

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

OA/TA/RA/CP/MA/PT 07.17 of 2090

Babu Ram Vaisya.....Applicant(S)

Versus

U. G. S......Respondent(S)

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B.C. file weeded and destroy

Certified that the file is complete in all respects.

.....
Signature of S.O.

.....
Signature of Deal. Hand

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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 4th day of April 1996.

O.A. No. 17 of 1990.

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

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

Applicant.

By Advocate Shri A. Moin.

versus

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

2. The Divisional Railway Manager, Moradabad.

Respondents.

By Advocate Shri A.K. Chaturvedi,.

O R D E R

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

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

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

1.
Boel

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

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

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

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Boh.

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

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

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

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

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

/ *Red*

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

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

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

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

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

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

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

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

11. The learned counsel for the respondents

Red

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

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

B. Saksena

VICE CHAIRMAN

~~MEMBER (2)~~ *Shakeel*

Lucknow; Dated: 4.4.96

Shakeel/

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

16-1-80

Registration No. 17 of 1969 (C)

APPLICANT(S) B. R. Vankh

RESPONDENT(S) UOL

<u>Particulars to be examined</u>	<u>Endorsement as to result of examination</u>
1. Is the appeal competent ?	Ys
2. a) Is the application in the prescribed form ?	Ys
b) Is the application in paper book form ?	Ys
c) Have six complete sets of the application been filed ?	Ys
3. a) Is the appeal in time ?	Ys
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 authorisation/ Vakalatnama been filed ?	Ys
5. Is the application accompanied by B.D./Postal Order for Rs.50/-	Ys
6. Has the certified copy/copies of the order(s) against which the application is made been filed?	Ys
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Ys
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	Ys
c) Are the documents referred to in (a) above neatly typed in double space ?	Ys
8. Has the index of documents been filed and pagging done properly ?	Ys
9. Have the chronological details of representation made and the out come of such representation been indicated in the application?	Ys
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?	No

Particulars to be Examined

Endorsement as to result

mination

- 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
13. Have the file size envelopes bearing full addresses of the respondents been filed ?
14. Are the given address the registered address ?
15. Do the names of the parties stated 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. 6 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.

Yes

No

Yes

Yes

NA

Yes

Yes

Yes

dinesh/

GA 17/90 (4)

19.1.90

Hon. J. P. Sharma, J.M.

3

The Id. Counsel Mr. Tiwari

would like to argue a few
points of himulahan. Recd.

5/2/90

OR CMA No 7/90 filed
by 4c for the applicant.
for condonation of delay 2

5.2.90

No sitting. Adj to 21/2/90
4c for the applicant is
present. L

21.2.90.

Hon'ble Mr. J. P. Sharma, J.M.

Sri T. N. Tewari Counsel for
the applicant is present.

Issue notices to the
respondents to show
cause why the application
be not admitted. The reply,
if any, may be filed
by 19.3.90. and put up
for orders on the date
fixed.

OR
Notice issued
11/3/90

J.P.
J.M.

OR
Notices were
issued on 1.3.90.
~~Station~~
Neither reply
nor any unseemed
reply could have been
returned here.

S. P. O

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

O.A.NO. 17/ No. 90 (L) OF 19

BABU RAM VAISH Vs. U.O.I.

Sl.No.	Date	Office Report	Orders
12291 -	12.2.91	No sitting Adj to 13.3.91	<p>27.11.90</p> <p>Hon'ble Mr. Justice K.Nath, V.C. Hon'ble M.M.Singh, A.M.</p> <p>Respondents Counsel requests and is allowed 4 weeks time to file counter, rejoinder may be filed within 2 weeks thereafter.</p> <p>ADMIT.</p> <p>List before D.R. on 16.1.91 for fixing a date if possible, after completion of record.</p> <p>SD/ A.M. Sd/ V.C.</p> <p align="right">16.1.91 D.R.</p> <p>Both the parties are absent today. Counter has not been filed by O.P., hence O.P. to file counter by 12/2/91. Case is listed before me on 12/2/91.</p> <p align="right">13.3.91 D.R.</p> <p>Both the parties are absent today. Counter has been on 4.3.91 by the respondents, but rejoinder not been filed till by the applicant.</p>

CA filed
L
4/3/91

CA filed on 4.3.91
No RA filed

L
12/3

O.A. 17/90

20.11.91
D.R.

Applicant's side is
present. Applicant
to file Rejoinder
by 10/2/92.

10.2.92
D.R.

Both the parties are
absent. Applicant
did not file Rejoinder
till today. He is ordered
to file it, by 28/4/92.

Behandl 28/4/92
JAOLC

28.4.92
D.R.

Applicant is present
in person. He is further
ordered to file Rejoinder
by 29/7/92. O.P. is
absent.

29.7.92
D.R.

Both the parties are present.
Applicant is directed to
file rejoinder by 28.9.92.

OA. No. 17/50

21/4/93

6

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

The case called out again after lunch. Shri Ram Ray learned Counsel for the applicant & Shri A.K. Chaturvedi learned Counsel for the respondents are present. Counsel for the respondents files Supplementary Counter affidavit. Copy where of has been received by the learned Counsel for the applicant. Supplementary Rejoinder affidavit, if any may be filed within 4 days.

List this case on 2 for hearing and disposal.

OL

SCA/12

Handwritten

SCA

2

4/4/93

date
28.4.93

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

The learned counsel for the applicant has sought adjournment. List this case for hearing and disposal on 29.4.93.

J.M.

J.M.

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

Case called out. Non-response on behalf of either of the parties. Put up again after lunch.

J.M.

O. A. 17/90 (4)

29/4/93

No sitting of single ^{member} bench after lunch.
Case is adjourned to 11/5/93.

11/5/83

Hon. Mr. S.N. Prasad, I.M

None responds on behalf
of either of the Parties.
C.A & R.A have been
Exchanged. List this case
on 1/15/53 for hearing
& disposal.

ok
CERA SEA files
RA not files
SFH
B

19/5/83

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

The case called-out.
The counsel for the applicant
has sought adjournment.
List this case on 24/5/83
for final hearing. & dispose

19593
on
CARLA
SEAL
SALAH
ffn
a
25/7/93

O.A. 17/90

08/10/1993

No sitting of Single Bench

Case is adjourned to 13/10/93.

at
as per
the
order
of
the
court

13/10/93

Hon. Mr. Justice R.K. Varma, V.C.

Shri V.S. Tripathi learned
counsel for the petitioner has
sought adjournment. The case
is adjourned.

R.K.V.
V.C.

DR
31.8.94

As per direction of Hon V.C.

list it for hearing on
20.9.94. Notify in the
waiting list.

DR

20-9-94

No sitting of D.B
adj to 20-10-94

for
the

31-1-95.

GA 17/90 9

Hon Mr Justice B.C. Gokhale, J.C.
Hon Mr V.K. Seth, A.M.

The name of Shri V.S. Toptani
be shown as learned counsel
for applicant in the cause
list. list for hearing on 23.2.95.

V.S.
A.M.

Boh
V.C.

23.2.95

Hon. Mr. D.C. Verma, J.M.

List this case on 23.3.95.

J.M.

22.3.95

HON. MR. V.K. SETH, MEMBER(A)

Advocates abstain from judicial work,
adjourn to 17.4.95

MEMBER(A)

Shakeel/

17/4/95

Hon'ble Mr. D.C. Verma, J.M.

Applicant: None.

Respondent: None.

Shri. Ram Raj, learned counsel
for the applicant has sent an appli-
cation for adjournment the same is
allowed.

list on 02/5/95 for hearing.

J.M.

SA 17/80

5/8/95

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the concerned person has not informed this section whether he has deposited said cost in this Tribunal.
8/9/95

Hon. Mr. D.C. Verma, J.M.

for applicant: Sh. A. Mohan
for respondents: Sh. A.K. Chakravarti

The learned counsel for applicant seeks & is allowed 2 weeks time to file Supp. R.A.

List for orders on 21/9/95

J.M.

21-9-95

No sitting of Single Bench
adj. to 11/10/95

supp. RA not filed
9/10/95

11-10-95

the
Bec

Hon. Mr. V.R. Sheth, A.M.

Sh. A. Mohan for applicant.
None for respondents.
In pursuance of the orders
of the Tribunal, the ^{cost} case
has been deposited with
the Registry. The OA is
therefore ~~not~~ restored.
The applicant has filed
Supplementary Respondent's
Affidavit, copy of which

has been
served on
respondents.

As to
compliance
for R.A.

O.A. 17/90 //

20.12.95

Hon. Mr. Justice B.C. Saxena, V.C.

Sh. A. Mohan Id. counsel for the applicant
and Sh. A.K. Chaturvedi Id. counsel
for the respondents are present. Id.
counsel for the applicant seeks
adjournment. List this case on
05.1.96.

on
pleadings are
complete
21/1/96

bc
V.C.

5.1.96

No sitting of S.B.

Adj. to 22.1.96.

//
B.C.

22/1/96

No sitting of S.B. case is
adj. to 24.1.96 for hearing

2
at new
exchange
S.M.
2/1/96

24/1/96

Hon. Mr. A.C. Verma J.M.
for applicant: Sh. A. Mohan
Sh. A.K. Chaturvedi has appeared
earlier & informed that he is
busy in Court No. 1 & requested
for adjournment.
List for hearing on 2/2/96.

2
B.C.

J.M.

SA 17/80

5/9/95

10

Hon. Mr. D.C. Verma, J.M.

for applicant: Sh. A. Mohan
for respondents: Sh. A.K. Chakravarti

The learned counsel for applicant
sells & is allowed 2 weeks time
to file Supp. R.A.

2nd for orders on 21/9/95

J.M.

21-9-95

No sitting of Single Bench
adj. to 11/10/95

11-10-95

Bor

Hon. Mr. V.R. J. Sh. A.M.

Sh. A. Mohan for applicant.
None for respondents.
In pursuance of the orders
of the Tribunal, the ^{cost} ~~case~~
has been deposited with
the Registry. The OA is
therefore ~~to be~~ restored.
The applicant has filed
Supplementary Respondent's
Affidavit, copy of which
has been served on the
respondents' counsel.

As the pleadings are
complete, the OA be listed
for hearing on 18-10-95.

12

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the concerned
person has not
inform this section
whether he has deposited
said cost in this
tribunal.
19/9/95

on
supp. RA not filed
9/10/95

O.A. 17/90 //

20.12.95

Hon. Mr. Justice B.C. Saklana, V.C.

Sh. A. Main Id. counsel for the applicant
and Sh. A.K. Chaturvedi Id. counsel
for the respondents are present. Id.
counsel for the applicant seeks
adjournment. List this case on
05.1.96.

on
pleadings are
complete
21/1/96

bc
V.C.

5.1.96

No sitting of S.B.

Adj. to 22.1.96.

B.C.

22/1/96

No sitting of SB case is
adj. to 24.1.96 for hearing

on
21.1.96
changed
2/1/96

24/1/96

Hon. Mr. A.C. Verma J.M.,
for applicant: Sh. A. Main
Sh. A.K. Chaturvedi has appeared
earlier & informed that he is
busy in Court No. 1 & requested
for adjournment.
List for hearing on 2/2/96.

2
B.C.

J.M.

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

O.A.No. 17/80 Dt. of decision

Babu Ram Varsh Petitioner(s)

Mr. A. Mohan Advocate for the
petitioner(s)

V E R S U S

Union of Indus Respondent(s)

Mr. A. K. Chatterjee Advocate for
respondent(s)

CORAM :-

HON'BLE MR. Justice R.C. Saxena, VC

HON'BLE MR.

1. Whether reporters of local papers may be allowed to see the judgment ? ☒
2. To be referred to the Reporter ~~or not~~ ? ☒ Yes
3. Whether their Loreships wish to see the fair copy of the judgment ? ☒
4. Whether to be circulated to all other Benches ? ☒

B. C. Saxena
SIGNATURE

Date 16-1-80.

Date of

In the Hon'ble Central Administrative Tribunal,

Additional Bench Allahabad, (Registrar)

Circuit Bench at Lucknow.

O.A. No. 17 of 1990 (L)

B.R. Vaish

...Applicant.

Versus

Union of India & another

...Respondents.

I N D E X

Sl. No.	Description of document	Page no.
1	Application.	1-12
2	Annexure A-3, copy of written statement intimating the forfeiture of gratuity.	13-14
3	Postal Order.	-
4	Power.	15

Separate

5	Annexure A-1, Copy of notice under Section 20 C.P.C.	1-2
6	Annexure A-2, copy of judgment dated 21-7-1989.	3-6

Filed Today
2 notes for
18-1-1990
Jitendra
16-1-1990

For the use in Tribunal office	Applicant
Date of Filing 16/1/90	through
Registration No.	(T.N. Tiwari)
Signature for Registrar.	Advocate counsel for applicant.

B.R. Vaish

In the Hon'ble Central Administrative Tribunal,
Additional Bench Allahabad,
Circuit Bench at Lucknow.

O.A. No.

17 of 1990 (L)

Central Administrative Tribunal
Lucknow
Date: 16-1-90
Date of Receipt: Past.....

Dep. Registrar(J)

Babu Ram Vaish aged about 69 years, son
of late Shri Lala Nathu Lal, resident of
B-1/658, Vinay Khand-1, Gomati Nagar, Lucknow.
....Applicant.

Versus

1. Union of India Ministry of Railways,
through General Manager, Northern Railways,
Bareda House, New Delhi.
2. The Divisional Railways Manager, Moradabad.
....Respondents.

DETAILS OF THE APPLICATION.

1. Particulars of order against which the
application is made :

That the application is made against
the order of Denial of the payment of Gratuity
avered in the Written Statement in a case
pending before the Prescribed Authority under
Payment of Wages Act (Annexure A-3).

B.R. Vaish

2. Jurisdiction of the Tribunal :

That the applicant declares that the subject matter of the order/decision against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

3. Limitation :

That the applicant further declares that the application is within the limitation period prescribed in Section 21 of the Central Administrative Tribunal Act, 1985.

4. Facts of the case :

(a) That the applicant had joined Railways services as Assistant Station Master on 16-8-1942 and after serving to his best dedication for about 37 years was retired w.e.f. 31-7-1979 as Station Master from the Railways Station Safipur district Unnao.

(b) That before retirement the

B.R. Vaish

applicant had visited the office of respondent no. 2 so as to complete all the required formalities with regards to the completion of the retirement/pension papers. In the said office the dealing concerned demanded certain sum to finalise the papers and release all the dues in time. The applicant did not agree for the said sum and to which the dealing concerned became unhappy and said " SAHAB SAMAJH LO, BAD MAIN LOG PARESHAN HOTE HAIN." However, the applicant did not pay even a single paisa and after filling all the required papers he returned back to Safipur Station.

(c) That at the time of retirement the applicant was cleared from the concerned office and all the dues including pension and other claims were paid to him but the gratuity was not at all paid while all the papers for required gratuity were got completed by respondent no. 2.

(d) That when the gratuity was not paid for more than 6 months after retirement the respondent no. 2 was contacted by one of the relative of the applicant as the applicant

B. R. Vaish

due to his serious sickness could not go personally. On personal contact, through relative it was confirmed that the same shall be paid shortly. However, the said gratuity has not been paid as yet.

(e) That the applicant just after retirement fallen seriously sick and as a result of that the matter of gratuity could not be agitated before the Hon'ble Court concerned. However, a notice under Section 80 C.P.C. was sent on 8-3-1984 through Sri S.D. Saxena Advocate which also could not dilate to any result from their end. A true copy of notice is annexed herewith as ANNEXURE A-1 to this application.

(f) That being very much disappointed and finding no other way left out, the applicant preferred an application as advised under Section 15 of the Payment of Wages Act, 1936 before the Prescribed Authority (City Magistrate) Shahjahanpur and in the said judgement, which was delivered on 21-7-1989, the Hon'ble Prescribed Authority declined to decide the gratuity issue. A copy of the judgement is annexed herewith as ANNEXURE A-2

B.R. Vaish

to this application

(g) That it is pertinent to mention here that the applicant was retired in 1979 and despite repeated request on personal contact the gratuity has not been paid to the applicant till date and when he had filed an application u/s 15 of the Payment of Wages Act the respondents had filed their written statement admitting an amount of Rs. 13411.20 p. due on account of gratuity and alleged that the same had been withheld on the advice of the superintendent of police Railways, Lucknow with regards to wrong delivery of Railways Wagons at Safipur Railway Station on forged Railway Receipts by the plaintiff. A true copy of the said written statement is annexed herewith as ANNEXURE A-3 to this application.

(h) That it is also pertinent to mention here that as alleged offence of the so called wrong delivery of wagons on forged railway receipts was committed on 20-5-1977 and the applicant was retired from services after about 2 years and 2 months but no administrative or disciplinary action was initiated against the applicant and even after

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retirement till date no proceedings to meet such loss has been initiated by the respondents. This automatically goes to show that the applicant has been arbitrarily and deliberately with mala fide intention put to suffer irreparable loss and injury in his old age.

(i) That it will not be out of place to mention here that it is not understood as to why the respondents have kept quite till date for taking any action to meet the loss of Rs. 21,400/- as alleged in the para 10 of the said written statement outstanding against the applicant. This also proves nothing but only to harass the applicant in his old age.

(j) That the respondents have no right to forfeit the gratuity of the applicant without any cogent reason and affording an opportunity to him. The provision to forfeit the gratuity is contemplated in Section 4 (6) (b) of the Payment of Gratuity Act 1972 which reads as follows :

* Any decision to forfeit the gratuity under Section 4 (6) (b) can be taken

B. R. Vaish

only after affording opportunity
to the employee concerned."

Bharat Gold Mines Ltd. Vs. Regional
Labour Commissioner 1987 ILLN 303 Kant (DB).

(k) That from the aforesaid
it can be easily seen that the applicant is
an innocent and has ~~never~~ never delivered such
wagens even then his gratuity has been
with held and lastly forfeited, without
any reasonable ground and without affording
opportunity to him. As such the applicant
is entitled for principle amount plus 15%
per annum compounding interest right from
1-8-1979 to the date of payment .

* Sudhir Chandra Sarkar

vs.

Tata Iron & Steel Co. Ltd.

(1984) 3 SCC 369

1984 SCC (L & S) 540

(1) That the applicant has
already suffered a lot and respondents are
adamant not to pay the gratuity to the
applicant. Under such circumstances, the
interference of this Hon'ble Tribunal is
very much essentially invited.

B.R. Vaish

5. Grounds for relief(s) with legal position :

That the applicant being aggrieved of the illegal acts of respondents is seeking relief(s) amongst other on the following

G R O U N D S

(i) Because the applicant was retired in 1979 and even then his gratuity has been not released so far though more than 10 years have passed.

(ii) Because the so called offence was said to have been committed in 1977 and the applicant thereafter was in service for more than 2 years but no action was taken .

(iii) Because no proceedings with regards to such loss or wrong delivery of wagons were recorded against the applicant.

(iv) Because the applicant had never delivered such wagons.

B. R. Varsh

(v) Because in any case the applicant is entitled for his gratuity with 15% per annum compound interest.

(vi) Because no opportunity has been offered to the applicant before forfeiting his gratuity.

(vii) Because the action of the respondents to forfeit the gratuity is plainly arbitrary, illegal and invites the interference of this Hon'ble Tribunal.

(viii) Because the gratuity can never be forfeited for no fault of the applicant.

(ix) Because the applicant had never been levelled with any such charges.

(x) Because the principles of natural justice have been violated by the respondents.

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6. Details of remedies exhausted :

That the applicant by filing the application under Section 15 of the Payment of Wages Act and sending notice under Section 80 of the Code of Civil Procedure, has exhausted all the remedies available to him. There is no other way out left except to approach this Hon'ble Tribunal for proper judicial intervention.

7. Matter not previously filed or pending with any other court.

That the applicant had filed the application under Section 15 of the Payment of Wages Act 1936 but the Prescribed Authority vide judgement dated 21.7.1989 declined to interfere into the matter of gratuity payable to the applicant, hence this application.

8. Relief(s) sought :

In view of the facts mentioned

B.R. Vash

in para 4 above the applicant prays
for the following reliefs :

(a) That the Hon'ble Tribunal
may graciously be pleased to direct
the respondents to pay the full gratuity
to the applicant with 15% per annum
compound interest from 1-8-1979 to the
date the gratuity is finally paid.

(b) Any other relief deemed just
and proper in the circumstances of the
case by the Hon'ble Tribunal may be granted
in favour of the applicant.

(c) Cost of the application may
also be awarded to the applicant as against
the respondents.

9. Interim relief, if any, prayed for :

That pending decision the applicant
prays for the following interim order :

(a) That the respondent no. 2 may be
directed to pay at least Rs. 10,000/- immediately

B.R. Varsh

for survival of the applicant.

10. N/A.

11. A postal order serial no. B/02-424871 dated 16.1.90 issued from G.O. V.K. post office for Rs. 50/- as court fee.

12. List of enclosures :

Annexures A-1 to Annexure A-3.

Lucknow, dated;

January 15, 1990

B.R. Vaish

Applicant

Verification

I, Babu Ram aged about 69 years, son of late Shri Lala Nathu Lal, hereby verify that the contents of 1 to 4 and 6 to 12 are true to my personal knowledge and the contents of para 5 are believed to be true on legal advice and that I have not suppressed any material fact.

Lucknow, dated;

January 15, 1990.

B.R. Vaish

Applicant

Identified by B.R. Vaish who is personally known to me and signed before
delivered to
(Sd/- M. K. Singh)

Babu Ram Vaish Applicant
Versus

Union of India & Others Respondents

ANNEXURE- A-3

IN THE COURT OF SUB DIVISIONAL MAGISTRATE ~~Allahabad~~ (City Magistrate)
SHAHJAHANPUR

No. 11 of 1985.

Baboo Ram Vaish V/S 1. Divisional Personnel Officer,
Northern Railway,
Moradabad,
2. Union of India.

Sir,

Written statement on behalf of defendants No.1 and

2 is as below-

Para-1. That the contents of Para 1 as stated are not admitted.

Para-2. That the contents of para 2 are admitted.

Para-3. (1 to 10)- That the contents of Para 3(1) to (10) as
stated are not admitted.

Para-4. That the contents of Para 4 are legal.

Para-5(a & (b))- That the contents of Paras 5 (a) & (b) are legal.

The relief claimed is not admitted.

ADDITIONAL PLEAS:

Para-6. That the claim of the applicant is time-barred.

Para-7. That the applicant has wrongly stated that Rs.1200/-
have been deducted from his wages in connection with
Punishment Notice No. 12/53/226/MK/76 Dt.21.7.78.

Para-8. That the amount of Rs.1200/- has been deducted
from his wages in connection with another claim case.

Para-9. That one wagon No. NR-24490 was fraudulently diverted
from Mughal Sarai and delivered at Safipur on forged
railway receipt No. 675869 Dt.20.5.77 by the Plaintiff.

That three more coal wagons were also delivered on
forged railway receipts by the plaintiff. That the
payment of gratuity comes to Rs. 13411.20 paise only
and it has been withheld on the advice of Superintendent
Police, Railway, Lucknow.

21400/-

- Para-10. That an amount of Rs. ~~21400/-~~ is outstanding against him in connection with wrong delivery of coal wagons on forged railway receipts.
- Para-11. That the cause of action arose to the applicant when he was posted at Saffapur Railway Station (District Unnao).
- Para-12. That the opposite parties have their offices at Moradabad and Delhi.
- Para-13. That no cause of action arose to the applicant and the application needs to be dismissed, with costs.
- Para-14. That this court has no jurisdiction as the matter relates to Tilhar Sub-Division.

Divl. Personnel Officer
N.Rly. Moradabad.

Senior Div. Council Supdt,
~~Joint Secy, Railway Manager,~~
N.Rly. Moradabad
for Union of India.

The contents of the above paras are verified to be true on the basis of information gathered from official records.

Verified at Moradabad on 9/9/1985.

Divl. Personnel Officer,
N.Rly. Moradabad.

Senior Div. Council Supdt,
~~Joint Secy, Railway Manager,~~
N.Rly. Moradabad
for Union of India.

15

ब अदालत धीमान

[बादी अपीलान्ट]

प्रतिवादी [रेस्पाडेंट]

In the Honble C.A.T.

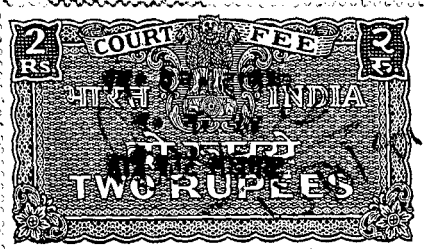
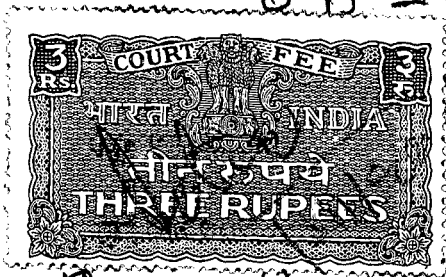
महोदय

C.R. Jadhav

का वकालतनामा

O.A. No

- 4/199041



(अपीलान्ट)

Babu Ram Varsh

Somnath

बनाम

प्रतिवादी (रेस्पाडेंट)

Union of India & Anr

नं० मुकद्दमा

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ऊपर लिखे मुकद्दमा में अपनी ओर से श्री

T.N. Thirain Anr

Shri V.S. Tripathi Advocate

एडवोकेट

नाम अदालत
मुकद्दमा नं०
नाम फरीकत

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूं और लिखे देता हूं इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जवाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावे और रुपया लसूब करें या मुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करे मुकद्दमा उठावे या कोई रुपया जमा करे या हारी विपक्षी (फरोकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करे—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होमा में यह भी स्वीकार करता हूं कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

B.R. Varsh

हस्ताक्षर

साक्षी (गवाह) ... साक्षी (गवाह) ...

दिनांक ... सन १९९० ई०

स्वीकृत

(T.N. Thirain Anr) (V.S. Tripathi Advocate)

Babu Ram Waish Applicant
Versus
Union of India & Others Respondents

ANNEXURE- A-1

The Union of India,
Through the General Manager,
Northern Railway, Baroda House,
New Delhi.

Disputed Railway Manager H.R. Moradabad.
Subject:- Notice u/s 80 CPC in respect of payment of
Rs 1200/- deducted vide Punishment letter
dated 21.7.78 which was later cancelled by
PRM/MB letter No. 1352/236/MK/76 dated
2.4.80 to Sri B.R. Waish, Retired Sri B.R. Waish
Rtd. Station Master Safipur Distt. Unnao,
Moradabad Division U.P.

SIR,

Under instruction from my client Rtd. Station
Master Safipur, the above named, I beg to submit the
undersigned notice u/s 80 CPC on the following grounds:-
1. That my above named client was working as Station
Master Safipur Katra Distt. Shahjahanpur in the year
1975.

2. That my client was served with charge sheet
13/SR/236/MK/76 dated 12.7.76 received by my client
on 25.3.78. My client requested the administration for
inspection of records mentioned in the charge sheet
which was shown to my client on 17.7.78.

3. That while my client was in the process of seeing
the record he was served with punishment order notice
No. 13/SR/236/MK/76 dated 21.7.78 served on 25.7.78
without waiting for the reply of charge sheet imposing
recovery of Rs 100/- from the pay of my client.

4. That my client thereafter appealed to Divisional
Railway Manager Northern Railway Moradabad which was
allowed vide letter No. 13/SR/236/MK/76 dated 2.4.80.
The said letter which cancelled the punishment of
imposition of recovery of Rs 100/- from my client P.M.
was served on my client on 10.8.80 after retirement
of my client from Railway Service.

5. That Rs 1200/- had already been deducted by the
Railway Administration, my client requested the Railway

Administration to refund the said amount of Rs 1200/- but of no avail and hence this notice.

6. That my client has requested for payment of gratuity amounting to Rs 13000/- but the said amount has also not been paid.

7. That the cause of action arose within the jurisdiction of the Civil Court of Shabdhanpur for which illegal punishment was imposed without following the procedure of natural justice and affording reasonable opportunity of defence and this court has jurisdiction to try the suit.

8. That the suit is valued to Rs 1200/- plus interest at 18% per annum along with notice charges of Rs 110/- and typing and posting expenses of Rs 50/- ^{and} hence the court fee would be paid as and when the suit is filed.

You are therefore, requested to pay Rs 1200/- plus interest at 18% per annum Gratuity amounting to Rs 13000/- ^{within 60 days} legal notice charges of Rs 110/- and posting and typing expenses of Rs 50/- to my client within sixty days from the date of receipt of this notice failing which my client shall be forced to file a suit in the proper court of law and you shall be liable to pay the damages and cost of the suit as well.

8.3.84.

(S. C. S. S. S.) Advocate
For
Rath. Station Master
Raipur Distt. U.P.

In the Hon'ble Central Administrative Tribunal
Addl Bench, Allahabad
Circuit Bench, Allahabad

O.A No. _____ of 1990 (L)

Babu Ram Waish Applicant
Versus
Union of India & Others Respondents

ANNEXURE - A-2

न्यायालय नगर मैसूर - शाहजहाँपुर।

दि. सं 39/11/85 धारा 15 पेमेंट आफ डेज एक्ट

37/11/85
प्राप्ति के बाद नाम डीपीओ उ० र० मुरादाबाद आदि

11/7/85

नमस्कार

यह कार्यवाही अन्तर्गत धारा 15 पेमेंट आफ डेज एक्ट प्राप्ति श्री बाबुराम केय सेवा निवृत्त स्टेशन मास्टर के प्राप्ति पत्र पर प्रारम्भ हुई। जिसमें कहा गया कि रेलवे विभाग से स्टेशन मास्टर के पद से दिनांक 1-8-79 को सेवा निवृत्त हुई। जब उनकी सेनाती मीरानपुर कटरा में थी तब उन्हें आरोपित दिनांक 12-2-76 दिया गया। जिसमें बिना उनकी स्थायीकरण प्राप्त हिये 200/- रु प्रति माह वेतन की कटौती के आदेश दिए गए प्राप्ति से अगस्त 1978 से एक वर्ष तक 100/- रु की भाति कटौती में 1200/- की कटौती की गई। प्राप्ति द्वारा इस कटौती के विरुद्ध 88x44x88 के अपील डिप्टी जनरल रेलवे मैनेजर मुरादाबाद को की गई। जिन्होंने अपने फैसले दिनांक 2-4-80 में कटौती आदेश को निरस्त कर दिया। ज कटौती के दा की वापसी उसे नहीं की गई। प्राप्ति का कथन है कि उल्लेखित का 13411-20 पैसा भी नहीं दिया गया। इस प्रकार कुल 14611-20 पैसा तथा 18 प्रतिशत सालाना व्याज उसे दिलाये जाने की प्राप्ति की गई। प्राप्ति प्राप्त होने पर विपक्षी को नियमानुसार नोतिश दी गयी। रेलवे की ओर से डिप्टी जनरल रेलवे मैनेजर मुरादाबाद द्वारा भी आरोपित अग्रवाल स्कोकेट को बाद में रेलवे का पदा प्रस्तुत करने हेतु अधिकारपत्र प्रस्तुत किया गया तथा जवाब दावा प्रस्तुत हुआ। जवाब दावा में रेलवे की ओर से कहा गया कि प्राप्ति का दावा काल बाधित है तथा 1200-00 की कटौती किसी अन्य मामले में की गई है तथा प्राप्ति द्वारा कोयले से भारे बैग फर्ी रेलवे रस्तीदों द्वारा गलत स्थान पर भोज दी गई जिसके कारण उसकी मेच्युटी 13411-20 पैसा स्त० पी० रेलवे की संतुष्टि के आधार पर रोक दी गई। तथा यह भी कहा गया कि प्राप्ति के ऊपर उपरोक्त कारणों से 21400-00 रु वकीला है। प्राप्ति ने अपने जवाब उस जवाब में दिनांक 19-9-85 में रेलवे के उपरोक्त कथान को गलत बताया और कहा कि फर्ी रस्तीदों के बारे में उससे कोई पुस्तक नहीं की गई।

वाद किन्तु

पेज- 2

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- 1- Whether the application is time barred?
- 2- Whether recovery of Rs. 1200/- has been made in connection with the notice no. 13/SR/22/dite/76 dt. 21-7-80 cancelled vide order no. 13/SR/236/MC/dt. 21-7-80 any other claim case if so its effect?
- 3- Whether the applicant has been served with any charge sheet about three or more Coal Wagon and if not its effect?
- 4- Whether payment of the applicant can be withheld on the called advice of S.R. Railway and if not its effect?
- 5- Whether the order of cancellation of punishment dated 21-7-80 by the applicant authority was served at Chajalpur and if so its effect.
- 6- Whether the court has jurisdiction to try the suit?
- 7- Whether the applicant is entitled to interest @ 18% per annum.
- 8- Whether Union of India has been represented in the case if not its effect.
- 9- To what relief is the applicant entitled?
- 10- Whether the court has jurisdiction to decide the case.

उपरोक्त प्रश्नों को साक्ष्य प्रस्तुत करने का पूर्ण अवसर दिया गया। प्रार्थी की ओर से मेडो रेलवे विभाग 12-7-76 प्रस्तुत किया गया जिसमें उक्त विभाग विभागाध्यक्ष कार्यालयी तथे का उल्लेख है कि मेडो में प्रार्थी पर 3320-र की छटीसी जिसमें अन्य मामलों में समाये जाने का उल्लेख है जिसमें विभाग में भ्रष्टाचार तथा ग्राहक संबंधों के विषय में उक्त मामले के अंतर्गत में काफी प्रचार दत्त इसके परभाव अन्य मेडो विभाग 21-7-78 के अनुसार डी.आर.ओ.एम.0 मुद्रादायाद द्वारा प्रार्थी की उपस्थिति में तत्कालीन कार्यालय पर उपस्थित कर ली गई तथा उस पर लगाया गया अपराध का आरोप निरास्त कर दिया गया। प्रार्थी की ओर से साक्ष्य में उक्त प्रमाण पत्रों का ज्ञान कराया। इसके अलावा मेरे पूर्ववर्तिकाहारी द्वारा इस कार्यवाही को केन्द्रीय दिव्युक्त को तदर्थित किया गया परन्तु माननीय केन्द्रीय प्रशासकीय दिव्युक्त द्वारा इस निर्णय के साथ परावर्ती वापस कर दी कि प्रस्ताव निरास्त। डॉ. डी.ए. ए. के अधीन इसी न्यायालय से किया जाय। रेलवे की ओर से गीतलार सिंह प्रधान निधि उल्लेख के ध्यान कराये गये जिन्हें अनुसार प्रार्थी रेलवे विभाग पर 3320-र

को केम की डिमीवरी देने के कारण उनके विरुद्ध विभागीय कार्यवाही के आदेशावले भी इसके प्रतिरूप एक अन्य बात है की तीन केम कोशे की 3 अवेर डिमीवरी के सम्बन्ध में प्राप्ती की प्रेरणी प्राप्ति के काली है आदेशावले। इस कार्यवाही के सम्बन्ध में उपाय पत्र के अतिरिक्त को हुना गया व पत्रावली का माती भान्ति अवलोकन किया गया।

प्राप्ती की ओर से कहा गया कि उसे देय धान विभागीय कार्यवाही के विरुद्ध विभागीय कार्यवाही विभागीय नहीं प्रमाण कि केम की ओर से कहा गया कि प्राप्ती का धान कार्यवाही के काली को हुना के कारण उसको देय धान रोकी गई।

आदेश विरुद्ध सं० 1 :-

प्राप्ती के अनुसार यह कार्यवाही प्राप्ति की ओर से की गई है। इस कारण प्राप्तीवाचक देर से दिया गया इसके अन्तर्गत में प्राप्ती के विरुद्ध प्रमाणपत्र प्राप्त किया। कारण 15/8/81 कोशे के अन्तर्गत से तत्त प्राप्तीवाचक एक कोशे के अन्तर्गत प्राप्त होना जाना चाहिये। परन्तु प्राप्ती द्वारा उसकी वाचकी प्राप्त होने के की तत्त 5 कोशे पर प्राप्तीवाचक प्रमाणित किया गया 5 कोशे का प्रमाण पत्र के अन्तर्गत तत्त तत्त है। इस अन्तर्गत का निमापन करने के लिए प्राप्ती किया गया। विरुद्ध की रिपोर्ट की पूर्णतः सम्पूर्ण है। प्राप्ती प्राप्ती का अन्तर्गत प्राप्तीवाचक कार्यवाही के।

आदेश विरुद्ध सं० 2 से 5 तक :-

परामर्शिक सम्बन्ध होने के कारण इसको एक आदेश विरुद्ध किया जाता है। ऐसे के अनुसार वित्त माफ़े में प्राप्ती के 100/- प्रति माह की कोशे की गई तत्त को कोशे समीचीन के आधार पर अन्य माफ़े के सम्बन्धित है इसकी गुणित प्रमाण व विधि उरी प्रमाणित के अपने स्थानों के की है। प्राप्ती द्वारा वित्त केम के अन्तर्गत किया गया प्रमाण 3320/- को प्रमाण होना जाना गया व इसे बाद में कोशे 100/100/100 द्वारा निरस्त कर दिया गया। प्राप्ती द्वारा प्रमाण 1200-0000 को कोशे के अन्तर्गत किया गया। अन्तर्गत तत्त के अन्तर्गत माफ़े वित्त 3320-0000 को कोशे के अन्तर्गत जाना गया है अन्तर्गत प्राप्ती की कोशे अन्तर्गत वित्त व इसके सम्बन्ध में केम केम प्रमाणित किया गया वित्त अन्तर्गत वित्त को

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

OBJECTION/REPLY

On behalf of respondents no. 1 & 2

IN

O.A. No. 17 of 1990

Babu Ram Vaishya ..

.. Applicant

Versus

Union of India & another ..

.. Respondents.

The objection/reply of the respondents to
the aforesaid application is as under :-

1. That in regard to the allegations made in
paragraph 1 of the application, it is stated that
on investigations having been carried out at Safipur
in connection with the delivery of Wagon No. NR 24490
and 3 more Wagon Nos. NR 26768, WR-38205 and NR-61024,
it was revealed that the applicant had affected the
deliveries on forged railway receipts Nos. C-675869
dated 20.5.1977, RR No.675870, 675871 and 675872, which
resulted in loss to the Central Government to the
tune of Rs.21,400/-. The case had been investigated

Divisional Personnel Officer
Northern Railway

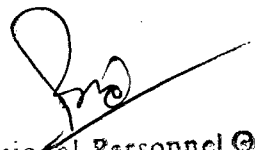
Filed today
13/12/91
Hr 3-51

Filed today
4/3/91

by O.S.I./M.B. and the applicant was held responsible for allowing the delivery of above Wagons on forged railway receipts. Orders had been passed by the competent authority for recovering the cost of consignment amounting to Rs.21,400/- from the settlement dues of the applicant. This order withholding the payment was passed on 22/23.11.1979 by the Senior Commercial Officer, Headquarters Office, Baroda House, New Delhi. The applicant, who was S.M./Safipur at the relevant time had played the major role in finalisation of the transaction, which resulted in the loss to the Central Government. The applicant had full knowledge of the above order and allowed the same to become final. The order having been passed in the year 1979, the application under section 19 of the Act is clearly barred by time. It is further stated that Annexure-A-3 referred to in the paragraph under reply does not amount to an order.

2. That in regard to the allegations made in paragraph 3 of the application, it is stated that the application is clearly barred by time. In this connection it is further stated that the order for withholding of the amount in question had been passed on 22/23.11.1979, a true copy of the aforesaid order dated 22/23.11.1979 is being annexed with this reply and is marked as Annexure-1.


3. That in regard to the allegations made in


Divisional Personnel Officer
Northern Railway
Moradabad

paragraph 4(a) of the application, it is stated that the applicant was appointed on 10.8.1942 as Probationary A.S.M. and retired on attaining the age of superannuation on 31.7.1979 (A/N). At that time he was holding the post of S.M. (S.F.P.R.)^{Safipur}. It is further stated that the service records of the applicant shows that his work and conduct had not been up to the mark.

4. That the allegations made in paragraph 4(b) of the application are absolutely incorrect and are emphatically denied. It is further stated that the enquiries into the fraudulent transaction, in which the applicant was involved and was found responsible for affecting deliveries on forged railway receipts, to which a reference has already been made above, were conducted. This enquiry was going on and the applicant retired from service. The enquiry report was submitted on 6.11.1979, whereafter the competent authority ordered for the withholding the dues of the applicant, which were outstanding by that date. This order was passed on 22/23.11.1979. No incident as asserted in the paragraph under reply ever happened.

5. That in regard to the allegations made in paragraphs 4(c)&(d) of the application, it is stated that as has already been indicated above, the enquiry proceedings were going on when the applicant retired from service. The enquiry report was submitted on 6.11.1979 and the orders for withholding the outstanding dues were passed by the competent authority on



Divisional Personnel Officer
Northern Railway
Allahabad

22/23.11.1979. It is further stated that the applicant has through out been aware of the enquiry proceedings and the orders passed by the competent authority for withholding his outstanding dues. The amount of outstanding dues was far less than the amount of Rs.21,400/- which was the amount of loss incurred by the Central Government on account of the fraudulent act of the applicant. In the circumstances of the case, the question of payment of the amount of gratuity claimed by the applicant does not arise.

6. That the allegations made in paragraph 4(e) of the application are incorrect and are denied. The applicant knew fully well that in face of the order, to which a reference has been made above, he was not entitled to any amount claimed by him. There is no evidence on the record showing that the applicant had fallen sick. The notice referred to in the paragraph under reply is totally misconceived and baseless.

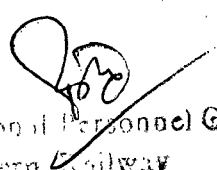
7. That in regard to the allegations made in paragraph 4(f) of the application, it is stated that the proceedings referred to in the para under reply were totally misconceived and the application filed by the applicant under the Payment of Wages Act was ultimately rejected.

8. That in regard to the allegations made in


Divisional Personnel Officer
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paragraph 4(g) of the application, it is stated that in the circumstances of the case, the applicant was not entitled to any amount claimed by him. As a matter of fact, the amount of gratuity is far less than the amount, which is outstanding against the applicant inasmuch as in the circumstances of the case the applicant is bound to pay the amount of Rs.21,400/- towards the recovery of loss, to which a reference has already been made above in the preceding paragraphs of this reply.

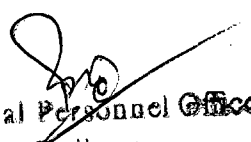
9. That in regard to the allegations made in paragraph 4(h) of the application, it is stated that the illegal delivery on the basis of the forged railway receipts, for which the applicant was responsible, came to the knowledge of the authorities concerned when the complaint about the non receipt of the goods and claim in this regard was received by the authorities and investigations were ordered in that matter, in which the report was submitted on 6.11.1979. As has already been indicated above, the enquiry proceedings were going on when the applicant attained the age of superannuation and was retired on account of the retirement of the petitioner. The payment of the amount in question stands withheld under the order passed by the competent authority. The applicant is not entitled to the payment of the amount of gratuity


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Northern Railway
Moradabad

as claimed. It is further stated that the applicant had throughout been aware of the enquiry proceedings and the report submitted by O.S.I./M.B. dated 6.11.79 and the order dated 22/23.11.1979 passed by the Senior Commercial Officer. The orders for recovering the amount from the outstanding dues of the applicant had been passed long back as is apparent from the order dated 25th June, 1981, a true copy of which is being annexed with this reply and is marked as Annexure-2. The order for withholding the payment of the amount in question and its recovery has not been passed arbitrarily as alleged and the action is not at all vitiated on account of any malafidies as alleged.

10. That the allegations made in paragraph 4(i) of the application are absolutely incorrect and are emphatically denied. The order dated 25th June, 1981 itself shows that the amount in question stood adjusted against the recovery of Rs.21,400/-, which was to be recovered from the applicant.

11. That in regard to the allegations made in paragraph 4(j) of the application, it is stated that the applicant was found responsible for the loss caused by him, to the Government and the orders for withholding the payment of the amount in question was ^{fully} ~~duly~~ justified. The applicant was made aware of the proceedings initiated against him and he has


Divisional Personnel Officer
Northern Railway
M o r a d a b a d

throughout been aware of the orders passed against him, to which a reference has already been made in the preceding paragraphs. It is further stated that in the circumstances of the case the provisions contained in Section 4 of the Payment of Gratuity Act, 1972 are not at all attracted. Moreover in the circumstances of the case, the adjustment of the amount in question against the amount of money, which the applicant is liable to pay to the Government cannot be deemed to be a forfeiture as asserted in the paragraph under reply.

12. That in regard to the allegations made in paragraph 4(k) of the application, it is stated that the applicant is not entitled to the amount in question and in fact a large amount of money is still due against him, which is to be recovered. In these circumstances, the question of payment of any interest as claimed does not arise.

13. That the allegations made in paragraph 4(l) of the application are absolutely incorrect and are emphatically denied. As has already been indicated above in the preceding paragraphs, the applicant is not entitled to the amount in question. No ground at all has been made out for interference by this Hon'ble Tribunal and the application deserves to be dismissed.

14. That in regard to the allegations made in


paragraph 5 of the application, it is stated that none of the ground mentioned in the paragraph under reply are made out and there is no evidence and materials on the record and are not at all justified from the facts and circumstances of the case.

15. That the allegations made in paragraph 6 of the application are incorrect and are denied. The order for withholding of the payment of the amount in question had been passed long back on 22/23.11.1979. The applicant did not avail of the departmental remedy against the order withholding the payment of the amount in question and allowed the said order to become final. The present application is, therefore, not maintainable.

16. That in regard to the allegations made in paragraph 7 of the application, it is stated that the proceedings referred to in the paragraph under reply are totally misconceived and baseless.

17. That in regard to the allegations made in paragraph 8 of the application, it is stated that the applicant is not entitled to any relief claimed.

18. That in regard to the allegations made in paragraph 9 of the application, it is stated that the applicant is not entitled to any interim relief as claimed.


Division of Personnel Officer
Northern Railway
Moradabad

I Hulas Singh aged about 31 years,
Son of Shri Yadu Nandan Singh working as Divl Personnel Officer
posted at Moradabad do hereby verify
that the contents of paragraph Nos 1 to 18 of this
reply are true to my personal knowledge and based on
perusal of records, which all I believe to be true that
no part of it is false and nothing has been concealed
in it.

Verified at Moradabad on 21-11-90

PLACE: Moradabad

DATE : 21-11-90

[Signature]
Divisional Personnel Officer
Northern Railway
Moradabad

(Signature of the Deponent)

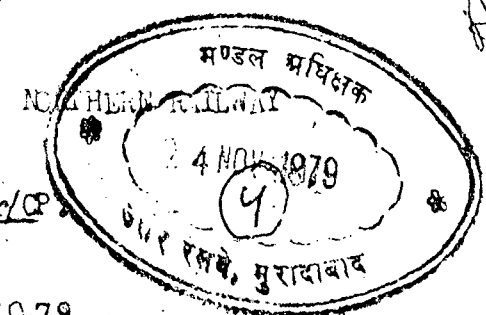
(Signature of Counsel)

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H. Khanna

Annexure

34 10



H. Khanna,
Sr. Comm. Officer/CP

Headquarters Office,
Baroda House, N. Delhi.

D.O. No. 70-POC-120-79.

Dt. 24/11/79.

My dear Sharma,

Mrs. Jain

Sub: - Ex. Andol to Ghaziabad, Inv. 10, ER 429121 dt. 26.4.77,
Rly. Receipt of wagon No. NR 24490 containing coal, claim
for Rs. 5,350/- wagon fraudulently diverted from MGS and
delivered at Safipur on forged ER No. 675869 dt. 20.5.77
issued from Sitarampur (E. Rly.).

Ref: - Your D.O. letter No. 48-FD-SFPR-790 dt. 20.7.79.

Kindly refer to Dy. CS/MS's D.O. letter No. C3/2076/7/77
dated 20.6.79 addressed to CSO/N. Rly., copy to you wherein action
under D&A Rules against Sh. B. R. Vaish, SM/Safipur (retired) was required
to be taken.

2. Enquiries made by CSO have revealed that Sh. B. R. Vaish
was responsible for delivery on forged ER. He has observed that even
if Sh. B. R. Vaish has since retired his dues if not paid can be
held up.

3. He has further observed that three more wagons No. NR 26768,
NR 36205 and NR 61024 were also found to have been delivered on forged
ERs No. 675870, 675871 & 675872 dated 20.5.77. These ERs have also
been shown as issued from Sitarampur (E. Rly.).

4. The dues of Sh. B. R. Vaish, if not already paid, be withheld
under advice to this office.

5. Action may also be initiated to get the cases registered
with the local police and copy of the FIR submitted to this office.

Yours sincerely,

(R. D. Khanna) 23/11

Shri S. N. Sharma,
Sr. D.C.S., N. Rly.
MORADABAD.

Copy forwarded to Sh. L. C. Mathur, Dy. CS (C) Varanasi. He will
please refer to Sr. DCS/MS's D.O. No. 48-FD-SFPR-790 dt. 20.7.79 and this office
letter of even number dated 22/23.8.79 and arrange to send relevant papers
to Sr. DCS/Moradabad to enable him to take action against Sh. B. R. Vaish. Full
report in regard to the three other wagons may also be sent to
Sr. DCS/MS as well as this office at the earliest.

Copy to CSO/Baroda House, New Delhi for information.

True copy

ATTESTED

Asstt. Personnel Officer
N. Rly. MORADABAD.

RAILWAY

B.M. Singh
A.C. D/SR

Chief Commr. Supdt's Office,
Station Building, Varanasi.

D.O. No. SR/C3/2076/77

Dated 25/6 June, 1981

My dear Sant,

Reg:- Andul to G4B Inv. 10 429121
dt. 26.4.77, Wagon No. NR 24490 containing
coal, claiming for Rs. 5350/- wagon fraudulently
delivered at SPPR on forged NR No. 675869
dt. 20.5.77.

Ref:- Your office D.O. No. 48-Fraud/SPPR-790
of 25.2.80.

Since the settlement dues of Retired SM/SPPR
Shri B.M. Vaish has been withheld and under process of recovery
and as such please advise me the particulars of recovery at your
earliest.

An early reply will be much appreciated.

Yours sincerely,

(B.M. Singh)

Shri B.M. Sant,
A.C. D/SR Office N.Rly.,
Moradabad.

F.L./

True copy
ATTESTED

Asstt. Personnel Officer
N.Rly MORAD/BZ

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDL. BENCH ALLAHABAD.

Circuit Bench Lucknow.

C.M. Application No. 77 of 1990 (L)

Babu Ram Vaish. ... Applicant.

In re;

O.A.No. 17 of 1990 (L)

Babu Ram Vaish. ... Applicant.

Versus.

Union of India and others. Respondents.

APPLICATION FOR CONDONATION DELAY.

To,
The Hon'ble The Vice Chairman,
and other Hon'ble Members
of the aforesaid Tribunal.

The applicant named above, most respectfully,
begs to submit as under:-

1. That the applicant was retired from service on 31.7.1979 and after retirement he was not paid his gratuity on the ground of some baseless charges levelled against him.
2. That after retirement the applicant had fallen seriously sick and as a result of that he could not present his matter of gratuity before the concerned Authorities.

B. R. Vaish

3. That the applicant in his sickness had remained always unconscious to which his family members took as an effect of some evil spirit and because of the same no treatment was given to the applicant upto 31.7.1980 except the 'DUA AND POOJA' etc. on 1.8.1980 when there was no improvement in the condition of the applicant he was taken to a Registered Ayurvedic Practitioner Vaidya who started treatment by which the applicant recovered his condition on 18.3.1985 and thereafter he filed an application as advised before the Prescribed Authority under Section 15 of the Payment of Wages Act, 1936. A true copy of the Medical Certificate for his sickness is annexed herewith as Annexure No.1 to this application.

4. That, the said application under Section 15 of the Payment of Wages Act was finally decided on 21.7.1989 then only the applicant could learn that he should file an application in the Hon'ble Central Administrative Tribunal and accordingly after the date of order i.e. 21.7.1989 the applicant has filed the original application in the Central Administrative Tribunal on 16.1.1990 i.e. within one year from the date of last order but the Hon'ble Tribunal at the time of admission observed the application to be beyond the time of delay permissible u/s 21 of the Central Administrative Tribunal Act, 1985.

B.R. Vaidya

5. That it is submitted that the delay, if any, was not deliberate but beyond the control of the applicant and as such the same is liable to be condoned.

6. That it is also submitted that if the delay is not condoned and application is not admitted the applicant shall suffer irreparable loss and injury by losing an amount to a tune of Rs.13,411.20.

7. That it is further submitted that the applicant is advised to state that "No claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specific period", under the provisions of Rule 7 (5) of the payment of gratuity (Central) Rules 1972.

8. That in the circumstances aforesaid it is very much expedient in the interest of justice that the delay, if any, is condoned and application is decided on merits.

PRAYER.

It is, therefore, most respectfully prayed that the Hon'ble Tribunal may graciously be pleased

B.R. Vaish

to condoned the delay, if any, in filing the application and the application may graciously be decided on merits, in the interest of justice otherwise the applicant shall suffer irreparable loss and injury.

Lucknow; Dated

February, 5, 1990.

B. R. Vaish
Applicant.

Verification.

I, Babu Ram Vaish, aged about 69 years, son of Late Sri Lala Nathu Lal, hereby verify that the contents para 1 to 5 of this application are true to my personal knowledge and those paras 6 to 8 are true on legal advice which are believe to be true and that I have not suppressed any material fact.

Lucknow, Dated
Feb. 5, 1990

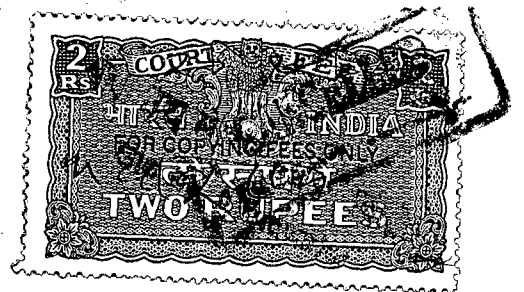
B. R. Vaish
Applicant.

Identified Sri Babu Ram Vaish who is personally known to me and has signed before me.

T. N. Tiwari
(T.N. Tiwari)
Advocate,
Counsel for the Applicant. *5/2/90*

B. R. Vaish

ANNEXER 1



26
29-1-90

Issued on priority Basis 1 pf = 21. 1/4
29-1-90

Notice
29-1-90

Issued
29-1-90

सील कसकर

1/4

29-1-90 AMC.

अध्यात्मिक

जनक जगन्नाथ, शोहराहा

Case No. 37/11 of 1984

M.C. 30/05

वास्तविक व 21 जनक डी.पी. 8000000
दुरादागद

18/3/85

गली प्रकाश निरीक्षण करने के उपरान्त

प्रमाणित जाता है कि श्री वास्तविक व 21

दुकान श्री नरेश लाल (रिटाग) स्टेशन कार्ड

जिनके हस्ताक्षर प्रकाश-कायल वि. कालिका

हैं यह प्रमाणित व संयुक्त रूप से

अभिहित है, कि श्री नरेश लाल के 8-8-80

आदेशों के अनुसार चले आ रहे हैं, यह उल्लेख

करने के अनुसार के पत्र के चले जाने

लाभ के ही मते है कि निम्नलिखित के व भी चले

(ए) है

है रोगी

sd/ B.R. Vaidya

है कि

शान्ति कल्याण विवेकी

2050 11577

Copy to Secy
Comptroller
Work about 100

सत्य प्रताप
29/1/90
आधन प्रताप
जिला न्यायालय
लाहौर

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

C.M. APPLICATION NO. OF 1992

in re:

O.A. No. 17 OF 1990

Babu Ram Vaish

....

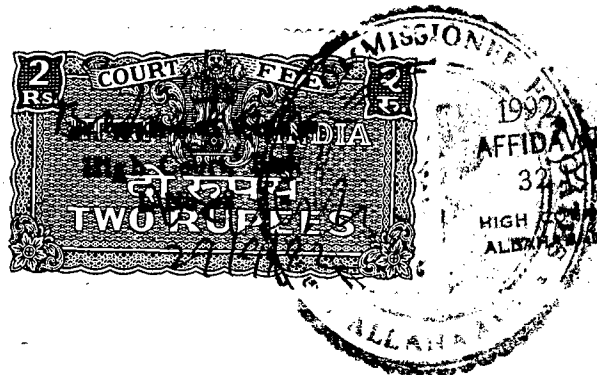
Applicant

Versus

Union of India

Ministry of Railways & another

Opp. parties



REJOINDER AFFIDAVIT

1. I, Babu Ram Vaish aged about 71 years son of late Nathu Lal resident of C/O Vijay Kumar, State Bank of India, Shahabad, District Hardoi do hereby solemnly affirm and state on oath as under.

That the deponent is the petitioner in the aforesaid writ petition and is well conversant with the facts of the case.

3. That the contents of para 1 of the objection/reply filed by both the respondents are wrong and have been made for the purposes of the aforesaid case and as such are categorically denied. Answering deponent submits that presuming though not conceding that any inquiry was pending against him, he was not aware of the same nor the respondents at any point of time informed the deponent of the same.

....2

Babu Ram Vaish

The alleged incident/offence as said to have been committed in the year 1977 and the services of the answering deponent came to an end on 31-7-1979.

Though the respondents had enough time to indicate the pending inquiry, if any, against the deponent, yet it was not done. The deponent submits that no inquiry was contemplated when his services came to an end after attaining the age of retirement.

4. That as regards para 2 of the objection under reply, the deponent submits that he was not aware of any such order dated 22/23 Nov 1979 was contained in Annexure 1 of the objections filed by the respondents. In fact such order was never passed as annexed now with the objections under reply. The said document is manufactured one and has been made for the purpose of the case. The said order, if any, was never communicated to the deponent.

In the light of the circumstances, the contents of para 2 vehemently denied. The work and conduct of the deponent was excellent through-out his career of service and no adverse entry was ever communicated to him. No charge-sheet, whatsoever, was served upon the deponent during his tenure of service.

5. That the contents of para 4 are false and denied and the contents of para 4(b) of the writ petition are reiterated to be correct. No inquiry was ever conducted against the petitioner as the deponent was never involved in any fraudulent transaction as alleged.

.....3

Baldev Ram Vani



6. That the contents of para 5 of the objections under reply are wrong and the same are denied. The deponent never indulged in any fraudulent transaction at any point of time. The opposite parties are to prove as to how and under what circumstances, the respondents came to a figure of Rs 21,400.00 (Rupees Twenty one thousand four hundred only]. The deponent is entitled for the gratuity with market rate interest.

7. That the contents of para 6 of the objections under reply are denied and that of para 4(e) of the writ petition are reiterated to be correct.

8. That as regards para 7 of the objections under reply, it is submitted that the proceedings under section 15 of Payment of Wages Act was preferred by the deponent before the Presiding Officer, Payment of Wages Act, Shahjahanpur and the same was rejected on the ground that the gratuity does not fall under section 2 of Payment of Wages Act and was, therefore, not maintainable. The Hon'ble Presiding Officer while deciding the application of the deponent under section 15 of the Payment of Wages Act observed that the respondents have failed to make out the case of fraudulent transaction.

9. That the contents of para 8 of the objections under reply are false and the same are categorically denied and the contents that of para 4(g) of the objection are reiterated to be correct.

.....4



Balaram Vajra

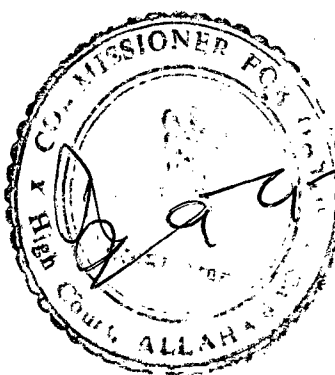
10. That the contents of para 9 of the objections under reply are false and the same are denied. The deponent is not aware of the Annexure No 2 filed alongwith the objections under reply and the same is, therefore, not in the knowledge of deponent and the contents that of para 4(h) of the petition are reiterated to be correct.

11. That the contents of para 10 of the objections under reply are wrong, concocted and the same are denied, and the contents that of para 4(1) of the writ petition are reiterated to be correct.

12. That as regards the contents of para 11 of the objections failed by the respondents are denied and the contents of para 4(j) of the writ petition are reiterated to be as correct. The deponent most humbly begs to state that the gratuity is treated a retiral benefit on par with pension. Therefore, this Hon'ble court is fully competent to adjudicate upon the matter and order the respondents to realise the gratuity illegally withheld by the respondents.

13. That the contents of para 12 and 13 of the objections under reply are wrong and the contents that of para 4(l) and (k) of the writ petition are reiterated to be as correct.

13. That the contents of para 14 of the objections under reply are wrong and that the grounds of the writ petition are reiterated to be correct. As a matter of fact the respondents have no evidence or the material to show that the deponent was ever involved in any fraudulent transaction as has been alleged.

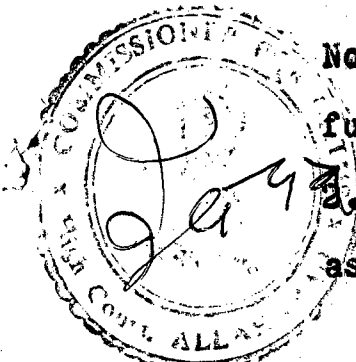


Baldev Ram Varsh

14. That as regards the contents of para 15 of the objections under reply, it is submitted that when the deponent was not involved in any fraudulent/illegal transaction at any point of time and no show-cause notice was served upon the deponent, no question of seeking any remedy arose. Therefore, the contents of para under reply are wrong and denied.

15. That the contents of para 16 and 17 and 18 of the objection under reply are wrong and the same are denied in to-to. The deponent is entitled for his gratuity alongwith market rate of interest.

16. That once the deponent was illegally served with a notice for recovery of Rs 3,320/- (Rupees Three thousand three hundred twenty only). On preferring an appeal before Divisional Railway Manager, Northern Railway, Moradabad which is being filed as Annexure No. RA-1 to this Rejoinder Affidavit, the deponent was fully exonerated vide order No 13/SR/236/MK/76 dated 2.4.1980 and photo-stat copy of the same is being filed as Annexure No. RA-2.



Lucknow

Baldev Ram Vardh

(Deponent)

Dated : 29 Sep 92

VERIFICATION

I, the above named deponent do hereby verify that the contents of paras 1 to 16 of this rejoinder affidavit are true to my personal knowledge and no part of it is

false and nothing material has been concealed. So
help me God.

Baldev Ram Varsh

Lucknow

Deponent

Dated: 29 Sep '92

I identify the deponent
who has signed before me.

Ramkoj
Advocate

Solemnly affirmed before me on *29*
at *10 45* am/p.m. by the *Baldev Ram*
deponent who is identified by
Sri *Ramkoj*

Advocate, High Court at Lucknow.

I have satisfied myself by
examining the deponent that he
understands the contents of this
affidavit which have been read out
and explained by me to him.

N. D. PHUJANI
OATH COMMISSIONER
High Court, Lucknow Bench, Lucknow
No *397528*
Date *29/9/92*

In the Central Administrative Tribunal At ALLAHABAD⁷
Addl. Bench At LUCKNOW
Babu Ram Vaish
vs.
U.O. Dandav.
O.A. NO. 17 of 1990
ANNEXURE NO 1

COPY

From BR Vaish

D.R.M.

SM/ Sajipur

M. Rly

(SEPR)

Moradabad

Respected Sir,

Re: Runishment notice No 13/SR/236/MK/76

D/27/7/78 (Debit of Rs 3320/- Recovery at the rate of Rs 100/- PM) from Aug 78 to July 79.

In connection with the above I have already submitted my appeal for the ex-parte action taken against me. Again I beg to approach your goodself with the following more facts for your kind consideration.

1. That wagon no 32964 booked ex-Tata Nagar to JUD containing the plates was despatched at MK Station being basaxle. This wagon remained standing for about more than two months for non availability of wagon, secondly when wagon received for TPT the consignment could not be transported by manual labour being heavy consignment. The matter was referred to ENL/MB for necessary action. The control arranged 5 Tons Crane for TPT of consignment. The crane man showed his inability in transporting the consignment into a covered wagon as crane could extract out the consignment of the covered wagon, but could not place it into covered wagon. This was again referred to ENL and ENL arrange one KC(open wagon) for the transportment of the wagon.

The consignment then transported into the wagon and there was no shortage as consignment transhipped correctly & then the question of issuing the DD Message does not arise. As such- the shortage was detected at destination station, the shortage is unavoidable being a open wagon for which I am not responsible as per conference rule.

8

: 2 :

Sir, I have acted as per order of M/L/MB and I am not responsible for any shortage of consignment. Consignment was transferred from covered wagon to open wagon.

Since huge amount Rs 3320/- has been debited against me and a recovery of Rs 100/- per month is being made from my salary bill and near about Rs 1000/- has since been recovered so-far. I approach your goodself to kindly review my case on the above facts.

I shall be highly obliged to kindly waive off the above punishment if your honour is not satisfied be kind enough to allow me to hear me in person to explain you the gravity of the case.

Thanking you.

Yours faithfully,

Sd/-xxx

B.R. Vaish

SM/SFPR

30/7/79

2943

SPECIAL POWER OF ATTORNEY

In the court of Central Administrative Tribunal
Addl Circuit bench Lucknow

Regn No. 17/1990

Plaintiff
Appellant
Petitioner

B.R. Vaishya

Versus

Union of India

Defendant
Respondent
Opposite Party

KNOW all men by these present that I S.N. Pandey, DRM/MB

Northern Railway, Moradabad do hereby appoint and authorise

S/Shri. Asit Kumar Chakravarti to appear, plead,

and act for me jointly or severally in the above noted case

and to take such steps and proceedings as may be necessary

for the prosecution and defence of the said matter, as the

case may be and for the purpose to make sign, verify and

present all necessary plaint petitions, written statements and

other documents to compromise the suit admit the claims and

to lodge and deposit money in court and to receive payment from

the court of money deposited and to file and withdraw comments

from court and Generally to set in the promises and in all

proceedings arising thereout whether by way of execution appeal

or otherwise or in any manner connected therewith as effectually

to all intents and purposes as I could act if personally present

I hereby agree to notify and confirm whatever shall be lawfully

done by virtue of these presents.

In witness whereof I herein to set my hand this

day of _____ 19____

S.N. Pandey

Northern Railway

Divl. Ry. Manager

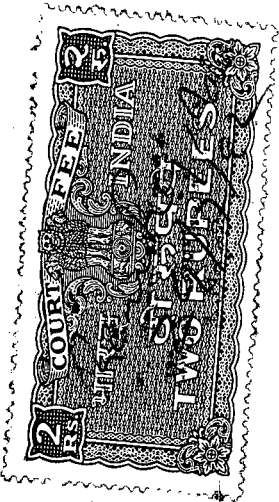
Northern Railway
Moradabad

Asit Kumar Chakravarti

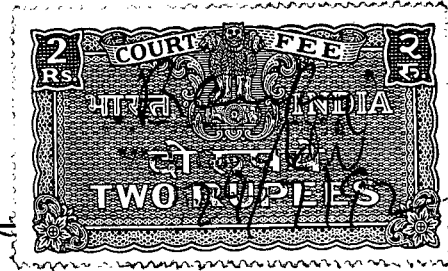
VAKALATNAMA

In the High Court of Judicature at Allahabad

SITTING AT LUCKNOW

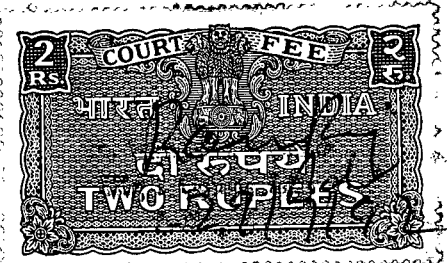


Babu Ram Varsh



VERSUS

Union of India



OA. No. 77
in
17/1990 (L)

of 1990 (L)

I/We the undersigned do hereby nominate and appoint Shri RAM RAJ and Shri VINOD SINGH 1/ Moti Mahal Road, opp SBI Hazart Ganj
LUCKNOW Advocates, to

be counsel in the above matter, and for me / us and on my / our behalf to appear, plead act and answer in the above Court or any Appellate Court or any Court to which the business is transferred in the above matter, and to sign and file petitions, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter arising therefrom, and also to apply for and receive all documents or copies of documents, depositions, etc, etc and to apply for issue of summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrant or order and to conduct any proceeding that may arise thereout; and to apply for and receive payment of any or all sums or submit the above matter to arbitration.

Provided, however, that if any part of the Advocates fee remains unpaid before the first hearing of the case or if any hearing of the case be fixed beyond the limits of the town; then and in such an event my / our said advocate shall not be bound to appear before the court and if my / our said advocate doth appear in the said case he shall be entitled to an outstation fee and other expenses of travelling, lodging, etc. Provided ALSO that if the case be dismissed by default, or if it be proceeded ex parte, the said advocate (s) shall not be held responsible for the same. And all whatever my / our said advocate (s) shall lawfully do, I do here by agree to and shall in future ratify and confirm.

ACCEPTED :

1. Ram Raj Advocate.
2. _____ Advocate.
3. _____ Advocate.

Signature of Client B. R. Varsh

F.T.
29-7-92

SPECIAL POWER OF ATTORNEY.

In the Central Administrative Tribunal Circuit Bench Lucknow
Court of
Regn. O.A. No. 17/1990

----- Plaintiff
----- Appellant
----- Petitioner

B. R. Vaish

Versus

----- Union of India -----

----- Defendant
----- Respondent
----- Opposite Party

KNOW all men by these present that I S. N. Pandey, Div. Rly. Manager

Northern Railway, Moradabad do hereby appoint and authorise

S/Shri S. P. Sinhasana, Advocate ----- to appear, plead,

N/o 7, Hamilton Road, George Town, Allahabad
and act for me jointly or severa the above noted case

and to take such steps and proceedings as may be necessary

for the prosecution and defence of the said matter, as the

case may be and for the purpose to make sign, verify and

present all necessary plaint petitions, written statements

and other documents to compromise the suit admit the claims

and to lodge and deposit money in court and to receive payment

from the court of money deposited and to file and withdraw

documents from court and Generally to set in the premises and

in all proceedings arising thereout whether by way of execution
appeal or otherwise or in any manner connected therewith

as effectually to all intents and purposes as I could act if

personally present I hereby agree to satisfy and confirm what-

ever shall be lawfully done by virtue of these presents.

In witness whereof I hereinto set my hand this 27-7-90
day of ----- 19-----.

Accepted
(S. P. Sinhasana)

S. N. Pandey
(S. N. Pandey)

----- Divisional Railway Manager
----- Northern Railway
----- Moradabad -----

(10)

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

M.P. No. of 1993

UNION OF INDIA & OTHERS

... APPLICANTS/
RESPONDENTS

In Re:

ORIGINAL APPLICATION No.17 OF 1990

BABU RAM VAISHYA

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

APPLICATION FOR TAKING
THE SUPPLEMENTARY COUNTER REPLY
ON RECORD OF THE HON'BLE TRIBUNAL

The Applicant / Respondent most respectfully
beg to submit as under:-

That the some new averments have been made in
the Rejoinder filed on behalf of the Applicant and
as such, it is necessary in the interest of
justice that the Respondent should file a
Supplementary Counter Reply thereto before this
Hon'ble Tribunal.

Therefore, it is most humbly prayed that for
the reason stated above and in the accompanying
Supplementary Counter Reply, this Hon'ble Tribunal
may be graciously pleased to permit the Respondents
to file a Supplementary Counter Reply to the
Rejoinder filed on behalf of the Applicant, and
take the Supplementary Counter Reply on record of
the Hon'ble Tribunal in the interest of justice.

Place : LUCKNOW
Dated : APR 1993

Asit Kumar Chaturvedi
(ASIT KUMAR CHATURVEDI)
Advocate

COUNSEL FOR THE APPLICANTS/RESPONDENTS

F.T.
21/4/93
[Signature]

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW.

ORIGINAL APPLICATION No. 17 OF 1990

BABU RAM VAISHYA

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

SUPPLEMENTARY COUNTER REPLY
ON BEHALF OF THE RESPONDENTS
TO THE REJOINDER AFFIDAVIT OF THE APPLICANT

I, P. S. NERWAL aged about 41 years
(I.R. T.S.)
S/o Sh. R.S. NERWAL R/o L-39(B) Railway
Officers Colony, N.R/Moradabad state as under:-

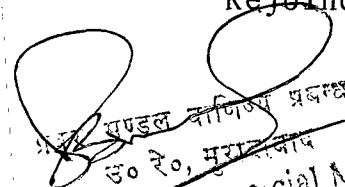
1. That the Deponent is presently working as Sr.Divl.Comml.Manager, in the Office of the Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad, the Respondent No. 3, and as such is fully competent to file Supplementary Counter Reply and is conversant with the facts and circumstances of the Case. The Deponent has read and understood the contents of the Rejoinder Affidavit under reply and states hereinafter.

प्रमुख वाणिज्य प्रबन्धक
उ० रे० मुख्यालय
Senior Divl. Commercial Manager
N. R. Moradabad

2. That the contents of Paragraphs 1 & 2 of the Rejoinder Affidavit need no comments.

3. That the contents of Paragraph 3 of the Rejoinder Affidavit are denied and the contents of Paragraph 1 of the Counter Reply are reiterated as correct. It is stated that the Applicant delivered four railway wagons on forged receipts to a fictitious firm named as Bharat Trading Corporation without verifying the original labels or seeking permission from the Competent Authority at the Divisional Office, Moradabad. The Competent Authority order to recover the cost, Rs.21,400/= (Rs.5350/= + Rs.16,050/=) from the Settlement dues of the Applicant. The actual owners of the wagon preferred a Claim for the cost of the goods. An inquiry /investigation was conducted by ~~Shri~~ *Out Standing* Inspector Moradabad and the Report dated 06th November 1979 was submitted. A copy of the Inquiry Report dated 06th November 1979 and the Recovery Orders dated 05th February 1980 and 23rd August 1984 of Rs.21,400/= is being annexed as ANNEXURES Nos. C-1, C-2 & C-3 respectively to this Supplementary Counter Reply.

4. That the contents of Paragraphs 4 & 5 of the Rejoinder Affidavit are denied and the


महोदय, मुद्रादाप
Senior Div. Commercial Manager
N. B. Moradabad

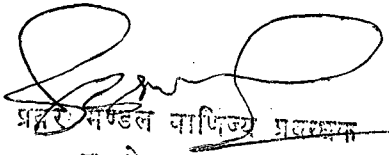
contents of Paragraphs 2, 3 & 4 of the Reply are reiterated as correct. It is stated that the Applicant is responsible for the loss to the Railway Administration to the tune of Rs.21,400/= and as such the recovery of the said amount has to be made from the Applicant.

5. That the contents of Paragraphs 6, 7, 8 & 9 of the Rejoinder Affidavit are denied and the contents of Paragraphs 5, 6, 7 & 8 of the Reply are reiterated as correct. It is stated that the payment of Gratuity of Rs.13,411.20 to the Applicant has not been made as the amount to be recovered from the Applicant was Rs.21,400/=. The Railway Administration has not been able to recover till date, Rs.7,488.80 from the Applicant.
6. That the contents of Paragraphs 10, 11 & 12 of the Rejoinder Affidavit are denied and the contents of Paragraphs 9, 10 & 11 of the Reply are reiterated as correct. The Applicant is not entitled for the payment of Gratuity as the recovery of Rs.21,400/= has to be made from the Applicant.
7. That the contents of Paragraphs 13, 14, 15 & 16 of the Rejoinder Affidavit are denied and the contents of Paragraphs 12, 13, 14, 15, 16, 17 & 18 of the Reply are reiterated as

प्रमुख मण्डल वाणिज्य प्रशासक
२०१३, मुंबई
Senior Dist. Commercial Manager
Mumbai, Maharashtra

correct. The amount of Rs.3,320/= has no relevancy with this Original Application. The Original Application is devoid of merits and deserves to be dismissed with costs to the Respondents.

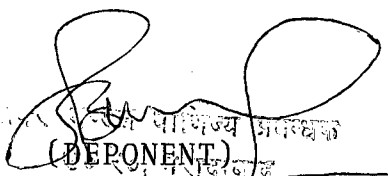
Place : Moradabad
Dated : 20 APR 1993


(DEPONENT)
Senior Divl. Commercial Manager
N. Ray, Moradabad

V E R I F I C A T I O N

I, the Deponent above named, verify that the contents of Paragraphs 1 to 7 above are true and correct to my knowledge derived from information and records. The legal parts of the paras are based on legal advice received which is believed by me to be true and correct.

Verified this, the 20th day of April, 1993
at Moradabad.


(DEPONENT)
Senior Divl. Commercial Manager
N. Ray, Moradabad.

Confidential

RM/OS/79 of 6-11-79.

Dated: 6/11/79

From: OSI/MB.

To,
The Sr.DCS/Moradabad.

Re:- Andar to Ghaziabad Inv.36 RR No.429121
dated 26-4-77 Non-Receipt of wagon No.
NR 24490 coal claim for Rs. 5350/-

Your no. 48-Fd-SFPR-79C

In compliance of orders investigations have been carried out at Safipur in connection with delivery of wagon no.NR 24490 (ix) coal and that the wagon in question was received at SFPR by M490p. of 6-6-77 under Sitarampur entry to SFPR as per wagon register entry. This was placed in position for unloading on 6-6-77 at 18/30 hrs and released on 7-6-77 at 9/-. The wagon No.NR 24490/C was delivered against RR No.C 675869 Inv. one of 20-5-77 Rr.Sitarampur to Safipur on 9-6-77 and the contents removed on 9-6-77.

The delivery was granted by Shri B.R.Vaish SM/SFPR who was already been retired from service on 31-7-79 to Shri Sheromal who signed in Urdu in the delivery book, wagon transfer register. Address written in the Dely. book by SM/SFPR* Makan No.111/87 Ashok Nagar Kanpur Telephone No.44676 where as on RR it is also written on the back" Mohalla Galaktarganj Unao and in bracket(Mahesh chandra Sheromal Bauna Mah. Unao) is different in delivery book and RR. The RR on the back bears Makan No.111/87 Ashok Nagar Kanpur telephone No. 44676 also.

The RR No.C 675869 thoroughly examined and found the distance, Rate and freight shown in RR are totally wrong. The actual distance rate and freight to be as follows:-

Distance Rate

806Kms.	52-30 per quintal for class 37-5 vide GT No.35 part.I volume.2 if the changed enforced from 1-9-76.	1223-80
	10% on the freight vide Spl. rate circular No.1 of 1976	122-30
	78% per tonne class change on the actual weight.	1346-10 18-30 1364-40
		R/o 1365/-

During examination of the RR it is also observed that the RR in question neither stich in any book nor from any book as all the ends at this RR are original. The print of the RR is also different as compared with OPRS at MB, Rosa and Una G/shees.

During check at SFPR I also found these wagons more were received at SFPR and delivery there on RR Nos C 675870, C675871, C675872 of 20-5-77 Ex. Sitarampur to Safipur details are given below:-

1- Wagon no. NR 26768/C Ctg. coal arrived SFPR by M4Dn. on 19-6-77 at 15/- placed in position at 15/- on 19/6 released at 19/- on 19-6-77 and delivered under invoice no. 2 RR C675870 of 20-5-77 by Shri B.R. Vaish SM/SFPR now retired to *श्री ब्रह्मदास मल्लिकार्जुन* as signed in the delivery book.

2- Wagon No. 38205/ER/C Ctg. coal arrived SFPR by M49Dn. on 14-6-77 at 15/- placed in position at 15/- on 14-6- and released at 19/- on 14-6-77 deld. on 15/6 by Shri B.R. Vaish SM/SFPR(Retired) to Sheromal as signed in Urdu in dely. book and position register. RR 675871 of 20-5-77 .

3- Wagon no. NR 61024 CRT etg. coal arrived SFPR by M49Dn. on 29/6 at 9/- placed on 29/6 at 11/- and released at 15/- on 29-6-77 and delivered under Inv. 4 RR 675872 of 20-5-77 Ex. Sitarampur to Safipur by Shri B.R. Vaish SM/SFPR (retired) to Shri Daram Das as signed in delivery book.

Thus the RRs no. 675869, 675870, 675871 of 20-5-77 Ex. Sitarampur to SFPR against the contents coal of wagon no. NR 24490/C, NR 26768/C, R 38205/C and NR 61024/CRT delivered at SFPR by Shri B.R. Vaish to SFPR (retired) apparently forged. All the RRs (four in number) placed in the file along with the three copies of RRs duly of attested by SM/SFPR for perusal please.

SM/SFPR was ordered to sec. ACS/BE at SPN along with the RRs unloading book, wagon register, wagon transfer register and delivery book in connection with the above four RRs on 18/x/79. The four RRs were examined by him (ACS/BE) and he is also of the opinion that these RRs are forged and ordered to take over from SM/SFPR and rest records in their connection to be kept at station in the custody of SM/SFPR. Therefore the four RRs No. C 675869, C675870, C675871, C675872 of 20-5-77 Ex. Sitarampur to safipur have been taken over from him along with true copies of RRs duly attested. are placed in the file and rest records have been made over the SM/SFPR for safe custody vide memo dated 18-5-79 placed in the file duly acknowledged by SM/SFPR Sh. H.P. Kausar.

ACS/BE ordered to compare these RRs with original RRs at other stations and also to contact DSO/Unnao regarding endorsement on the back of RRs duly signed and stamped by *जिवा प्रती अधिकारी, उन्नाव*

I have checked up and tallied the same and find that the enclosed RRs have been printed in Boldu letters and also the station stamp fixed on RRs does not tally the genion RRs bear station stamps showing Sitarampur and 23404 Sitarampur Jn. where as these RRs show 23402 Site- E.Rly.-23402 -rampur.

The distance rate and freight shown in these RRs are quite wrong and incorrect. The actual distance rate are given above the original seal labels of these wagons are not available at SFPR as per memo of SM/SFPR placed in the file.

From the records at SFPR I observed that No coal wagon arrived at SFPR earlier to these wagons since long. The MPA of these railway receipts is not available, the SM/SFPR took these in debit through RRs. The SM/SFPR might have not verified, and compared the same with the genuine RR as no prior delivery of coal wagons effected at SFPR.

The arrival and delivery particulars of these four RRs are already given above. As per orders of ACS/BE I went to Unnao on 5-11-79 to contact DSO/Unnao. The DSO was out of that date, I met ARD/Unnao, but he did not help me and asked me to DSO on any other date. He confirmed that Shri G.B.Pandey was DSO/Unnao in 1977, but the signatures on these RRs could not be verified by him. After that I went to G/shed Unnao and examined the RRs delivery at Unnao having the signatures and stamps of DSO/UN. Which totally deffers the signatures and stamp on these RRs. On enquiry I also observed that there is no firm like "Bharat Trading corporation" being the consignee of these RRs as per RRs does not exist at Safipur.

Thus in my opinion it is clear case of deliveries on forged RRs and fit case to be investigated by police. The four RRs no. 675869, 675870, 675871, 675872 of 20-5-77 Ex. Sitarampur to Safipur on which the four wagons coal delivered, are enclosed herewith for perusal and necessary action please.

This is also pointed out that Sh. B.R. Vaish SM/SFPR granted deliveries on these forged four RRs, has since been retired. As such this should be kept in view in setting his retirement dues.

The original file no. 48-Fd-SFPR-79C containing 23 (twenty pages including four RRs 675869, 675870, 675871, 675872 of 20-5-77 Ex. Sitarampur to Safipur) pages 42 pages PP is returned herewith for necessary action please.

OSI/MB.

Allesha
Com
ASST. COML. MANAGER
N. RLY. MORADABAD

1258

Singh Judge

20

Singh Judge

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.

M. P. No. 1246 of 1995

inre;

O. A. No. - 17 of 1990.

Place before the

Hon'ble Bench

for orders on 31.7.95

Dy. Registrar

Place before the

Hon'ble Bench

for orders on 8.8.95

Dy. Registrar

Babu Ram Vaish.

.....

.....Applicant.

Versus;

Union of India & Others.....

.....Respondents.

APPLICATION FOR RECALL OF ORDER DATED 12.5.1995
PASSED BY HON'BLE MR. JUSTICE D. C. VERMA.

The applicant named above, most respectfully begs to submit as under :-

For the facts and circumstances mentioned in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to recall the order dated 12.5.1995 by means of which the above noted petition of the applicant has been dismissed for want of non-prosecution and restore the case of its original numbers and may be heard and decided on merit, other-wise applicant shall irreparable loss and injuries.

LUCKNOW:

DATED: 14-7, 1995.

18

Ram Raj

(Ram Raj)

Advocate

Counsel for the Applicant.

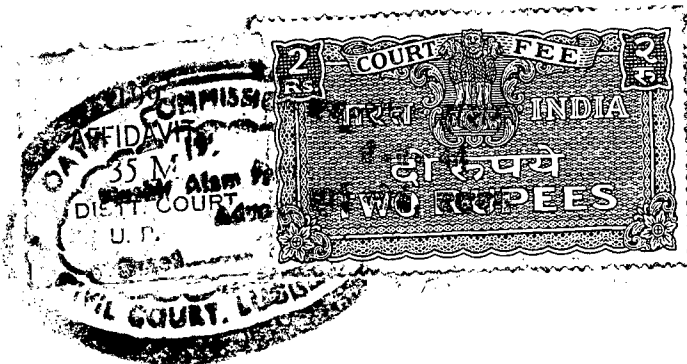
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW.

M. P. No.

of 1995

inre;

O. A. No. 17 of 1990.



Babu Ram Vaish.

.....

.....

Applicant.

Versus;

Union of India & Others.....

.....

Opp. Parties/
Respondents.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR RECALL
OF THE ORDER DATED 12.5.1995.

I, Babu Ram Vaish, aged about 74 years, Son of Late Sri Lallu Nath Lala Resident of E-1/658, Vinai Khand, Gomtinagar, Lucknow, the deponent, do hereby, solemnly affirm and state on oath as under :-

1. That the deponent is applicant in the above noted original application, as such is well conversant with the facts of the case.
2. That the aforesaid case of the applicant was listed for arguments on May 11, 1995. The said date was declared holiday on the eve of Idul Zuha.
3. That the case of the deponent was listed for next

date i.e. on 12.5.1995.

4. That the counsel for the applicant did not attend this Hon'ble Tribunal on 12.5.1995 and therefore, this Hon'ble Tribunal was pleased to dismiss the aforesaid case, as the counsel for the applicant was not present.

5. That the deponent was seriously ill and could not contact his counsel. Only on 7th July, 1995, the deponent contacted his counsel who had sent his clerk to the office of this Hon'ble Tribunal and it was revealed from the office records that the aforesaid original application of the applicant stands dismissed for want of prosecution.

6. That the deponent most humbly begs to state that without any fault of his, the aforesaid case has been dismissed. In case the ~~imposed~~ order of dismissal of the application, dated 12.5.1995 is not recalled, the applicant shall irreparable loss and injuries, as he is already 74 years of age and is ailing.

7. That in the view of above mentioned facts and circumstances it would be expedient in the interest of justice that the Hon'ble Tribunal may please to recall the order dated 12.5.1995 passed by Hon'ble Mr. Justice D.C. Vema in the aforesaid original application and

15/7/95

Balraj Verma

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restore the same in its original number and may be heard and decided on merits.

LUCKNOW:

DATED: 10/7, 1995.

Babu Ram Varsh

DEPONENT.

VERIFICATION:

I, the deponent named above, do hereby verify that the contents of paras 1 to 7 of this affidavit are true to my own knowledge, those of paras — are true as per information derives from the perusal of records while paras — are based on legal advise. No part of it is false and nothing material has been concealed. So help me God.

LUCKNOW:

DATED: 10/7, 1995.

Babu Ram Varsh

DEPONENT.

I, identify the deponent, who has signed before me.

1-10/7/95 B.R. Varsh
Identified by B.R. Varsh
10/7/95

Ram Roy
ADVOCATE.

10/7/95
JOSHIA ALAM FAROOQ
Oath Commissioner
Civil Court Lucknow

FF-21/9

In the Hon'ble Central Administrative Tribunal,
Lucknow. *Central Administrative Tribunal
Lucknow Bench, 21.9.95*
Date of Filing
Date of Receipt by Post

M.A.No. 1879 of 1995.

O.A.No. 17 of 1990.

Babu Ram VaishApplicant

Versus

Union of India and Others.....*Opposite Parties
Union of India*

Application for filing and taking on record supplementary rejoinder.

In the above noted case, it is respectfully submitted as under:

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That certain new facts have been brought out in the supplementary counter reply filed by the opposite parties and as such, it is necessary in the interest of justice that the applicant should file a supplementary rejoinder reply thereto.

It is therefore most respectfully prayed that for the reason stated above and in the accompanying supplementary rejoinder reply, the Hon'ble Court may be pleased to permit the applicant to file a supplementary rejoinder reply to the supplementary counter filed by the opposite parties and the supplementary Rejoinder reply be taken on record.

Dated: 14-9-95
21
at Lucknow.

A. Mani Adv.
Counsel for applicant

Central Administrative Tribunal
Lucknow Bench
In the Hon'ble Central Administrative Tribunal...
Date of Receipt by Post
Lucknow.

M.A.No. 188 of 1995.
O.A.No. 17 of 1990.

By, Registrar (J)

Babu Ram Vaish

Applicant

Versus

Union of India and Others

Opposite Parties

Application for condonation of delay.

In the above noted case, it is respectfully submitted as under:

- 1) That there has been some delay in filing the supplementary rejoinder reply to the supplementary counter reply of the opposite parties. The delay being unintentional and having been caused for no fault of the applicant, the same merits condonation.

It is therefore most respectfully prayed that the Hon'ble Court may be pleased to condone the delay in filing the supplementary rejoinder reply and take the same on record in the interest of justice.

Dated: 12-9-95
at Lucknow.

B. R. Vaish

APPLICANT

In the Hon'ble Central Administrative Tribunal,

Date of Receipt by Post

Lucknow.

By, Registrar ()

O.A.No.17 of 1990.

Babu Ram Vaish

Applicant

Versus

Union of India and Others

Opposite Parties

Supplementary rejoinder to the supplementary counter

I, the applicant named above, having read the supplementary counter (herein after referred to as counter) and understood its contents, respectfully submit as under in reply thereto:

- 1) That contents of paras 1 and 2 of the counter need no reply.
- 2) That contents of para 3 of the counter are denied while those of para 3 of the rejoinder are reiterated as correct. ^{DAR} No enquiry was ever initiated against the applicant nor was the applicant ever chargesheeted or associated with any alleged enquiry, as alleged by the opposite parties. The alleged order of forfeiture of the applicant's gratuity was passed ^{in 1984} without any opportunity of hearing to the applicant or without any opportunity of showing cause and thus, any such order is vitiated in the eyes of law, and is against the Railway Board's letter dated 7-8-89 which provides that the D.C.R.G. of a retired employee cannot be withheld unless disciplinary proceedings are commenced or suspension given effect to before employee's retirement.

B.R. Vaish.

1(a)

Central Administrative Tribunal
Lucknow Bench
Date of Filing
Date of Receipt by Post

It is further submitted that Annexure C-1 ^{By Registrar (1)} has been filed after 3 years of filing of the O.A.A perusal of the said annexure reveals that the statement of his successor was recorded on 18-10-79 and the District Supply Officer (DSO) Unnao, who endorsed the receipts of coal wagons without which delivery cannot be granted, was never contacted and examined by the Enquiry Officer. The opinion regarding alleged forgery about which a report was lodged with the police discloses that both the opposite parties and the G.R.P. authorities failed to initiate any action for the criminal prosecution of the consignee.

It is further submitted that the whole enquiry report is based on the opinion of the Enquiry Officer, the OSI, Moradabad without any cogent reasons in support of his conclusions and thus, mere presumption of forgery is not sufficient to conclude that the applicant was responsible for the alleged incident when the Railway Receipt was duly endorsed by the DSO, Unnao for delivery.

It may be relevant to state here that the alleged incident of forgery relates to 20-5-77, 14-6-77 and 29-6-77 while the alleged enquiry report ^{at} 6-11-79 was submitted after the applicant's retirement and more than 2 1/2 years after the alleged incident without even informing the applicant or without even associating him in the alleged enquiry and thus, no credence can be given to the enquiry carried behind the back of the applicant.

B.R. Vaish

It is further submitted that it is a settled principle of law that an opportunity to show cause must be given before passing an order affecting pay and emoluments.

It has been held by the Hon'ble Supreme Court that -

" Even an administrative order which involves civil consequences must be made consistently with the rules of natural justice and in case it is not done, the order is bad."

In another case, it was held by the Hon'ble Supreme Court that -

" All actions which involve penal or adverse consequences must be in accordance with the principles of natural justice."

It is further submitted that even if an alleged enquiry was held, a copy of the alleged enquiry report having been annexed vide Annexure C-1 to the counter, the same is bad in the eyes of law as the applicant was never associated with the same and the alleged enquiry was held behind the back of the applicant and thus, the alleged enquiry and the enquiry report being merely based on the alleged fact finding enquiry without holding enquiry under Rule 9 of the Railway Servant's (D & A) Rules, 1968 is bad, as held by the Hon'ble Calcutta Tribunal.

In another case, it has been held by the Hon'ble Patna Bench that -

B. R. Vaish

" DCRG cannot be withheld unless a formal ^{Dy. Registrar ()} chargesheet was issued in a departmental proceeding or filed in Court in a criminal trial."

In this case, the applicant retired on reaching the age of superannuation on 31-7-79 and the alleged fact finding enquiry report is dated 6-11-79 i.e. more than 3 months after the applicant's retirement and based on this alleged enquiry report, the applicant's gratuity has been withheld, without associating the applicant in the enquiry or giving him an opportunity of hearing to place the correct facts and thus, the act of withholding of gratuity is ab-initio void and illegal and merits outright quashing.

It may be relevant to state here that it has been observed by the Hon'ble Supreme Court in a catena of decisions that -

" We are of the view that gratuity is no longer a bounty but it is a matter of right of the employee and it can therefore no longer be regarded as a provision in the discretion of the President as provided in the Pension Regulations. Since there is no legal provision empowering the authorities to forfeit the gratuity payable to an employee, the order passed by the government forfeiting the gratuity payable to the appellant must be held to

B R. Varsh,

be bad and must be set aside." Dy. Registrar (7)

As regards the claim of the applicant being time barred, as alleged by the opposite parties, it is submitted that it has been held in a catena of decisions that claim for pensionary benefits is a recurring cause of action and hence, the plea of limitation cannot be accepted in a case where pensionary benefits are sought to be denied.

Thus, in view of submissions made above, the withholding of the applicant's gratuity is illegal and void and the orders of the opposite parties for withholding the gratuity are illegal, ab-initio void, perverse and merit outright rejection.

3). That contents of para 4 of the counter are denied while those of paras 2, 3 and 4 of the rejoinder are reiterated as correct. The act of the opposite parties in holding responsible the applicant for the alleged loss without even giving the applicant even opportunity of hearing, a show cause notice chargesheet or an enquiry associating the applicant is illegal, perverse and merits outright rejection.

It is further submitted that Section 76 B of the Indian Railways Act, 1890 provides -

"Responsibility for wrong delivery -

Where a railway administration to which animals or goods are delivered to be carried by railway

B. R. Vaish.

delivers them in good faith to a person who produces the original railway receipt, the railway administration shall not be responsible on the ground that such person is not legally entitled thereto or that the endorsement on the railway receipt is forged or otherwise defective,"

and thus, the applicant cannot be held responsible for any alleged fraudulent dealing as the provisions contained above fully exonerates the railway administration in such cases.

4.) That contents of para 5 of the counter are denied while those of paras 6, 7, 8 and 9 of the rejoinder are reiterated as correct. No amount is payable by the applicant much less recoverable from the applicant, as alleged by the opposite parties, for reasons set forth in paras above.

5.) That contents of para 6 of the counter are denied while those of paras 10, 11 and 12 of the rejoinder are reiterated as correct. As mentioned in the preceeding paras above, the alleged orders of withholding of gratuity are patently illegal, malafide and perverse and thus, merit outright rejection.

6.) That contents of para 7 of the counter are denied while those of paras 13 to 18 of the rejoinder are reiterated as correct.

Dated: 12-9-95

at Lucknow.

B.R. Vaish
APPLICANT

VERIFICATION

By, Registrar ()

I, the applicant named above, do hereby
verify that the contents of paras 1 to 6 of this
supplementary rejoinder reply are true to my
knowledge, based on records while the legal parts
thereof are believed to be true.

Signed and verified this 12th day of
September, 1995 at Lucknow.

B. R. Vash

APPLICANT

In the Hon'ble Central Administrative Tribunal,
Lucknow.

O.A.No. 17 of 1990.

Babu Ram Vaish

Applicant

Versus

Union of India and Others

Opposite Parties

Deposit of cost.

In the above noted case, it is respectfully
submitted that as per orders of the Hon'ble Court
dated 8-8-95²⁵⁻⁹⁻⁹⁵, costs of Rs.200/- have been deposited
in the Registry of the Tribunal on 6-9-95 vide
Book No.34 and receipt No.3313. The receipt is
annexed for the perusal of the Hon'ble Court.

Dated: 21-9-95
at Lucknow.

A. Jain Adv.
Counsel for applicant

F.T.
11/10

Central Administrative Tribunal, Calcutta

(BEFORE A.P. BHATTACHARYA, JUDICIAL MEMBER AND P.K. MALLICK,
ADMINISTRATIVE MEMBER)

Applicant ;

Versus

Respondents.

O.A. No. 17 of 1988, decided on June 9, 1989

✓ **Gratuity — Death-cum-Retirement Gratuity of railway servant — Competence to order forfeiture of, held, possessed by the President alone — Hence, order of forfeiture passed by some other authority, held, incompetent — Railway Establishment Code, Vol. 2, Rule 2308 — Railway Board's letters Nos. E (D & A) 85 RG 6 — 49, dated 24-2-1986 and E (D & A) 88 RG 6-39, dated 20-3-1988 — Misconduct — Punishment** (Para 8)

✓ **Relief — Gratuity — Gratuity illegally withheld — Payment with interest @ 12 per cent per annum directed — Interest (Fara 10)**
 Connected references: S. Malik: SUPREME COURT (L & S) DIGEST, Vol. 4, § [23220-B]

Manual of Railway Pension Rules, 1950 -- Rule 313 (Dated w.e.f. 23-10-1983) -- Order passed under, on a subsequent date, held, illegal (Para 8)

✓ **Departmental enquiry -- Natural justice -- Hearing -- Denial of opportunity to cross-examine witnesses during enquiry, held, violative of principles of natural justice and vitiation of the findings -- Railway Servants (Discipline & Appeal) Rules, 1968, Rule 9 (Para 7)**

Connected references: S. Malik: SUPREME COURT (L & S) DIGEST, Vol. 1 §§ [20737] to [20739]; B.R. Ghaiye: LAW AND PROCEDURE OF DEPARTMENTAL ENQUIRIES (Third edn.), Chap. 13, Note 23(f) p. 863

H-M/5335

Advocates who appeared in this case:

**P.B. Mishra, and K.K. Ghosh, Counsel, for the Applicant;
Asit Banerjee, Counsel, for the Respondents.**

The Judgment of the Bench was delivered by

A.P. BHATTACHARYA, JUDICIAL MEMBER.—This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Bimalendu Banerjee against the Union of India, represented by the General Manager, Eastern Railway and four others.

2. The applicant retired from service as Chief Booking Clerk, Krishnanagar City Junction under the Eastern Railway, with effect from the forenoon of 29-2-1976. After his retirement he was granted his pension and his contribution to provident fund, but his death-cum-retirement gratuity had not been paid. By a letter, dated 22-2-1978, issued by respondent 4, the applicant was directed to show cause as to why his D.C.R.G. should not be forfeited as he was responsible for the theft of Rs 12,780.55p. from the cash

safe of Liluah Booking Office in the night between 3/4-1-1972. The applicant replied to the show-cause notice denying the allegation made against him. Ultimately he had to move the Hon'ble High Court at Calcutta. By its order, dated 29-11-1982, the High Court disposed of the matter by giving a direction to the respondents to the effect that if they liked to initiate proceeding against the applicant, they might do so under Rule 313 of the Manual of Railway Pension Rules, 1950 and decide the matter in accordance with law after giving opportunities to the applicant of being heard. The railway authority had not initiated any further proceeding against the applicant. Nor did they release his D.C.R.G. money. The applicant sent a representation on 7-2-1986 to the General Manager, Eastern Railway. As no reply to it was given, the applicant filed an application before this Tribunal which was numbered as O.A. 407 of 1986. That application was disposed of by this Tribunal on 8-1-1987. Pursuant to the direction given by this Tribunal, the applicant submitted a further representation to the railway authority, but no reply to it was given. The applicant states that as per the order passed by this Tribunal the respondents had simply supplied him with a copy of the Fact Finding Enquiry Report. The applicant pointed out in his representation that on the basis of the Fact Finding Enquiry Report the charge levelled against him could not be taken as established. By a letter issued on 17-7-1987, the respondent 4 expressed his mind to the effect that the loss incurred by the railway authority would be recovered from the D.C.R.G. of the applicant. On 8-6-1987 the applicant preferred an appeal which also yielded no result. So, in filing the application the applicant has prayed for issuing a direction on the respondents so that his D.C.R.G. amounting to Rs 9867 may be paid to him at an early date with interest accrued thereon.

3. During the pendency of this case the applicant filed a supplementary annexing thereto an order dated 25-6-1987 passed by the Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah (*sic*) in which it was mentioned that his D.C.R.G. amounting to Rs 8700 had already been confiscated, and by this letter he had been directed to deposit the balance amount of Rs 4080.55p. to meet the outstanding dues of the railway. In his supplementary application, the applicant has prayed for setting aside the said order.

4. The application has been contested by the respondents. The reply filed by the respondents deals only with the supplementary application filed by the applicant. It is stated by the respondents that in compliance with the order passed by the Hon'ble High Court at Calcutta they had handed over the copy of the findings of the Fact Finding Enquiry Committee to the learned advocate for the applicant. It is also stated by the respondents that in compliance with the order passed by this Tribunal they once again made over a copy of the said report to the applicant's advocate. The applicant made a representation which was duly replied to. It is the version of the respondents that the matter has been examined once again under the provision of Rule 313 of the Manual of Railway Pension Rules, 1950, and it has been decided by the Sr. Divisional Commercial Superintendent, Liluah (*sic*) that the D.C.R.G. amounting to Rs 8700 payable to the applicant would be forfeited. The appeal preferred by the applicant was duly considered and replied to by the successor in office and the decision taken earlier was confirmed. According to the respondents, the applicant has no case warranting an intervention by this Tribunal.

5. We note that in order to get his D.C.R.G. released from the

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respondents, the present applicant had to approach the court thrice. The applicant retired from service on superannuation with effect from the forenoon of 29-2-1976. After his retirement all his retiring benefits had been granted to him excepting his D.C.R.G. money. At first that was withheld on the ground that an enquiry was pending against him. By a notice issued by the Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah (sic), respondent 4, on 22-2-1978, the applicant was directed to show cause as to why his D.C.R.G. should not be forfeited as he was responsible for the theft of Rs 12,780.55 p. from the cash safe of Liluah Booking Office in the night between 3/4-1-1972. The applicant denied the allegation made against him. He filed a writ application in the Hon'ble High Court at Calcutta which was numbered as C.R. 3125(w) of 1978. By an order passed on 29-11-1982 the said civil rule was disposed of with a direction on the respondents that if they so liked they might initiate proceeding against the applicant under Rule 313 of the Manual of Railway Pension Rules, 1950. The said decision was communicated by the applicant to the concerned authority. Now, we refer to a letter dated 17-7-1984 issued by respondent 4. In this letter it was mentioned that pursuant to the Hon'ble High Court's order dated 29-11-1982 the case of the applicant had been examined under the provision of Rule 313 of the Railway Pension Rules, 1950 and it was decided not to release any sum to the applicant towards his D.C.R.G. claim. By that letter the entire D.C.R.G. amounting to Rs 8700 due to the applicant was confiscated. The applicant was given an opportunity by that letter to make a representation against the decision so taken. The applicant sent a representation to the General Manager, Eastern Railway on 7-2-1986 and getting no reply to it, filed an application before this Tribunal which was numbered as O.A. 407 of 1987. On 8-1-1987 this Tribunal disposed of the said original application directing the applicant to make a further representation to the concerned authority within three weeks from the aforesaid date and further directing the concerned railway authority to dispose of his representation in course of three months. Some other directions, viz. furnishing a copy of the letter dated 17-7-1984 and a copy of the report of the Fact Finding Enquiry Committee to the applicant were also given by this Tribunal. It is the respondents' version that they had complied with the said directions. But the fact remains that the said amount which is due to the applicant towards his D.C.R.G. has not yet been released in his favour. Being aggrieved by that the applicant has filed the instant application.

* 6. The whole action of the respondents of withholding and forfeiting the D.C.R.G. of the applicant rests on the decision taken by the Fact Finding Enquiry Committee. On 4-1-1972 when the cash safe at Liluah Booking Office was opened by the Head Booking Clerk it was found that cash amounting to Rs 12,780.55p. kept in the iron safe by him on 3-1-1972 was missing. As per order of the superior authority a Fact Finding Enquiry Committee consisting of A.C.S.(I), Howrah, A.S.O.(2), Howrah and A.D.A.O., Howrah, was constituted. The committee held an enquiry and found that this applicant was responsible for the theft of such cash. On the basis of that finding of the enquiry committee, the D.C.R.G. amount due to the applicant was first withheld and then forfeited. It is contended by the respondents that even after considering the matter under the provision of Rule 313 of the Manual of Railway Pension Rules, 1950, as directed by the Hon'ble High Court, the decision so taken could not be changed. On a consideration of the materials on record and the law on the point we are unable to uphold the action of the respondents.

7. At the very outset we must mention that an enquiry by a Fact Finding Enquiry Committee cannot be a substitute for an enquiry contemplated under Rule 9 of the Railway Servants-(Discipline & Appeal) Rules, 1968. On a reading of the copy of the enquiry report as annexed to the application, we find that while holding the said enquiry, the Enquiry Committee examined the applicant as well as eight other persons. After recording their statements, the committee came to the conclusion that this applicant was responsible for the theft of cash. It should be borne in mind that all the witnesses were examined separately by the said committee. The applicant did not get any opportunity of cross-examining any of the witnesses from whom some incriminating materials might have come before the committee. There is nothing on record to show that at the time of examinations of the other witnesses the applicant was present. Such being the position his liability to the theft of the amount cannot be fixed in his absence and in a position where he was not made aware of the nature of evidence adduced against him. Natural justice demands that before finding a person guilty of any offence he should be given an opportunity of being heard. So, when the applicant had not been given such opportunity, the principle of natural justice had been offended and as such the finding of the Fact Finding Enquiry Committee could not be applied against him. Now on a scrutiny of the enquiry report we find that it was also held by the enquiry committee that the responsibility of one Shri N.G. Roy, Sr. A.B.C., who was on duty from 9 p.m. of 3-1-1972 to 6 a.m. of 4-1-1972 for theft of the said cash amount could not be ruled out. In the concluding portion of the enquiry report a suspicion was cast on Shri N.G. Roy also. It was the observation of the enquiry committee that "Shri N.G. Roy might have also taken out the cash with duplicate key made previously". Such being the observation of the Fact Finding Enquiry Committee, it is not understandable to us as to how for the loss of the said amount of Rs 12,780.55p. the entire amount of the D.C.R.G. of the applicant could be forfeited.

8. It is the admitted position that the incident in question had taken place on 4-1-1972 when the applicant was in service. The enquiry committee held enquiries on 21-4-1972 and 29-8-1972 when also the applicant was in service. Long after his retirement i.e. on 22-2-1978 by a letter issued by respondent 4 he was directed to show cause as to why his D.C.R.G. amount should not be forfeited. The said show-cause notice was given to him on the basis of the aforesaid report submitted by the Fact Finding Enquiry Committee. In his show cause petition the applicant had denied the allegation made against him. Thereafter came the order of the Hon'ble High Court at Calcutta. The High Court while disposing of the writ application filed by the applicant directed the respondents to initiate proceeding against the applicant, if they so liked, under Rule 313 of the Manual of Railway Pension Rules, 1950. Instead of initiating any proceeding against the applicant, respondent 4 passed the order on 17-7-1984 forfeiting the entire D.C.R.G. amount of the applicant. In our opinion, that action was highly arbitrary and illegal. It should have struck respondent 4 that Rule 313 of the said rules was deleted with effect from 23-10-1983 i.e. long before his passing the order on 17-7-1984. Besides, when the applicant had retired from service on 29-2-1976 the Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah (sic), had no authority to pass the said order forfeiting the entire D.C.R.G. of the applicant. In this context the D.C.R.G. shall be treated as pension and as one of the retiring benefits allowable to a railway servant. In our opinion in deciding the matter the provision of Rule 2308 of the Indian Railway Establishment

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With a view to implementing this direction the State Government came out with the impugned order dated August 12, 1988 marked Annexure 'A'.

4. In *Siva Reddy case*¹ this Court found that promotees had exceeded the quota and even got regularised in respect of the posts in excess of the limit. Taking into consideration the fact that regularisation had been done after the promotees had put in some years of service and disturbing regularisation would considerably affect the officers concerned, regularisation was not interfered with. This Court's intention obviously was not to take away the benefit of regularisation in respect of the officers belonging to the promotee group in excess of their quota but the court did not intend to allow such regularised officers in excess of the quota to also have the benefit of such service for purposes of seniority. A reading of the judgment in *Siva Reddy case*¹ clearly indicates that this Court intended what the government has laid down by way of guideline. We see no justification to interfere with the government direction. A draft seniority list on the basis of such direction has already been drawn up and has been circulated. We are told that objections have been received and would be dealt with in usual course by the appropriate authorities. This writ petition had been entertained in view of the allegation that the government direction was on a misconception of what was indicated in the judgment and in case there was any such mistake the same should be rectified at the earliest. Now that we have found that the government order is in accord with the court direction, this writ petition must be dismissed and individual grievances, if any, against the draft seniority list would, we hope, be considered on the basis of objections filed by the competent authority.

5. There shall be no order as to costs.

1990 (Supp) Supreme Court Cases 640

(BEFORE P.N. BHAGWATI, C.J. AND V. KHALID, J.)

F.R. JESURATNAM

Versus

UNION OF INDIA AND OTHERS

Civil Appeal No. 2827 of 1986 with SLP No. 5907 of 1985,
decided on September 30, 1986

Service Law — Gratuity — Forfeiture of — Employees have a right to be paid gratuity and government has no discretion in the matter — Hence order of forfeiture of gratuity set aside

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Code, Vol. II should have been taken into consideration. Under the Railway Board's letter No. E(D & A) 85RG6-49 dated 24-2-1986 the President alone has the right of effecting a cut in Pension/D.C.R.G., if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. In this case the impugned order of forfeiting the D.C.R.G. of the applicant was not passed by the President nor was his sanction taken before taking the said action. Besides, neither in a departmental nor in a judicial proceeding, the applicant, a pensioner, was found guilty of theft of the said cash. By its letter No. E(D & A) 88RG6-39, dated 20-3-1988, the Railway Board made it clear once again that where a pensioner is found guilty of grave misconduct or negligence during the period of his service as a result of a departmental or judicial proceeding, the powers to withhold or withdraw his pensionary benefits or any part of it vest with the President only. At para 2 of the aforesaid letter it was stated that if the departmental proceedings were instituted while railway servant was in service, it shall be deemed to be proceedings under para 2308 RII and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service. It was pointed out by the Railway Board that this does not mean that the authority who instituted the departmental proceeding and concluded it has the power to pass the final orders of withholding or withdrawing the pensionary benefits. Such a power in cases falling under item (a) of the proviso to para 2308 RII vests only with the President. It was observed by the Railway Board that in such cases, after conclusion of the departmental proceedings, where it is proposed to effect a cut in pensionary benefits, a reference should be made to the Railway Board's office for obtaining the sanction of the President to effect the proposed cut in pension. We have already mentioned that for the purpose of pensionary benefits D.C.R.G. stands on the same footing with pension. So, it is quite clear from the aforesaid directions issued by the Railway Board that although some sort of enquiry was started against the applicant, such forfeiture of his D.C.R.G. amount could not be done by respondent 4 without the sanction of the President. Besides, it had nowhere been held in any departmental or judicial proceedings that the applicant was liable for the theft of the aforesaid cash causing loss to the railway. Considering the aforesaid we hold that the order passed by respondent 4 forfeiting the entire D.C.R.G. of the applicant cannot be sustained as it is bad in law.

9. Before parting with the case we like to make some comments on Annexure 'A' to the supplementary application. By the order passed by this Tribunal, the applicant made a representation. In reply to that representation, the present respondent 4 i.e. Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah(sic), passed an order rejecting the applicant's prayer. It is curious to note that without applying his mind at all the present Sr. Divisional Commercial Superintendent, Eastern Railway, Liluah(sic), upheld his decision taken by the predecessor in office. We cannot but hold that this sort of treatment and disposal of a prayer made by a retired railway servant in compliance with the direction of the Tribunal is unbecoming of such a highly posted officer.

10. In view of our findings made above the application succeeds. We allow this application with costs which is quantified at Rs 1000. The respondents are directed to pay the Death-cum-Retirement Gratuity of the applicant with interests at the rate of 12 per cent per annum accrued thereon from 1-6-1976 till the date of actual payment within 90 days from this date.

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With a view to implementing this direction the State Government came out with the impugned order dated August 12, 1988 marked Annexure 'A'.

4. In *Siva Reddy case*¹ this Court found that promotees had exceeded the quota and even got regularised in respect of the posts in excess of the limit. Taking into consideration the fact that regularisation had been done after the promotees had put in some years of service and disturbing regularisation would considerably affect the officers concerned, regularisation was not interfered with. This Court's intention obviously was not to take away the benefit of regularisation in respect of the officers belonging to the promotee group in excess of their quota but the court did not intend to allow such regularised officers in excess of the quota to also have the benefit of such service for purposes of seniority. A reading of the judgment in *Siva Reddy case*¹ clearly indicates that this Court intended what the government has laid down by way of guideline. We see no justification to interfere with the government direction. A draft seniority list on the basis of such direction has already been drawn up and has been circulated. We are told that objections have been received and would be dealt with in usual course by the appropriate authorities. This writ petition had been entertained in view of the allegation that the government direction was on a misconception of what was indicated in the judgment and in case there was any such mistake the same should be rectified at the earliest. Now that we have found that the government order is in accord with the court direction, this writ petition must be dismissed and individual grievances, if any, against the draft seniority list would, we hope, be considered on the basis of objections filed by the competent authority.

5. There shall be no order as to costs.

1990 (Supp) Supreme Court Cases 640

(BEFORE P.N. BHAGWATI, C.J. AND V. KHALID, J.)

F.R. JESURATNAM

... Appellant;

Versus

UNION OF INDIA AND OTHERS

... Respondents.

Civil Appeal No. 2827 of 1986 with SLP No. 5907 of 1985,
decided on September 30, 1986

Service Law — Gratuity — Forfeiture of — Employees have a right to be paid gratuity and government has no discretion in the matter — Hence order of forfeiture of gratuity set aside

R-M/10102/SLA

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2. We are of the view that gratuity is no longer a bounty but it is a matter of right of the employee and it can therefore no longer be regarded as a provision in the discretion of the President as provided in the Pension Regulations. Since there is no legal provision empowering the authorities to forfeit the gratuity payable to an employee, the order passed by the Government forfeiting the gratuity payable to the appellant must be held to be bad and must be set aside. We accordingly set aside the order of the High Court as also the Order of the Government forfeiting the gratuity of the appellant and direct that gratuity shall be paid to the appellant forthwith. There will be no order as to costs of the appeal. The appeal is disposed of in these terms.

1990 (Supp) Supreme Court Cases 641

(BEFORE S. RANGANATHAN AND K.N. SAIKIA, JJ.)

Writ Petition (Civil) No. 11704 of 1985†

AMAR DEO PRAKASH AND 44 OTHERS

.. Petitioners;

Versus

UNION OF INDIA AND 53 OTHERS

.. Respondents.

And

Writ Petition (Civil) No. 12802 of 1985

ALL INDIA TRAIN CONTROLLER ASSOCIATION

.. Petitioner;

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

Writ Petition (Civil) No. 11704 of 1985,

decided on February 19, 1990

Service Law — Seniority and Promotion — Seniority — Discrimination —

Transportation (Traffic) Department of Railways — Determination of inter se seniority of Group C (Class III) employees drawn from two different streams viz. Control Stream and Traffic Stream with different pay scales for promotion to Group B (Class II) posts — Principle of considering employees in higher grade on regular basis as senior to those in lower grade failed to work when as a result of implementation of Third Pay Commission's recommendations, pay scales in the two streams became dissimilar — Later restructuring of cadres effected granting upgradation to each stream based on its total strength in order to balance promotional chances in both the streams — Sufficient material not placed before Court showing that Control Stream as a class was thereby subjected to discrimination — Good number of persons in Control Stream were also benefited monetarily despite the disadvantage to a few —

† Under Article 32 of the Constitution of India

now decide the matter afresh with advertence to the above observations taking into account the decision of this Court in *B. Karunakar*². In the circumstances of the case, we also direct that the Managing Director of the Corporation should decide the matter as early as possible and preferably by 31-1-1994.

8. No costs.

(1995) 30 Administrative Tribunals Cases 330

Central Administrative Tribunal, Patna

(BEFORE R.K. VARMA, J., VICE-CHAIRMAN)

RAM SHIROMANI

Applicant;

Versus

UNION OF INDIA AND OTHERS

Respondents.

O.A. No. 605 of 1993, decided on August 31, 1994

Retiral Benefits — Pension/Gratuity/Commutation of pension — Withholding of, merely on the basis of intimation received from CBI advising major penalty proceedings against a retiring employee — Held, not permissible — Applicant retiring from service on 30-6-1993 — Before that date, General Manager (Vigilance) vide his letter dated 15-6-1993 informing that a letter had been received from CBI advising major penalty proceedings against applicant — No charge-sheet however issued to applicant till his retirement — Held, DCRG/commutation of pension could not be withheld unless a formal charge-sheet was issued in a departmental proceeding or filed in court in a criminal trial — Mere receipt of intimation from CBI was not sufficient to withhold DCRG/commuted pension — Respondents directed to allow commutation of pension and to release DCRG with interest @ 15% p.a. from 1-7-1993 — Instead of paying provisional pension, pension actually admissible to applicant also directed to be paid — Costs of Rs 500 allowed — Manual of Railway Pension Rules, Para 316(1) — IREC, Vol. II, R. 2308A — Pension — Gratuity — Commutation of Pension

(Paras 3 and 4)

Application allowed

K-M/A-04586

Advocates who appeared in this case :

Sudama Pandey and Umesh Pathak, Counsel, for the applicant;

A.B. Ojha, Counsel, for the respondents.

The Order of the Bench was pronounced by

R.K. VARMA, J., VICE-CHAIRMAN.— In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who superannuated on 30-6-1955, has made a grievance that he has not been paid pension, commuted value of pension and gratuity and has prayed for directions to the respondents for immediate payments of the same with interest at penal rate of 20 per cent per annum or at the market rate from 1-7-1993 till the date of actual payments.

2. The applicant was appointed in service in North Eastern Railway on 30-6-1955 and he superannuated on 30-6-1993 after attaining the age of 58 years as Assistant Engineer (Group 'B') at Chapra under the administrative control of Divisional Railway Manager, Varanasi and General Manager, North Eastern Railway, Gorakhpur. All settled dues on retirement of the applicant were due to be paid to him on 30-6-1993/1-7-1993 by the respondents but the

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Applicant;

Respondents.

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K-M/A-04586

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applicant alleges that the respondents deliberately withheld the amounts of pension, commuted value of 1/3rd pension and gratuity, which caused financial harassment to the applicant. The respondents in their counter reply have tried to justify withholding of the aforesaid amounts on the plea that before 30-6-1993, the date of superannuation of the applicant, a letter dated 15-6-1993 was received by the respondents from the G.M. (Vigilance), Gorakhpur stating that a letter had been received from the C.B.I. indicating that a major penalty action against the applicant had been recommended and as such, the applicant's DCRG had been withheld in terms of para 316(1) of Manual of Railway Pension Rules, 1950/2308A of Indian Railway Establishment Code, Volume II. It has also been stated in the counter reply that the provisional pension has been sanctioned to the applicant and in view of the sanction of provisional pension, no commutation of pension is permissible.

3. The learned counsel for the applicant has stated that no provisional pension is being paid to the applicant. He has further submitted that the provision of para 316(1) of MRPR 1950/2308A of IREC Vol. II is not applicable to the instant case since contrary to the requirement of the said provision no departmental or judicial proceeding has been instituted or is continued against the applicant who has retired on attaining the age of superannuation. It is not disputed that no charge-sheet has been issued to the applicant either in a departmental proceeding or in any judicial proceeding so far. The learned counsel for the respondents has however, submitted that major penalty action has been recommended by the CBI., but mere recommendation of major penalty, action against the applicant does not amount to institution of a departmental proceeding or judicial proceeding which is the condition precedent for applicability of para 316(1) of MRPC 1950/2308A of IREC Vol. II relied upon by the respondents. A departmental or judicial proceeding can be said to be instituted only when a charge-sheet is issued or filed against the applicant. In the instant case no charge-sheet has been issued and as such, withholding of pension, commuted value of pension and DCRG by the respondents is arbitrary and illegal, being without authority of law.

4. Respondents are directed to pay to the applicant amounts of commuted value of pension and DCRG with interest @ 15 per cent per annum from 1-7-1993 till the date of payment. The respondents are also directed to pay the payable amount of pension accruing to the applicant every month since after the date of superannuation with interest @ 15 per cent annum till the date of payment and to continue to pay further pension month by month in future. All payments due to the applicant in pursuance of the directions made as hereinabove shall be made within a period of one month from the date of receipt of this order.

5. This application is accordingly allowed with costs. The counsel's fee would be Rs 500/- which shall be paid by the respondents.

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the impugned order of transfer has not been made in good faith and to meet the exigencies of service alone. If the services of a senior Engineering Assistant at Port Blair was indispensable, the respondents would not have retransferred Mr Ravindran. Therefore, we are of the view that the impugned orders are liable to be quashed.

6. In the result, for the reasons mentioned in the foregoing paragraphs, we allow the application, quash the impugned orders dated 11-8-1989 and 27-10-1989 passed by the Chief Engineer, South Zone, Madras as arbitrary and illegal and direct the respondents to allow the applicant to resume his duties as Senior Engineering Assistant, Doordarshan, Trivandrum. We direct that this order should be complied with within a period of 7 days from the date of communication of this order. There is no order as to costs.

[1991] 15 Administrative Tribunals Cases 83

Central Administrative Tribunal, Calcutta

(BEFORE A. P. BHATTACHARYYA, JUDICIAL MEMBER AND P. K. MALLICK, ADMINISTRATIVE MEMBER)

BARINDRA KUMAR GHOSH .. Applicant ;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

T.A. No. 131 of 1988, arising out of C.O. No. 148(w) of 1985,
decided on April 4, 1990

Punishment — Natural justice — Hearing — Government money allegedly lost from applicant's custody — Recovery of, merely on the basis of a fact finding enquiry without holding enquiry under Rule 9 — Held, bad — Departmental enquiry — Railway Servants (D & A) Rules, 1968, Rule 9 (Para 5)

N. Gopalakrishna Naidu v. State of M. P., AIR 1968 SC 240, followed

Connected references : S. Malik: SUPREME COURT (L & S) DIGEST, Vol. 1, §§[20579] & [20580] ; B. R. Ghaiye : LAW AND PROCEDURE OF DEPARTMENTAL ENQUIRIES (Third edn.), Chap. 3, Note 8(k), pp. 272-73

Retiral Benefits — Death-cum-retirement gratuity — Competence to order recovery from — Fact finding enquiry held after expiry of re-employment — Committee holding such enquiry, held, had no jurisdiction to order recovery from death-cum-retirement gratuity, of loss allegedly caused to government during re-employment — Railway Pension Rules, 1950, Rules 323 & 315 — Re-employment (Para 7)

Application succeeded H-M/6936

Advocates who appeared in this case :

Ashok Ganguly, Counsel, for the Applicant ;
M.S. Banerjee, Counsel, for the Respondents.

The Judgment of the Bench was pronounced by

A.P. BHATTACHARYYA, JUDICIAL MEMBER—Applicant Shri Barindra Kumar Ghosh filed a writ application in the Hon'ble High Court at Calcutta against the Union of India, represented by the General Manager, Eastern Railway and four others, which by operation of Section 29 of the Administrative Tribunals Act, 1985 came to this Tribunal by way of transfer for disposal.

2. The applicant entered railway service on 3-1-1945 and retired on superannuation under the Eastern Railway on and from 1-8-1979. From 25-4-1980 he was reappointed as a Rest Giver Assistant Station-master at Kalinarayanpur within the Eastern Railway. Such re-employment was terminated on 24-4-1981. The applicant states that prior to his retirement his D.C.R.G. was determined as per rules. He states further that on 26-1-1981 he had to overstay in his duty at Santipur railway station as his reliever had not turned up. At that time it was detected that four sealed bags containing an amount of Rs 10,344.41 paise from the iron safe of this station were missing. The applicant immediately reported the matter by wire to all concerned. An investigation into the matter was conducted by the G.R.P.S. and Railway Protection Force at Ranaghat. Ultimately, final report was submitted by them. To make a probe into the incident a fact finding enquiry was held and it was decided by the enquiry committee that the aforesaid amount which was found missing from the applicant's custody would be recovered from his D.C.R.G. The applicant challenges that order as illegal. According to him, without giving him any opportunity to know the allegation against him and to show cause such decision could not be taken lawfully. In filing the application the applicant has prayed for quashing the decision of the fact finding enquiry committee dated 1-7-1983.

3. The application has been contested by the respondents. It is the main contention of the respondents that when the amount had been stolen from the custody of the applicant he would be liable to make good the loss caused to the government. According to them, a fact finding enquiry was held by senior officers of the railway before whom the applicant had admitted that for his negligence the four cash bags containing the amount of Rs 10,344.41 paise were lost from his custody.

4. The short question to be decided in this case is whether the decision of the fact finding enquiry can be sustained.

5. Admittedly, the applicant retired from railway service under the Eastern Railway on superannuation on 1-8-1979. It is also admitted that he was re-employed for a period of one year as a Rest Giver Assistant Station-master from 25-4-1980 to 24-4-1981. There was an incident on 27-1-1981 at Santipur railway station during the duty hours of the applicant when four sealed cash bags containing the amount of Rs 10,344.41 paise were missing. A fact finding enquiry was held and the committee holding the enquiry passed an order on 1-7-1983 to the effect that the said amount would be recovered from the D.C.R.G. of the applicant. Considering the facts and circumstances of the case as mentioned above we have no hesitation to hold that such a decision cannot at all be sustained.

6. We have already got that the applicant was re-employed for a period of one year from 25-4-1980 to 24-4-1981. The incident when the four cash bags containing the aforesaid sum were found missing happened during the tenure of service of the applicant as a railway servant and during his duty hours.

It remains unexplained as to why without starting a departmental enquiry as per Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 a fact finding enquiry was held and the applicant was held responsible for the said loss. We cannot but deprecate this sort of short cut method. Admittedly, the applicant was never given any opportunity of showing cause against the punishment proposed to be inflicted on him. In the fact finding enquiry, the applicant got no opportunity to cross-examine the witnesses examined. Such being the position, we cannot but hold that by holding such an enquiry the whole responsibility could not be cast on the applicant. It has been held by the Supreme Court in the case of *N. Gopalakrishna Naidu v. State of Madhya Pradesh*¹, that in such a case the very nature of the function implies the duty to act judicially. In a case where an opportunity to show cause against the action proposed is not afforded the order is liable to be struck down as invalid on the ground that it is one in breach of principles of natural justice. We have already mentioned that the applicant did not get the least opportunity to defend his case and as such the order passed by the fact finding enquiry committee cannot at all be sustained.

7. There is another aspect of the matter. The incident in question happened on 27-1-1981. The fact finding enquiry was held long after the expiry of the period of the applicant's re-employment i.e. 24-4-1981. By an order passed on 1-7-1983 (vide Annexure 'A' to the application) it was decided by the fact finding enquiry committee that the sum of Rs 10,344.41 paise would be recovered from the D.C.R.G. of the applicant. In our opinion the fact finding enquiry committee had no jurisdiction to pass such order. It has been contended by the side of the respondents that under the authority of Rule 323 of the Railway Pension Rules, 1950 such an order for recovery of the amount of loss caused to the government can be passed. We are unable to accept this contention. It is needless to mention that an order for recovery under the aforesaid rules can only be made in terms of Rule 315 which authorises only the President of India to order for recovery from the retiring benefits of a government servant of any pecuniary loss caused to government. The impugned order was neither passed by the President nor was with his consent. Such being the position, we have no hesitation to conclude that the order passed by the fact finding enquiry committee is wholly illegal and cannot at all be given effect to.

8. In view of our findings made above, the application succeeds. We allow this application making, however, no order as to costs. The decision of the fact finding enquiry committee dated 1-7-1983 as shown in Annexure 'A' to the application be hereby quashed. Respondents are directed to release the entire D.C.R.G. due to the applicant within 90 days from this date as per rules.

1. AIR 1968 SC 240.