

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::GUWAHATI-5.

O.A.No.200 of 1997

DATE OF DECISION.....15-7-1998.....

Shri Gopika Ranjan Bhattacharjee

(PETITIONER(S))

Mr.G.K.Bhattacharjee, Mr.G.N.Das,
Mrs. B.Dutta Das

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. S. Sengupta

COUNSEL FOR THE
RESPONDENTS.

THE HON --- SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER
THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ADMINISTRATIVE MEMBER

Sanglyine
15/7/98

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 200 of 1997

Date of Order: This the 15th July 1998.

HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

Shri Gopika Ranjan Bhattacharjee Applicant
Son of Late G.C.Bhattacharjee
Coaching Clerk.
New Bongaigaon,
N.F.Railway(retired)

By Advocate Mr.G.K.Bhattacharjee, Mr.G.N.Das,
Mrs. B.Dutta Das

- Vs -

1. Union of India(represented by the General Manager, N.F.Railway, Maligaon, Guwahati-11.
2. Senior Divisional Commercial Manager,
N.F.Railway, Alipurduar Jn.
P.O.Alipurduar Jn.
District :Jalpaiguri
West Bengal
3. Divisional Railway Manager(P)
N.F.Railway, Alipurduar Jn.
P.O.Alipurduar
District- Jalpaiguri
West Bengal.
4. Financial Adviser and Chief Accounts Officer,
N.F.Railway, Maligaon.

By Advocate Mr.S.Sepguta

O R D E R.

SANGLYINE:ADMINISTRATIVE MEMBER:

The applicant was an employee of Northeast Frontier Railway since 10-10-1958 till he retired on superannuation on 31-12-91 as Chief Coaching Clerk. A sum of Rs. 18,611 was retained out of his death-cum-retirement gratuity(DCRG). On representation by the applicant the respondents have given details by a letter dated 11-2-94, Annexure I, regarding this sum of Rs. 18,611. It has also been stated therein that since final commercial clearance certificate has not been received from DCM/APDJ withheld amount of Rs. 15701 out of 18611 can not be released for the

contd/-

payment. Thereafter by letter dated 4-8-94, Annexure II, a sum of Rs.4986 was released out of the withheld amount of Rs. 15,701 mentioned above leaving a balance of Rs. 10,715 for recovery in terms of order dated 10-5-94 issued by the Sr.DCM/APDJ. The applicant submitted further representation and the respondents communicated to him by letter dated 9.8.96, Annexure V, giving details of the sum of Rs. 10,715 and stated that it was debited consequent to Audit objection pertaining to undercharge in respect of Special Ticket No.069807 dated 19-4-84. It has also been stated therein that there was another debit amounting to Rs.6324 lying outstanding against the applicant in addition to the above sum of Rs. 10,715. Hence this Application.

2. The delay in submission of this Original Application was condoned vide order dated 17-9-97 in Misc.Petition No.253 of 1997.

3. In this application the applicant prays for setting aside the order dated 9-8-96 and for a direction to the respondents to release the withheld amount of gratuity with interest thereon. The respondents have contested the application and submitted written statement. Mr.G.K.Bhattacharya learned counsel for the applicant, relies on Annexure VI being Railway Board's order No.F(E)III-87-PNI/1, dated 17-11-87 on the subject matter of prompt payment of DCRG involving Commercial Debits. According to this order, in terms of para 323 (IV)(b) of Manual of Railway Pension Rules, efforts should be made to assess and adjust the recoverable dues within a period of 3 months from the date of retirement of Railways servant concerned. It is further laid down that, in any case, it should be presumed that there is no claim against the Railway servant if none is made after his retirement within the period indicated below:-

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"15 months if Commercial debits are involved, and 6 months if commercial debits are not involved."

Every possible effort should be made to finalise the commercial debit before the superannuation of the employee so that gratuity is not withheld on this account. The period of 15 months above was further reduced in a phased manner as per the following schedule and the withheld gratuity after the expiry of the period mentioned below be released immediately :

- | | | |
|----|-------------|-----------|
| 1. | from 1-1-88 | 12 months |
| 2. | from 1-4-88 | 9 months |
| 3. | from 1-1-88 | 6 months |

He has submitted that in accordance with this order dated 17-11-87 and in view of the facts as stated above it has to be presumed that there is no claim against the applicant. Mr. Sengupta, the learned counsel for the respondents, has submitted that the aforesaid Railway Board's order is not applicable to the case of the applicant as the debits relate to an audit objection. He has further submitted that the loss on account of Special Ticket referred to above was already assessed before the date of retirement of the applicant. Therefore, the order dated 17-11-1987 is not applicable and the applicant cannot claim the benefit of the aforesaid order of the Railway Board.

3. I have heard learned counsel of both sides. The Railway audit had raised the objection vide Audit No.TA/1/Spl/NBQ/ RESV/88-89/2222 dated 30-5-88 as was communicated by the AAO(CG)/Maligaon vide D.O.letter No.TA/FBPT/86/Audit/IV dated 30-1-1992. Another sum of Rs.6324 being debits against the applicant was brought out in the letter dated 9-8-96, Annexure V. This fresh sum of Rs. 6324 does not appear to be the sum total of the other amounts excluding Rs.15701 mentioned in the letter dated 11-12-94 Annexure 1. It is also seen that out of the sum of Rs. 15701 mentioned in Annexure I the

applicant was not liable to pay to the extent of Rs.4986/- as per letter dated 4-8-94 and after adjustment of the said amount the balance of Rs. 10715/- remains as the debit on account of the Special ticket. The decision to recover the sum of Rs. 10715 from the DCRG of the applicant towards closure of the audit case was taken in the letter dated 9-8-96. In addition to this amount a sum of Rs.528 528 against the final electricity current charge bill from November 91 to 27-4-92 and balance Electricity current charge bill from May 90 to October 91 of Rs. 830 and 134 were adjusted against the gratuity. A total amount of Rs.12,208/- out of gratuity was withheld.

4. In the light of the above it is to be seen whether the above mentioned debit of Rs. 10,715, comes within the purview of the aforesaid O.M. dated 17-11-1987. The Railways Audit raised an objection in May 1988 in connection with issuing of the special ticket No.609807 dated 19-4-86 by the applicant. It appears to me that this is a commercial debit arising out of a commercial transaction conducted by the applicant. The nature of the debit does not cease to be a commercial debit simply because it was raised as a result of an audit objection. In the written statement the respondents themselves have termed the loss as commercial debit, audit debit (commercial) or commercial debit(audit objection). Thus they themselves considered it as a commercial debit. Therefore, there is no ground to justify the contention of the respondents that this is not a commercial debit and for that reason the O.M. is not applicable. Since this is a commercial debit it has next to be considered whether

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this debit was assessed within the stipulated time after the date of retirement of the applicant. The audit objection was raised in May 1988. The applicant retired in December 1991. It is seen from the Annexures in this Original Application that the audit objection raised in May 1988 was not settled as in January 1992. It is needless to mention that according to the rules of the Railways the audit objections have to be promptly attended to and disposed of by the Accounts Department. When an audit objection is received the department concerned has either to accept or to reject the audit objection. If the objection is accepted then it becomes settled that according to the authority a wrong was committed by the employee concerned and he has to be informed of the same. If he tenders no explanation or the explanation offered is found to be unsatisfactory then he may be saddled with the liability for the loss. In that case the loss can be said to have been assessed. On the other hand when no decision was taken on the audit report by the department either to accept or reject, it means that liability of the employee concerned was not assessed. It has not been shown by the respondents as to on which date it was decided by them to accept the audit objection and further, on which date the explanation of the applicant was disposed of, if any called for from him. It however, appears that up to 4-8-1994 the actual liability of the applicant on account of the aforesaid special ticket was not determined or ascertained. It was only on 4-8-94 that it was finally determined that the applicant was liable to the extent of Rs. 10,715 after excluding Rs. 4986 out of the original amount of Rs. 15701/-.

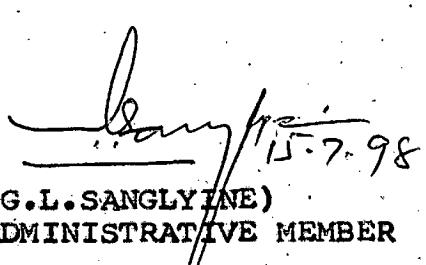
Thus the claim against the applicant was finally assessed only long after the period prescribed in the O.M. According to the Railways themselves when there is delay to assess and

adjust recoverable dues within the period prescribed in the O.M. it is to be presumed that there is no claim against the retired Railways servant concerned to be recovered from his gratuity . In other words, the Railways has waived the right to recovery of the loss out of gratuity if no claim is made by it against the employee within the prescribed period after his retirement. There is also no reason to justifiably attribute the delay in ascertaining the liability arising out of the aforesaid commercial transaction to the applicant. In view of the facts as mentioned hereinabove and the policy of the Railway as declared in para 1 of the above mentioned O.M. dated 17-11-1987, the recovery of the sum of Rs. 10,715/- from the gratuity as above is not sustainable. I, therefore, set aside the order for recovery of the sum of Rs.10,715/- from the gratuity of the applicant. The respondents are directed to refund the amount to the applicant within sixty days from the date of their receipt of this order.

5. The application is allowed as indicated above.

6. No order as to costs.

LM


15-7-98

(G.L.SANGLYANE)
ADMINISTRATIVE MEMBER