

24

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.14 of 1990

Date of order: 23-8-1990.

BETWEEN

Ch.Venkateswara Rao

... APPLICANT

A N D

1. Union of India per General Manager,
South Central Railway, Secunderabad.
2. Divisional Engineer (Doubling),
S.C.Rly., Vijayawada.
3. Senior Divisional Personnel Officer,
S.C.Rly., Vijayawada.
4. Labour Court, Guntur, rep. by
its presiding officer.

... RESPONDENTS

APPEARANCE:

For the applicant

: Shri G.Ramachandra Rao, Advocate

For the Respondents 1-3

: Shri N.R.Devaraj, Addl.SC for Rlys.

CORAM:

The Hon'ble Mr. B.N.Jayasimha, Vice-Chairman

and

The Hon'ble Mr. D.Surya Rao, Member (Judicial)

...2.

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE

The applicant herein is a retired Railway employee. He retired on 28.2.1982 as Head Clerk, Stores (Deposit Works), Bitragunta, South Central Railway. He states that he is eligible for pension and Death-cum-retirement Gratuity consequent on his retirement. It is alleged that the respondents have not fixed his pension nor paid the applicant DCRG dues. It is also alleged that he was not paid the provident fund accumulations nor leave salary in lieu of encashment. The respondents 2 and 3 have not chosen to pay these pensionary benefits inspite of several representations. The applicant thereupon filed an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 before the 4th respondent claiming Rs.5,000/- from provident fund, Rs.1080/- towards unpaid salary for the month of February 1982, Rs.2250/- towards anticipatory pension @ Rs.450/- per month for five months and a sum of Rs.17,000/- towards DCRG. He also claimed Rs.6,480/- towards leave salary in lieu of encashment of leave and Rs.300/- towards arrears of dearness allowance. ^{The Industrial Tribunal} ~~It was~~ ^{his application} dismissed on the ground that it was premature as the departmental enquiry has been pending against the applicant. The writ petition filed against the order of dismissal was also ^{observed that it is open to} rejected but with an opportunity to the applicant to approach this Tribunal under (Administrative Tribunals Act, 1985). ^{thereupon filed the present application and} The applicant states that the provident fund and the DCRG cannot be withheld under any circumstances. He further states that a Railway servant on retirement is also entitled to pension unless it is wholly or partly withheld in pursuance of an order passed by competent authority as to the loss caused

to the Railways on the ground of grave misconduct. It is stated that the criminal cases against the applicant resulted in his acquittal and that in ^a department enquiry charges were framed to the effect that a sum of Rs.87,039/- loss was caused by the applicant. The applicant states that he denied the charges levelled against him and that the departmental enquiry which was started on 22.10.1980 must be deemed to have been dropped or closed since no action was taken after examining the witnesses. He contends that under Para 2308 of Indian Railway Establishment Code, the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specific period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct during the period of his service, vests with the President of India. In the instant case, there was no order culminating in the departmental proceedings against the applicant as to any pecuniary loss caused to the Railways so as to withhold payment towards PF, DCRG and Pension. Failure to pay the amount due to the applicant towards DCRG is also contrary to the provisions of Para 1712 of Indian Railway Establishment Manual. Since the criminal cases launched against the applicant viz., C.C.No.1/1984, CC No.99/85 ended in his acquittal as a result of an appeal preferred to the High Court, it is stated that the respondents are bound under law to pay the retirement benefits due to the applicant. The applicant, therefore, filed this application for a direction to the respondents to forth with pay the commuted pension, Rs.1080/- towards unpaid salary for the month of February 1982, a sum of Rs.17,000/- towards DCRG and a sum of Rs.6480/- towards leave salary in lieu of encashment of leave and Rs.300/- towards arrears of Dearness Allowance with interest on the

amounts due @ 12% per annum from the date when they become due till payment.

2. On behalf of the Respondent-Railways, a counter has been filed. It is stated that the Senior D.P.O., Vijayawada, by letter dated 26-2-1982 has issued order not to pay any amount except the Provident Fund contribution of the applicant since during stock verification it was found that huge amounts of shortages were found. While reiterating that the applicant's claim under Section 33-C(2) of the I.D.Act filed before the Labour Court, Guntur claiming an amount of Rs.32,110/- towards retirement benefits, has been rejected, it is contended that the said rejection was on the ground of departmental enquiry pending against the applicant. It is stated that the departmental enquiry is still pending and under para 323 of the Manual of the Railway Pension Rules, 1950, it is permissible to make recovery of government dues from the D.C.R.G. without obtaining the consent of the employee. The pension due is being paid regularly to the applicant. It is stated that the payment of retirement benefits were withheld as the departmental enquiry was pending for loss of stores. It is further alleged that a major penalty charge-sheet was issued on 22-10-1980 for shortage of stores valued at Rs.87,039/- and the same was pending at the time of his retirement, i.e. 28-2-1982. It is further stated that the DAR enquiry which was commenced in the year 1982, was adjourned to 19-2-1982 and subsequently the last adjournment was 23-1-1983. The applicant, on some plea or the other, did not attend

8

the enquiry. Thereafter, the Enquiry Officer was promoted and hence the disciplinary authority appointed another enquiry officer by his letter dated 6-5-1983. This enquiry officer felt that he should go through the records before commencing the enquiry. It is further alleged that a criminal case was filed for the said shortages of stores worth Rs.87,039/- before the Special Judge Court, Visakhapatnam viz. C.C.No.99/85 and that the applicant was convicted and awarded punishment of two years R.I. But in appeal, the High Court of Andhra Pradesh gave the applicant the benefit of doubt and acquitted the applicant. Consequent to the judgment of the High Court, the amount of Rs.87,039/- towards the shortage of stores, has been written off. It is alleged that in addition to the above amount, the applicant is responsible for the shortage of material to an extent of Rs.28,178.55 and the applicant could not give a satisfactory explanation in regard to this shortage. It is contended that no charge-sheet need be issued in regard to these shortages. It is contended that this sum of Rs.28,178.55 was set off against the retirement dues to the tune of Rs.23,133.78 and the balance of Rs.5,044.77 due to the department was written off on 21-2-1990. It is, therefore, contended that while pension is being paid regularly to the applicant, the retirement dues payable to the applicant, have been set off for shortages of stores. The details of this sum Rs.23,133.78 being retirement dues set off against shortages, have been furnished as constituting

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D.C.R.G., an amount of Rs.14,674.25, encashment of leave salary Rs.7,301.25 and the salary for the month of February 1982 Rs.1,158.28. It is this sum of Rs.23,133.79 which has been set off against the amount of Rs.28,178.55 allegedly due by the applicant towards shortages.

3. We have heard the arguments of Shri G.Ramachandra Rao, the learned counsel for the applicant and Shri N.R. Devaraj, additional Standing Counsel for the Railways on behalf of the Respondents 1 to 3.

4. It is clear from the counter of the Railways that the initially a shortage of a sum of Rs.87,039/- was found either misappropriated or due by the applicant. Both a criminal case and a departmental charge-sheet were initiated against him. The criminal case ended in his acquittal while no action has been taken in regard to the departmental enquiry. Finally, this sum of Rs.87,039 was written off on 9-2-1990. In addition to this shortage, a further sum of Rs.28,178.55 is alleged to be due by the applicant since it constituted shortages as per stock verification on various dates, as also the shortages found at the time of retirement of the applicant as he left without handing over the stores. It is admitted in the counter that no enquiry was held and that no charge-sheet has been framed to determine or hold the applicant liable for these shortages to the tune of Rs.28,178.55.

Shri Devaraj, the learned standing counsel for the Department, states that the shortage was detected while the applicant was in service. He contends that it is open to the Railways to effect recovery of this

9

sum without any notice, without any enquiry and even without the consent of the employee. He relies upon para 323 of the Manual of Railway Pension Rules 1950 which corresponds to Rule 1712 of the Indian Railway Establishment Manual. Before dealing with para 323 it ^{would be} ~~is~~ also relevant to refer to para 315 of the Indian Railway Pension Rules 1950. This rule which corresponds to Rule 9 of the Central Civil Services (Pension)

Rules, permits the President to withhold or withdraw the pension or any part of it whether permanently or for a specified period if in a departmental or judicial proceedings a pensioner is found guilty of grave misconduct or negligence. As in the case of Rule 9 of the C.C.S. (Pension) Rules, if a departmental or judicial ^{grave misconduct or negligence} proceedings were commenced for such losses while the railway servant ^{was} ~~is~~ in service, such proceedings shall be deemed to be a proceedings for the purpose of

Rule 315. Hence, it is clear that for any loss caused or grave misconduct or negligence committed during the service of railway employee, ^{an employee} he can be proceeded against by way of such stoppage or recovery from his pension.

^{If the disciplinary had been} Since proceedings ~~if~~ commenced while he was in service ^{such proceedings are} ~~is by~~ ^{by a fiction} deemed to be a proceedings under Rule 315 ~~and~~ ^{for the purpose of stoppage or recovery of from pension} can be continued even after his retirement.

In the instant cast, admittedly no judicial or departmental proceedings have been commenced against the applicant for the loss of Rs. 28,178.55 detected while he was in service. Hence it is clear that no proceedings for recovery of this amount is legally permissible under Rule 315 of the Railway Pension Rules.

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of the employee, it follows that no enquiry need be held. This contention is, in our view, wholly untenable. Rule 6(3) of the Railway Servants (Discipline and Appeal) Rules provides for recovery of losses caused, by way of punishment. If as in the instant case the recovery is sought to be made for losses for which the applicant-employee is responsible it would clearly follow that such a recovery amounts to a punishment within the meaning of Rule 6(3) of the Railway Servants (Discipline and Appeal) Rules and can be recovered only after a notice and holding an enquiry in accordance with the D&A Rules. ^{Consequently &} ~~if~~ as a result of such an enquiry ^{if} it is established that the employee was responsible for the loss or ^{if} fraud and negligence is established, the question of consent would not obviously arise. Reference to recovery without consent is only after establishing the liability of the employee and not by arbitrarily determining or holding that an employee has caused the loss. The interpretation sought to be put to Rule 323, para (2) is, in our view, misconceived. We would accordingly hold that the recovery sought to be made from the applicant pursuant to the order of the CAO/C/SC No.W.Con.480/VI/XI dated 21-2-1990 by setting off the amount allegedly due by the applicant from his terminal benefits to the tune of Rs.23,133.78 ps. cannot be sustained. The plea of the applicant that withholding of terminal benefits due to the applicant is illegal and not warranted by law has clearly been made out.

5. So far as the relief is concerned, the applicant claims (i) commuted pension, (ii) Rs.1080/- towards unpaid salary for the month of February 1982, (iii) Rs.17,000/- towards D.C.R.G., (iv) Rs.6,480/- towards encashment of leave and (v) Rs.300/- towards arrears of D.A. The Respondents have admitted that they have withheld in all a sum of Rs.23,133.78 ps. towards items (ii) to (iv) above. They have also stated that they have been paying the pension regularly. Hence the respondents are liable to pay the applicant commuted pension due to the applicant and the sum of Rs.23,133.78 ps. illegally withheld. The applicant would also be entitled to interest at 12 per cent per annum on the ^{of Rs.23,133.78 ps.} latter sum from the date of retirement till the date of actual payment.

6. The O.A. is allowed accordingly, but in the circumstances there would be no order as to costs.

B.N. Jayasimha
(B.N. Jayasimha)
Vice-Chairman

D. Surya Rao
(D. Surya Rao)
Member (Judl.)

Dated: 23rd day of August, 1990.

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[Signature]
Deputy Registrar (Judl.)

To

1. The General Manager, Union of India,
S.C. Railway, Secunderabad.
2. The Divisional Engineer (Doubling), S.C. Railway, vijayawada.
3. The Senior Divisional Personnel Officer, S.C. Railway,
vijayawada.
4. The Presiding Officer,
The Labour Court, Guntur.