

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1040/97

Date of Order : 23.10.97

BETWEEN :

G.Narasimha Reddy

.. Applicant.

AND

- 1. General Manager,
S.C.Rly., Secunderabad.
- 2. Chief Personnel Officer,
S.C.Rly., Secunderabad.
- 3. Financial Advisor & Chief Accounts
Officer, S.C.Rly., Secunderabad.
- 4. Divisional Railway Manager,
S.C.Rly., Guntakal.
- 5. Sr.Divisional Accounts Officer,
S.C.Rly., Guntakal.

.. Respondents.

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Counsel for the Applicant

.. Mr.S.Ramakrishna Rao

Counsel for the Respondents

.. Mr.K.Siva Reddy

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CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

ORDER

X As per Hon'ble Shri R.Rangarajan, Member (Admn.) X

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Mr.S.Ramakrishna Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant joined the service as Assistant Permanent Way Inspector on 5.2.58. He was later promoted as Permanent Way Inspector in 1969 and also to the higher grade-I PWI in 1979. The applicant retired from service on 30.6.91.

3. It is stated that the pension payment order was given to the applicant on 8.8.91 and his commutation was also paid. But his gratuity and leave encashment salary were not paid, but the dearness allowance on pension was stopped abruptly w.e.f. 1.3.91. The applicant submitted a representation for paying him dearness relief and also the gratuity and leave salary by his representation dated 4.10.92. That was disposed of by the impugned order No. A/PEN/CTL/Rlys./SP/2728, dated 17.12.92 (A-1). From the impugned letter it is seen that the Senior DEN. North Guntakal has suggested in his letter dated 27.9.92 to stop the relief payable on pension towards the railway dues. Accordingly the Branch Manager, Adoni was addressed to stop only the relief on pension vide letter dated 23.9.92. The letter further states that in terms of Railway Board's letter dated 20.9.85 the relief payable on pension is not governed by the Pension Act and there is no objection to recover the government dues without consent of the pensioner.

4. This OA is filed to set aside the impugned order No. A/PEN/GTL/Rlys/SP/8728, dated 17.12.92 issued by R-5 by holding it as arbitrary, illegal and for a direction to the respondents to release the relief on pension from the date it was withheld i.e. 1.3.93 till date and for a further direction to the respondents to make immediate payment of gratuity and leave encashment to which the applicant is rightly entitled alongwith 24% interest per annum till the date of payment by declaring the action of the respondents to adjust the same towards the loss of stores, without establishing and without conducting disciplinary proceedings as arbitrary.

5. A reply has been filed in this OA. It is seen from the reply that while he was in service at Raichur as Permanent Way Inspector, Gr-I-Broad Gauge ^{he} was incharge of maintenance of accounts



and custodian and supervision of materials/stores during the period of service. Between 16.1.79 to 15.10.84 there were series of discrepancies involving huge shortage of permanent way materials like C.I. scrap in Broad Gauge and some steel sleepers. The shortage was quantified ^{as} Rs. 2,45,074/-. It is stated that the applicant was asked to explain the shortage of railway materials on or before 30.4.91. There was no reply. Subsequently on 7.5.91 another letter was sent to the applicant to explain his stand. The applicant by his letter dated 12.5.91 requested to give him 3 days time to enable him to verify the records and give his explanation. But it is stated that no efforts were made to explain his case and he was permitted as a last chance to go over to Hubli for 3 days from 22.5.91 to 24.5.91 to verify the records and submit his explanation. The respondents complain that the applicant took no action. In view of the above the applicant was once again informed by the letter dated 27.9.91 to meet the Senior Divisional Engineer, North, Guntakal on 28.10.91 for finalisation of stocks regarding Krishna Permanent Way Section. ~~That~~ opportunity was also not taken by the applicant herein. Notice was issued to him by Registered post with acknowledgement due on 4.2.93 to the applicant that the proposed legal action against him for recovery of the amount would be withdrawn if the applicant offered his explanation and satisfy the respondent about the shortage of materials. But the applicant replied him on 6.10.93 stating that he was not liable to pay any amount to the respondents.

6. In view of the above circumstances an amount of Rs. 49,088/- payable to the applicant as gratuity and Rs. 19,761/- payable as leave salary were withheld against the cost involved in the shortage of stores amounting to Rs. 2,43,554/-. Even this amount is less to compensate for the shortage involved and it was decided to

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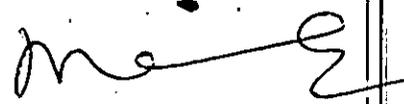
recover the shortfall amount from relief payable on pension of the applicant. The above stoppage of relief on pension is in accordance with the Railway Board's letter dated 20.9.85 which clarifies that the relief payable on pension is not covered by pension act and there is no objection to recover the government dues from the relief payable to the pensioner. It is also stated in the reply that a charge sheet under Rule 11 (minor penalty) was issued to the applicant when he was working as Permanent Way Inspector, (BG) at Anantapur and the same was sent to serve on him on 27.6.91 at his office through special messenger and acknowledgement of Senior Clerk was obtained. No enquiry was proceeded with.

7. The charge sheet dated 27.6.91 issued to the applicant was handedover to the senior clerk incharge through a special messenger. But the applicant submits that the charge sheet was not received by him before his retirement i.e. on 30.6.91. The reply ^{is} also silent in regard to the issue of the charge sheet to the applicant before his retirement. No proof has been produced to show that the applicant received the charge sheet earlier to his retirement. Hence it has to be held that the applicant has not received the charge sheet before his superannuation. If a charge sheet is not issued before superannuation the charge sheet is to be issued by the President of India only as per the D&A Rules of the Railways. Hence it has to be stated that the applicant is not issued with any proper charge ^{sheet} so far. // The applicant was also granted the final pension and commutation () as stated by the respondents. Hence the applicant is entitled for gratuity and leave salary. But the applicant fail ^{-ed} to prove that no shortage was caused by him while he was in service as PWI Gr-I. As the shortages

had to be recovered from the applicant to that extent the withholding the gratuity and the leave salary cannot be said to be incorrect. Even now if the applicant proves that he is not responsible for the shortages then he is entitled to get the gratuity and leave salary. It is for the applicant to meet the concerned and provide the proof that he is not responsible for the shortage of railway material and because of that gratuity and leave salary has to be paid to him. If such an action to prove his case has to be taken by the applicant then the respondents should give him all assistance to prove his case. On the basis of that the applicant should be informed suitably in regard to payment of gratuity and leave salary.

8. The charge sheet is not received by him so far and hence the withdrawal of the relief on pension cannot be accepted as the loss of materials was not conclusively proved. Merely stating that recovery is to the extent over two lakhs, the stoppage of dearness relief cannot be resorted to. The applicant is entitled for the dearness relief from that date it was stopped till the charge sheet if any issued to him is disposed of. On the basis of the decision taken on charge sheet the relief on pension can be withdrawn. Arrears due the kept back amount of relief on the pension should be paid to him within a period of 2 months from the date of receipt of a copy of this order and the relief on pension should not be withheld in future also unless it is warranted after the disposal of the charge sheet as indicated above.

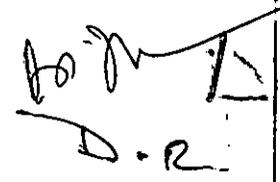
9. The OA is disposed of with the above direction.
No costs.



(R. RANGARAJAN)
Member (Admn.)

Dated : 23rd October, 1997

(Dictated in Open Court)



D.R.

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