

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 207 of 94  
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Transfer Application No:

DATE OF DECISION: 1.12.1994

G M Rateshwar

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Advocate for the Petitioners

Mr. K B Talreja

Versus  
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\_\_\_\_\_  
Respondent

U.O.I. & Ors.

\_\_\_\_\_  
Advocate for the Respondent(s)

Mr. S.C. Dhawan

CORAM :  
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The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

*[Signature]*  
V.C.

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESCOT ROAD, BOMBAY-1

O.A. No. 207/1994

Gurdat Mulchand Rateshwar

..Applicant

V/s

Union of India & 2 ors.

..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

Appearance:

Mr. K.B. Talreja  
counsel for the applicant

Mr. S.C. Dhawan,  
Counsel for the respondents

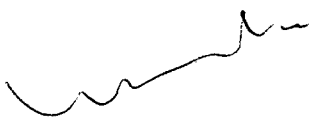
ORAL JUDGMENT:

DATED: 1.12.1994

(Per: M.S. Deshpande, Vice Chairman)

By this application the applicant seeks a direction to the respondents to pay Rs. 45,000/- which has been withheld together with interest @ 18% from 1.9.1992.


2. The applicant was a Railway employee and retired on 31.8.1992 on superannuation and was paid settlement dues to the extent of Rs. 1,39,453/- on 31.8.92 and a sum of Rs. 45,000/- was not paid to him and was withheld out of the total amount of Rs. 1,84,533/- which was due to the applicant. According to the applicant the respondents were not justified in withholding this amount and he therefore after an unsuccessful representation approached the Tribunal.



3. The respondent's contention is that while the applicant was working as Chief Goods Supervisor during the period from May 1991 to November 1991 has collected less freight charges amounting to Rs.2,21,177/- and was given the Error Sheet dated 20.4.1992 by the Accounts Office. The applicant wrote letters dated 8.6.92 and 15.6.92 admitting that the amount was not recovered. Respondents by the letter dated 7.8.92 called upon the applicant to clear the debit of Rs.2,21,177 which was outstanding against him and since this was not done the amount of Rs.45,000/- was withheld.

4. The applicant by his rejoinder stated that the debits ordinarily have to be raised against the station not more than six months after the month of accountable transaction. In the present case wagons had been booked from Prachi Station of Western Railway and Bagalkot-MG station of South Central Railway and while the consignments were being loaded axle load restriction was kept in view, and the raising of the debit was wrong and irrational. In fact out of the amount of Rs.2,21,177/- the not admitted debits to the extent of Rs. 1,44,372/- had been cleared leaving the sum of Rs.72,519/- against Prachi Road Station and Rs.4,286/- against Bagalkot Station and further the credit advices had been received from the office of DRM Bombay V.T. It was urged that the applicant was not responsible for the short realisation if any.

5. Annexure A to the rejoinder which is the letter dated 3.8.92 written by one Prem Narayan, Area Manager shows that an enquiry had been made and it revealed that the forwarding station Prachi Road on Western Railway was not in receipt of any circular or information, which was the consequence of deletion of Rule no.163, dated 27.6.92 which laid restrictions from 1.5.1991, and therefore the loading as well as charging was done as per rules for axle load restriction in force. The staff from NGSM had stated in his letter that no circular or instruction in this regard was noticed by him and as such he had levied the same charges and no undercharges were recovered at the time of delivery. In para 6 of the letter it is mentioned that non-compliance or non-implementation of certain rules by the staff cannot be the responsibility of an individual person but it amounts to a joint responsibility of the station concerned, and it was suggested that the debits raised against these cases may be treated as 'Non-Admitted Debits' against the station and may be cleared jointly by the station only. In para 7 it is mentioned that the CGSR-NGSM vide his letter dated 3.7.92 had fixed the responsibility against the applicant for non-collection of the undercharges which is incorrect as such matter cannot be treated as default of an individual as the station concerned is responsible for such cases as a whole. It was added that since the applicant was due to retire on superannuation on 31.8.92 this case should be decided earlier i.e., before superannuation of the employee.



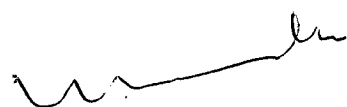
6. No sur-rejoinder was filed in answer to the rejoinder, but the Id. counsel for the respondents referred to the letter dated 7.8.92 in which it was mentioned, without referring to the letter dated 3.8.92, that no one could be permitted to derive benefit from ignorance of rules and that the rules should be followed and the amount recovered.

7. The Id. Counsel for the respondents urged that the Area Manager (WB) who wrote the letter dated 3.8.92, Annexure A to the rejoinder, did not have the authority to absolve the applicant. There is no sur-rejoinder raising this contention and no ~~where in the~~ rules <sup>was</sup> ~~it is~~ pointed out on the basis of which it could be said that the Area Manager could not have made the observation ~~as~~ he did, as extracted above from paras 6 and 7 of the letter dated 3.8.92. That letter clearly shows that the applicant was exonerated individually and his retiral benefits had to be decided on that basis. The Id. counsel ~~further~~ urged that even if it was the responsibility of the station concerned, in the present case the applicant could not have escaped the responsibility because he was part of the station staff. The Id. Counsel for the respondents was however not in a position to state whether any enquiry had been initiated for ascertaining the extent of the liability which the applicant would have to share in respect of the joint responsibility of the station staff since 7.8.92 when the letter which was annexed to the reply was written. Clearly the applicant's share of liability could have been ascertained only if such an enquiry was to have been initiated. It seems the officers were <sup>content in</sup> ~~contented~~ by merely writing letter

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dated 7.8.1992 without taking up any follow up action. On the basis of the material on record it is, therefore, difficult to ascertain the contention that there were justifiable reasons for withholding the amount of Rs.45,000/- from the gratuity which was payable to the applicant.

8. The application is allowed. The respondents are directed to pay the applicant Rs.45,000/- together with interest at the rate of 7 per cent from 1.12.1992 and at the rate of 10 per cent after expiry of nine months thereafter until the amount is paid to the applicant. The amount of Rs.45,000/- together with interest shall be paid to the applicant within three months from the date of communication of this order together with costs of this proceeding which is quantified at Rs.500/- (Rupees five hundred only).



(M.S. Deshpande)  
Vice Chairman