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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.828/97

dt. 31-3-1999

Between

KBP. Chandrasekhar Rao : Applicant

and

1. Union of India, rep. by  
its General Manager,  
SE Rly., Garden Reach  
Calcutta 43

2. Sr. Divnl. Engr.(Co-ordn.)  
SE Rly., Waltair Division  
Visakhapatnam

3. Divnl. Rly. Manager (Engn)  
SE Rly, Visakhapatnam-4

4. Divnl. Engr. (Central).  
SE Rly., Waltair Divn.  
Visakhapatnam

: Respondents

Counsel for the applicant : P.B. Vijyakumar  
Advocate

Counsel for the respondents : V. Bhimanna  
SC for Railways

Ceram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl)

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## Order

Oral order (per Hon. Mr. R. Rangarajan, Member (Admn.))

Heard Sri P.B. Vijayakumar for the applicant and Sri V. Bhimanna for the respondents.

1. The applicant retired from service as Chief IOW, Araku, South East Railway. A chargesheet was issued to him <sup>on</sup> 24-8-1992. <sup>and</sup> Articles of charges ~~one~~ indicated as below:

Article-I: That the said Sri KBPCS Rao, Chief IDW/ARK while functioning as such during the period from 16-9-1988 till date has committed an act of misconduct inasmuch as he failed to enter final measurements relating to 30 bills in the measurement book and failed to prepare the final material statement against each work order.

Article-II: That the above said Sri KBPCS Rao Chief IDW/ARK while functioning as such at the aforesaid station during the period from 16-9-1988 till date has committed grave misconduct inasmuch as he issued 18,675 bags of cement to the contractor Sri GS Raju for the protection works of Bridge No. 318 between KVLS SMLG from time to time as against 17753 bags as per the work Order No. GSR/RW/Dr. No. 318/KVLS-SMLG/1, dated 5-8-1990. In other words Sri KBPCS Rao has issued excess quantity of cement bags to the tune of 922 bags to the contractor Sri GS Raju.

Article III: That the aforesaid Sri KBPCS Rao, Chief IDW/ARK while functioning as such during the period from 16-9-1988 till date has committed an act of serious misconduct inasmuch as he issued 510 bags of excess cement to M/s Sivasai Constructions against work Orders Nos. Zc/90/ARK/SSC/29, dated 11-1-1991, Zc/90-91/ARK/SSC/23, dated 24-12-1990, ZC/90-91/ARK/SSC/31, dated 11-1-1990 and ZC/91/SSC/9 dated 7-11-1991.

2. It is stated that chargesheet <sup>was</sup> is closed by order No. WEX/D&A/CIOW/KBPCSR, dated 9-1-1995. Subsequently, the applicant filed OA.1273/93. Probably that OA was filed for payment of his final settlement dues. As the direction in the OA was not complied with the applicant filed CP.19/96 in that OA

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for non-implementation of judgement which was also disposed of. In the order in that CP the Bench of this Tribunal observed as follows :

"The respondents are directed to intimate the applicant the reasons for which it is not possible for them to comply with the direction made in the order on the OA, and take a decision in the matter after giving opportunity to the applicant to offer his explanation. The decision taken thereafter be intimated to the applicant. The remedy of the applicant in the event of being aggrieved by that decision will be open to be adopted in accordance with the law."

3. Thereafter also the applicant filed OA.291/97 questioning the impugned order No.WEX/9/CC/1273/93/CP/19/96 dated October, 1996. In the impugned order it is stated as follows:

"After duly considering your explanation and thorough examination on various aspects, the administration has decided that you are responsible for the shortages shown in the show-cause notice. The total cost of shortages worked out to Rs.1,06,696.52."

4. The applicant filed his appeal and that appeal was disposed of by impugned order No.WEX:9/CC/OA.291/97 dated 14-5-97 (Annex.1 to OA). Para-2 of this order is relevant which reads as below :

"The D&A action taken against you is for the specific items of transaction dealt by you, which has been closed. The clearance certificate has not been issued after closing of D&A since you have failed to offer your remarks for the SVRs and accounts note thereon."

5. This OA is filed to set aside the impugned order No. WEX/9/CC/OA.291/97 dated 14-5-97 by Respondent-3 by holding the same as arbitrary, illegal and direct the respondents to release the withheld amounts relating to Leave salary, Gratuity, and commutation with attendant benefits like interest etc.

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6. No reply has been filed in this OA. However, the learned counsel for the respondents submitted that the applicant has not submitted his remarks on the stock verification report and accounts note thereon and hence the clearance certificate has not been issued after close of disciplinary proceedings. If the applicant had submitted his remarks on SVR and accounts note thereon the same would have been examined and a final decision would have been taken. In view of non-compliance by the applicant in submitting his <sup>in case</sup> remarks, the final settlement dues <sup>leave salary, gratuity</sup> <sub>are</sub> not released. Even now if he submits the same his case will be considered in accordance with law.

7. The applicant relies on Bachni Devi Vs. Union of India and others (9/96 Swamy's News S-765 (Patna) date of Judgement 13-2-1996, and submits that in a similar case the respondents are directed to arrange payment of DCRG amount to family members as per rules along with interest @ 12%.

8. But it is stated that for withholding his final settlement dues appropriate action under D&A rules should have been taken well in time. This was not done. Hence his final settlement dues cannot be withheld.

9. Relying on the judgement in Gurubachan Singh Vs. Union of India and others 12/96 Swamy's News 1016 (Calcutta) date of judgement 6-5-1996) the applicant submits that the authorities should not take undue time to assess recoverable dues from a retiree; all efforts should be made to assess and adjust the dues within a period of three months from the date of retirement. Similar is the view expressed in 1987 (3) ATC 441 (D. Meher Benorjee vs. Union of India).

10. The first contention that withholding of final settlement dues can be done only after initiation of D&A Rules. This principle is a valid principle. For that the applicant should submit his views on SVR and accounts notes to check whether

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there is any need to initiate D&A Procedure. If there is no need the final settlement dues can be released. That is why the respondents in the impugned order dated 14-9-1997 had asked him to submit his remarks for the SVRs and accounts note thereon. That the clearance certificate is not available in view of the fact that he failed to offer his remarks for SVRs and accounts notes. Even now it is not late. The applicant can submit his remarks on the SVRs and accounts notes thereon with details. When he submits his details he can also request the authorities to call him for personal interview. If such an action is taken the applicant is very likely to get the relief asked for in this OA. Unfortunately the applicant did not take any initiative to submit his remarks on SVRs and Accounts notes. Thus if he has not availed the available opportunity he cannot claim that he is to be paid final settlement dues. Even now he can submit his remarks if he had not done so earlier. If he had already submitted his remarks he may now furnish a copy of those letters containing his remarks to the respondent authorities to enable them to take action. If such remarks are received a firm decision should be taken within a period of 60 days from the date of receipt of remarks from the applicant and decide this issue in accordance with law.

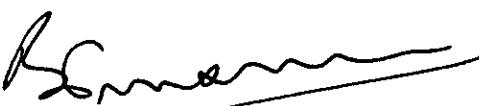
11. The next contention of the applicant is that all recoverable dues be estimated and adjusted within three months from the date of his retirement. It is a very





laudable proposition as far as a delinquent employee is concerned. But the interests of the Department cannot be thrown to winds. The materials are procured from the public money. That public money cannot be allowed to be fretted away by not initiating action if the materials entrusted to an employee is not returned when he leaves that post. The respondents have not taken adequate action to settle the case of the applicant in time. To that extent they are responsible. Hence the respondents should pay an amount of Rs.1,000/- to the applicant within a period of one month from the date of judgment for the delay in initiating the proceedings for getting necessary reply from the applicant. Even then the case of the applicant can be decided only after he submits his remarks on SVRs and accounts to the respondents as required.

12. With the above directions the OA is disposed of.

  
(B.S.Jai Parameshwar)  
Member (Judl.)  
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(R.Rangarajan)  
Member (Admn.)

Dated: 31-3-1999  
Dictated in the open court

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Copy to:

1. HDHND
2. HMRP M(A)
3. HBSJP M(J)
4. D.R. (A)
5. SPARE

1ST AND 2ND COURT

TYPED IN BY  
COMPARED BY

CHECKED BY  
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR :  
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :  
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :  
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR  
MEMBER (J)

DATED: 31.3.99

ORDER/ JUDGEMENT

MA./RA./CP. No.

IN

O.A. No. 828/99

ADMITTED AND IN TERIM DIRECTIONS  
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

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not in cost memo.

