

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No. 577/95.

Pronounced, this the 5th day of Sept 1996.

Coram: Hon'ble Shri M.R. Kolhatkar, Member(A).

S.A. Shaikh,
C/o. Asim Ansari,
Advocate, 11, Aga Khan Bldg.,
1st Floor, R.No.5,
Morland Road, Agripada,
Bombay - 400 011.

... Applicant.

(By Advocate Shri A. Ansari)

V/s.

1. Union of India, through
General Manager,
Western Railway, H.Q. Office,
Churchgate,
Bombay - 400 020.
2. The Divisional Railway Manager,
Western Railway, Bombay Division,
Divisional Office, Bombay Central,
Bombay - 400 008.
3. The Manager,
Central Bank of India,
Malad (West) Branch,
Bombay - 400 062.

(By Advocate Shri A.L. Kasturey, Counsel)

O R D E R

¶ Per Shri M.R. Kolhatkar, Member(A) ¶

The applicant retired as Head Telephone Operator of Western Railway on 31.1.1990. He challenges the letter dt. 27.3.1991 which seeks to adjust overpayment of Rs.12,326.30 on account of 188 days Leave on Average Pay (LAP) availed by the applicant during the years 1985, 1986 and 1989. After adjusting an amount of Rs.1,973/- from P.L., Bonus and Rs.1000/- from DCRG, the balance of Rs.9,353.30 is sought to be recovered from him, in the absence of lumpsum payment,

from the Relief on Pension. The grounds for challenge are that in terms of Para 514 of Chapter 5 of the Indian Railway Establishment Code, Volume - I, Respondents are expected to sanction Leave only after verification of Leave at credit. Para 514 reads as below :

"514. Verification of title to leave :

The amount of leave due to a railway servant is the balance leave at the credit in the Leave Account. No leave shall be granted to a railway servant until a report regarding its admissibility has been obtained from the authority maintaining the record of leave account."

The second ground for challenging the impugned order is that according to para 323 (iv)(b) a time limit of six months in respect of non-commercial debits is laid down in respect of recoverable dues. The same reads as below :

"323(iv)(b)

Efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement of the Railway servant concerned. In any case, it should be presumed that there is no claim against a Railway servant if none is made after his retirement within the period indicated below :

15 months, if commercial debits are involved; and

6 months, if commercial debits are not involved.

In respect of dues on account of rent etc., of Government accommodation, the period of 15 months/6 months shall reckon from the date of retirement of the employee or the date of vacation of the Government accommodation, whichever is later. After the lapse of this period the cash deposit or surety or gratuity withheld for Government dues will be released. However, the dues themselves will not lapse and will be recoverable through legal procedure."

2. The applicant has raised other grounds, but they are not material.

3. The respondents have opposed the O.A. The first submission is that the O.A. is time barred. The Memorandum was issued on 27.3.1991 and the applicant (had) sent a legal notice on 15.4.1991 and therefore, applicant ought to have approached the Tribunal in good time, when he did not receive a reply. The contention of the applicant is that he was shocked by the order of recovery and thereafter he was seriously ill. In support of his contention he has produced Medical Certificates at (Annexure A-3). It appears to me that to the extent the amount of overpayment is being recovered from Pension/Relief on Pension and ~~which~~ it affects the right of the Pensioner to receive the correct amount of Pension month after month; ^{therefore} I am not inclined to dismiss the O.A. on the point of limitation and propose to consider the same on merit. The respondents do not dispute the provisions of para 514 of the Railway Establishment Code Volume - I. But it is contended by them that the provisions could not be complied with, because the applicant was working with an Executive Authority viz. Divisional Signal and Telecommunication Engineer and posted at Churchgate Station. Whereas, the leave sanctioning authority is DSTE, the Leave Records are maintained by the Personal Branch of the Division Office, hence the discrepancy

arose and the excess leave was sanctioned. Moreover, the applicant was himself was working in the Supervisory capacity, therefore, he ought to have inquired about the balance leave before availing of the same. Regarding para 323 (iv)(b) Respondents pointed out that the dues do not lapse and are recoverable through legal procedure.

4. Arguments based on the submissions of the Respondents regarding the circumstances under which discrepancy arose do not impress me. Whatever might have been the reasons for discrepancy, it was necessary for the respondents to verify the discrepancy before the applicant retired and before his settlement dues are paid. Moreover, in terms of para 323 it was open to them to recover the overpayment from Gratuity ^{etc. within 6 months} / this they did not do. No doubt the respondents are entitled to recover the dues through legal procedure, but the legal procedure does not cover recovery from the dues payable to the Government employee.

5. In view of this discussion, I am of the view that the action of the Respondents to recover the amount of Rs.12,326.80 vide Memorandum dt.27.3.1991 is not legally valid and is not in accordance with the applicable Rules and is therefore liable to be quashed. The Respondents are directed to refund such

quantum of the amount as has actually been recovered from the employee within two months of the communication of the order. There will be no order as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

B.