stated that the petitioner has rendered most efficient, dedicated and honest service to the Railway Administration and heavy burden lines on the Respondents to prove that his services were un-satisfactory.

15. That the contents of para 16 of the reply are not admitted.

16. That the contents of para 17 of the reply are not admitted.

Contd.....4/-


Mahesh Kumar
N. S. Gaur

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17. That the contents of para 18 of the reply are not admitted.

18. That the contents of para 19 of the reply are not admitted. The matter has not been finally adjudicated by C.G.I.T. and the final word has to come from this Hon'ble Tribunal because the humble petitioner has come in a case involving the service matter and that too by exhausting remedies which were open to him in C.G.I.T. etc.

19. That the contents of para 20 of the reply are not admitted.

20. That the contents of para 21 of the reply are not admitted.

21. That the contents of para 22 of the reply are not admitted.

I, Mahesh Narayan Nigam, do hereby verify that the contents of paras 1 to 21 of this rejoinder are true to my personal knowledge and nothing material has been concealed.

Petitioner.

Mahesh Narayan
Nigam

CU

DATE: 13-11-92-

RECEIVED

V E R S U S

If, no appearance is made on your behalf, your pleader or by some one duly authorized to act and plead on your behalf on the said application, it will be heard and decided in your absence. Given my hand and the seal of the Tribunal this day

[Handwritten signature]

(M. Mehrotra)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
(ALLAHABAD BENCH)
ALLAHABAD.

Regd. A/D.
23-A, Thornhill Road,
ALLAHABAD-211001.

REGISTRATION NO. O.A. NO. OF 1990
CAT/Alld/Jud. 970

877127-87732
..Rabash..Nasain..Nigam.....APPLICANT(S)

VERSUS

..... RESPONDENT(S)

U.O.I.&Others

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi
2. Divisional Railway Manager, Northern Railway, Lucknow.

Please take notice that the applicant above named has presented an Application a Copy where of is enclosed herewith which has been registered in this Tribunal and the Tribunal has fixed

9th

April Day of 1991 For before DR(2) for completion of pleadings. Counter can be filed 8 weeks from 10.12.90.

if, no appearance is made on your behalf, your pleader or by someone duly authorised to Act and plead on your behalf in the said application, it will be heard and decided in your absence.

Given under my hand and the seal of the Tribunal this 13th Day of 1990.

December

Disb.
FOR DEPUTY REGISTRAR (J)

GHANSHYAM/