

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00630/2015

Order Reserved on: 10.11.2016

DATE OF ORDER: 30.11.2016CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Jagannath S/o Shri Rohan Lal, aged around 62 years, R/o 55, Ekta Colony, Poonam Colony Road, Durga Nagar, Kota Junction, Kota (Rajasthan). Earlier working as Retired Motor Trolley Driver at West Central Railway, Kota Division, Kota.

....Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The General Manager, West Central Railway, Jabalpur (M.P.).
2. The Divisional Railway Manager, West Central Railway, Kota Division, Kota.

....Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 aggrieved from the recovery of Rs. 1,91,820/- made by the respondents from the amount of gratuity and pensionary benefits of the applicant, and further challenged the action of the respondents for not having allowed the benefit of commutation of pension to the applicant, seeking the following reliefs: -

“(i) the present original application may kindly be allowed and the respondents may be directed to make the payment of Rs. 1,91,820/- recovered from the gratuity amount of the applicant;

(ii) They may be directed to make the payment of commutated value of pension of Rs. 3,32,742/-.

- (iii) They may be directed to make the payment of interest over the gratuity amount that has been paid on 24.06.2015 which he was entitled on 1.1.2013 @ 9% p.a. / GPF rate.
- (iv) They may be directed to make the payment of interest over the commuted value of pension at the rate of 18% p.a.
- (v) They may be directed to make the payment of interest over recovered amount of Rs. 1,91,820/- from 1.1.2013 till said amount is paid @ 18% p.a.
- (vi) Any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (vii) Cost of this original application also may be awarded in favour of the applicant."

2. When the matter came up for consideration and hearing on 10.11.2016, learned counsel for the applicant submitted that the applicant was working as Motor Trolley Driver in the respondents Railways and retired on 31.12.2012 on attaining the age of superannuation. In the year 2004, when the applicant was in service and employment of the Railways, he had an accident while driving the Government vehicle (Truck No. RJ-20 / G-3863) during the course of duty on 10.11.2004. The person, namely Shri Rajkumar Agarwal, who was travelling in another vehicle and sustained injuries as a result of the accident, filed a case registered as Motor Accident Claim No. 19/2006 before the Motor Accident Claims Tribunal (MACT), Bundi in which vide order dated 25.04.2014 (Annexure A/3) the MACT passed an order/award giving compensation to the claimant, Shri Rajkumar Agarwal, for an amount of Rs. 1,02,750/-. Counsel for the applicant further submitted that the respondents vide Annexure A/1 order dated 18.12.2014 recovered the entire amount of Rs. 1,02,750/- from the gratuity of the applicant and also the fees of Railways'

advocate of Rs. 89070/- in addition. Counsel for applicant contended that this recovery is completely illegal and further that even withholding his gratuity and commutation of pension at the time of retirement had no valid basis, and therefore the applicant is not only entitled to refund of the recovery along with interest but also interest on the delayed payment of gratuity and commuted value of pension, as the remaining amount of gratuity, after deducting an amount of Rs. 1,91,820/-, was paid only after passing of Annexure A/1 dated 18.12.2014.

3. Counsel for the applicant argued that the basic issue is whether the amount of the award granted by the MACT can be recovered from the salary/gratuity of an employee when the accident occurs during the performance of Govt. duty. In this case, the accident occurred on 10.11.2004 when the applicant was in service and performing his Govt. duty and no amount can be recovered because of the principle of vicarious liability, which falls on the State, which is the Railways in this case. In support of his contentions, counsel for applicant referred to the judgment dated 29.05.2003 passed by the Hon'ble Rajasthan High Court in the case of Jaswant Singh vs. State of Rajasthan and Ors – S.B. Civil Writ Petition No. 1256/1996 (reference MANU/RH/0424/2003), and judgment dated 03.02.2014 passed by the Hon'ble Rajasthan High Court, Jaipur Bench, in the case of Ramesh Chand Kakkar vs. the Rajasthan State Road Transport Corporation and Ors. – S.B. Civil Writ Petition No. 8176/2012 (reference MANU/RH/1636/2014), in which it has been held that though the accident took place while the petitioner was driving the

vehicle but as it was during his employment with the respondents, during the course of duty the State is vicariously liable to pay the amount of compensation and recovery of such amount from the salary of the petitioner cannot be made. Counsel for the applicant also submitted that the applicant vide letter dated 20.09.2004 (Annexure A/4) had already requested the concerned authorities that the insurance of the vehicle no. RJ20-G-3863 is expiring on 10.10.2004 and the same may be now got done for the year 2004-2005 for which the insurance premium is about Rs. 7062, and this letter was also forwarded to the higher authorities but no action was taken to get the insurance renewed on time. Had the respondent-authorities been prompt in getting the insurance renewed on time, at least part of the payment could have been recovered from the insurance company, but even that could not be done due to lack of timely action by the respondents. The recovery of the entire amount of compensation awarded by the MACT was however recovered from the applicant against all principles of fairness and justice.

4. Counsel for applicant, with reference to the reply of the respondents that gratuity can be withheld as per Rule 10 (c) of Railway Services (Pension) Rules, 1993, when judicial proceedings are pending, further submitted that in this case the proceedings were pending in the MACT and pendency of the claims' case in MACT cannot be the basis for withholding the gratuity. He further added that a criminal case was also registered against the applicant for the same accident, but in that he was convicted in the year 2007 but given the benefit of Probation

of Offenders Act and at the time of his superannuation this criminal case stood decided and was no longer pending.

5. Counsel for applicant further contended that the recovery of the fees paid to the Railways' advocate of Rs. 89,070/-, which itself is a considerably high amount, cannot be recovered from the applicant because the case was filed by the affected injured party / claimant Shri Rajkuamar Agarwal and both the applicant and the Railways authorities were non-petitioners and the Railways engaged a lawyer to defend their case and it was not the applicant who filed any case and therefore there is no justification whatsoever to recover the same from the gratuity of the applicant. Counsel for applicant therefore contended that there is no basis for the recovery of the said amount of Rs. 1,02,750/- of compensation awarded by the MACT and the fee of Rs. 89,070/- of the lawyer of the railways, and the applicant is entitled to refund of the recovered amount with interest, as well as interest on delayed payment of gratuity, and further payment of commutation of pension with interest, and on these grounds prayed for the O.A. to be allowed.

6. Per contra learned counsel for respondents submitted that as may be seen from the O.A. the applicant has sought a number of reliefs including the refund of the amount of Rs. 1,91,820/- recovered from the gratuity as per Annexure A/1 along with interest, interest on delayed payment of gratuity and payment of commuted value of pension along with interest. With regard to the relief sought for and the pleadings made in the O.A. and the arguments made by the

counsel for the applicant, counsel for respondents submitted that in the first place as per Rule 15 of Railway Services (Pension) Rules, 1993, the railways are entitled to recover and adjust the dues from the pensionary benefits. He referred to the sub rule (2) and (3) (b) of Rule 15 of Railway Services (Pension) Rules, 1993, which read as under: -

“15(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of a railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purpose of this rule, the expression “railway or Government dues” includes –

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.”

Counsel for respondents further referred to the order of the MACT as at Annexure A/3 in which the applicant was non-petitioner no. 1 and the railway-authority was non-petitioner no. 2 and they have been jointly and severally held responsible for the payment of the award to the injured claimant, and because the accident occurred due to the rash driving and negligence of applicant, who was driving the vehicle and loss was caused to the railways, therefore, the recovery of the amount in question from the gratuity of the applicant is fully justified and in accordance with the aforesaid rules.

7. Counsel for respondents further referred to Rule 10 of Railway Services (Pension) Rules, 1993, which relates to ‘provisional pension

where departmental or judicial proceedings may be pending' and submitted that as per Rule 10 (1) (c), "no gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon". Counsel for respondents submitted that when the applicant retired on 31st December, 2012 judicial proceedings in the MACT were pending and his gratuity was correctly withheld.

8. With reference to the judgments relied upon by the counsel for applicant regarding vicarious liability, counsel for the respondents submitted that the judgment in the case of Ramesh Chand Kakkar (supra) pertains to Rajasthan State Road Transport Corporation and in the case of Jaswant Singh (supra) even disciplinary proceedings were initiated against the petitioner, and, therefore, the judgments relied upon by the counsel for the applicant have no applicability to the present case. He further submitted that the driving of Roadways Buses is a sovereign functions of RSRTC, and in the present case while it is the sovereign function of the Railways to run the trains, etc., but the driving of a four wheeler / truck is not a sovereign function, and therefore recovery of loss caused to the railways can be recovered from the applicant, especially when his driving has been held to be rash and negligent resulting in the accident and losses to the railways, and he has also been made liable for the payment of the compensation.

9. Counsel for respondents also submitted that the applicant has not even submitted any order regarding the finalization of the criminal

case filed against him, though he has averred in the O.A. and admitted that he has been convicted but given the benefits under the Probation of Offenders Act.

10. Counsel for the respondents also submitted that the fees of the railways' lawyer is also recoverable from the applicant because the claimant, who suffered the injuries as a result of the accident, filed the motor accident claim before the MACT in which the railways were also made party and they had to engage a lawyer to contest the matter, and as this award was given as the accident occurred due to the negligence of the applicant, therefore, the recovery of the fees of the railways' lawyer from the applicant is justified in terms of the orders of the MACT and Rule 15(3)(b) of Railway Services (Pension) Rules, 1993, which by way general provisions also cover the present loss.

11. Counsel for respondents further submitted that the applicant has not given any application regarding commutation of pension to the respondents and not even filed the same in the OA or even referred to it during the course of the arguments. Therefore, the question of granting the commuted value of pension or interest thereon does not arise.

12. Counsel for respondents summed up by reiterating that as there are clear rules in the Railways regarding withholding of gratuity when judicial proceedings are pending, as per Rule 10 of Railway Services (Pension) Rules, 1993 and recovery of the dues can be made from pension and retirement benefits as per Rule 15 of Railway Services

(Pension) Rules, 1993, therefore the respondents have acted in accordance with the rules on the basis of MACT award (Annexure A/3). On all these grounds, counsel for respondents submitted that the applicant is not entitled to any relief as claimed in the O.A. and the recovery from gratuity of Rs. 1,91,820/- pertaining to the award of MACT and lawyers fees in the said case as per Annexure A/1 dated 18.12.2014 is valid and in accordance with the rules and he, therefore, prayed for the dismissal of the O.A.

13. In rebuttal counsel for applicant submitted that it is clear from Annexure A/1 dated 18.12.2014 that both gratuity and commutation of pension were withheld because of the pending case in the MACT, and provisional pension was paid to the applicant, and on the decision of the MACT, Bundi vide order dated 25.04.2014 (Annexure A/3), the entire amount of Rs. 1,02,750/- as awarded by the MACT to the injured person and an amount of Rs. 89070/- towards the fees of railways' lawyer has been recovered. He further submitted that the issue of sovereign function has no relevance in the present case and the judgments cited by him as above are fully applicable in the present case also, as in those cases also accident took place when the employee was driving the vehicle during the course of duty and therefore the Railways have a vicarious liability and the amount cannot be recovered from the applicant. He also contended that when the payments of Rs. 25,000/- were earlier made on 04th May 2007 to the claimant by the Railways, no recovery was made by them from the salary of the applicant but after the final order of the MACT, the entire amount has been recovered from the gratuity of the applicant

without any legal basis and without even considering the fact that the vehicle was not duly insured by the concerned authorities and prayed for the O.A. to be allowed.

14. Considered the aforesaid contentions and perused the record. As far as withholding of gratuity is concerned, Rule 10 (c) of Railway Services (Pension) Rules, 1993 clearly provides that 'no gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon'. In the present case, a claim was filed before the MACT, Bundi by the injured Shri Raj Kumar Agarwal against the applicant and the railway authorities in the year 2006 pertaining to the accident that took place when the applicant was driving a truck of the respondents on 10.11.2004. The applicant retired on 31st December, 2012. The MACT, Bundi passed the final order/award on 25.04.2014 (Annexure A/3). Therefore, it is clear that a judicial proceeding was pending against the applicant at the time of his retirement. Thus the case of the applicant that his gratuity could not have been withheld has no legal and valid basis, and as the gratuity was paid after the final order in the claim case, no interest on the same becomes due.

15. As far as the issue raised by the counsel for applicant that no recovery can be affected at all from the applicant as per the award of the MACT because of the fact that he was driving the vehicle during the course of duty and, therefore, it is the respondents who have the vicarious liability for the same (and has also referred to the judgments of the Hon'ble Rajasthan High Court (supra) in support of his

contention) is concerned, it is seen from the MACT award dated 25.04.2014 (Ann. A/3) that both the applicant and the Railways were respondents/parties in the claim filed by the injured person Shri Raj Kumar Agarwal in the MACT, Bundi. The MACT, Bundi in its award has held the applicant responsible for the accident because of his rash and negligent driving and further both the applicant and the Railways as non-petitioners have been held jointly and severally responsible for payment of the award of Rs. 1,02,750/- to the injured claimant. The Railways, in view of the said award and provision of Rule 15 of the Railways Services (Pension), Rules 1993, recovered the same from the gratuity of the applicant, which had been withheld because of the pendency of the judicial proceedings as per Rule 10 (c) of the Railways Services (Pension), Rules 1993. Therefore, in view of the MACT award and fixing of the responsibility jointly and severally, the Railways, thus, have a vicarious liability, but as the MACT has fixed the liability jointly and severally for the award to be paid, the Railways are entitled to recover the same from the applicant, as per their Rules especially as the negligence of the applicant in driving the vehicle has been accepted by the MACT while deciding the issue no.1 and further even as per the own admission of the applicant he was convicted in the criminal case pertaining to that accident though given the benefit of Probation of Offenders Act.

16. Though the counsel for respondents has argued that as the applicant was not performing the sovereign function of the Railways and therefore, there is no vicarious liability but this cannot be a

ground at this stage, because MACT order (Annexure A/3) has held the applicant and Railways jointly and severally responsible and there is nothing on record to show that the said order of the MACT was challenged at any higher level on the ground that the Railways are not liable because the applicant was not performing a sovereign function. Thus in view of the MACT order it cannot be accepted that the Railways are not at all liable for payment of award to the injured person because of the issue of sovereign function or otherwise but as already discussed and held earlier the Railways are entitled to recover this loss from the applicant especially in view of his established negligence in driving the vehicle and as per provision of Rule 15 of the Railway Services (Pension) Rules, 1993.

17. On the basis of above analysis, it is held that the applicant is not entitled to the refund of Rs. 1,02,750 i.e. compensation award or any interest on it, or subsequent payment of gratuity as claimed in the O.A.

18. As far as recovery of railways' lawyer fees of Rs. 89070/- is concerned, as the claim for award/compensation was filed by the injured person and both the applicant and the railways were made party-respondents and the Railways engaged their own lawyer to defend their case, given the facts and circumstances of the present case, it does not appear fully fair and just to recover the railways' lawyer fees of Rs. 89070/-, which is quite a considerable amount, also from the applicant. Therefore, it is directed that the recovery of the railways' lawyer fees Rs. 89070/- as per Annexure A/1 dated

18.12.2014 be refunded to the applicant by the respondents within three months from the date of receipt of a copy of this order, failing which interest be paid @ 9% per annum for any further delay.

19. As far as the relief regarding commutation of pension is concerned, though it has been mentioned in the Annexure A/1 order dated 18.12.2014 that the commutation of pension of the applicant has been withheld due to pendency of the case before the MACT but there is nothing on record to show as to when the applicant, if at all, applied for commutation of pension. Therefore, it is considered appropriate that the applicant may pursue the matter regarding the commutation of pension at his level with the respondents and they may consider and decide the same as per law.

20. With the aforesaid orders, directions and observations, the Original Application is partly allowed as above with no order as to costs.



(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

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