

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,  
JABALPUR

Original Applications No 930 of 2004

*Orwales*, this the 22<sup>nd</sup> day of *June*, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. Madan Mohan, Judicial Member

- Kavingal Narayan Kutty,  
Aged about 63 years,  
S/o Late M.M. Menon,  
Retired Chief Permanent Way Inspector,  
S.E.Rly Chhindwara  
R/o Sanchar Colony,  
Goraiya Road,  
Chhindwara (M.P.)

Applicant

(By Advocate – None)

V E R S U S

1. Union of India,  
Through General Manager,  
South Eastern Railway,  
Garden Beach,  
Kolkata (W.B.)
2. Divisional Railway Manager,  
South Eastern Railway,  
Nagpur (MH)
3. Senior Divisional Engineer,  
South Eastern Railway,  
Nagpur (MH)

Respondents

(By Advocate – Shri M.N. Banerjee on behalf of Shri S.K.Jain)




ORDERBy Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought the following main reliefs :-

- (i) to refund the amount of Rs.1800/- which was illegally recovered from the salary of the applicant along with interest thereon @ Rs.12% p.a. w.e.f. the date of recovery to the date of its actual payment;
- (ii) To pay interest on the amount of DCRG Rs.39727 w.e.f. 30.09.1994 ( i.e. the date on which it became due to 27.3.2004( i.e. the date on which the said amount was paid to the applicant) in accordance with rules;
- (iii) To pay interest @ 12% p.a. on the amount of leave salary Rs.33728/- from 30.9.1994 to 27.3.2004 ( i.e. the date on which the said amount became due) to the date of actual payment;
- (iv) To pay interest @ 12% p.a. on the amount of Rs.55500/- towards refund of recovery from pension which was illegally recovered from pension for the period from October 1994 to November 1997 from the dates of recovery to the date of refund i.e. 1.9.2004.

2. The brief facts of the case are that the applicant while serving as Permanent Way Inspector Grade-I with Head Quarter at Amgaon Railway station of Nagpur Division of S.E. Railway fell sick on 9.11.1989 and due to the sickness he could neither depute anyone nor hand over charge of stores to anyone. According to the applicant, the respondent authorized and allowed LR Permanent Way Inspector Shri B.R. Gupta to handle Track Materials without following guidelines issued by the Railway Board dated 2<sup>nd</sup> November 1966. He take over the charge on 5.2.1990 and found that there was a shortage Track Materials were short and the value of this short materials was assessed to be Rs. 1,86,966/-. The Divisional Railway Manager, S.E. Railway, Nagpur ordered to inquire into the shortage and report about the official responsible. On the submission of Joint Committee report, Divisional Railway Manager, Nagpur S.E. Railway ordered to issue a major penalty of charge sheet to the applicant. Thereafter an enquiry was conducted and punishment of recovery of the whole amount



along with pension cut after the retirement of the applicant was imposed on the applicant. Aggrieved with the punishment order, he filed an OA No.683/1995 before this Tribunal. The Tribunal disposed of the aforesaid OA vide order dated 9.7.1997 with the following direction :-

“Total loss cannot be recovered from the applicant alone the applicant has also since retired”.

Thereafter the respondents held the enquiry proceedings against the applicant and on receipt of the enquiry report, the disciplinary authority imposed the punishment, holding the applicant alone responsible for the total loss of Rs.1,86,977/-. Aggrieved with the aforesaid action of the respondents, the applicant again filed another OA No. 644/1998. The aforesaid OA No.644/98 was disposed of vide order dated 30.7.2003 and in pursuance of the aforesaid order of the Tribunal, the ADRM decided the appeal of the applicant vide order dated 17.10.2003 by which the punishment imposed on the applicant was set aside. Thus, the applicant is entitled for withheld amount of Rs.18,000/- and interest on delayed payment of arrears of pension, leave salary and DCRG which was not paid to him. Hence, this OA.

3. Sine none is present on behalf of the applicant, we are disposing of this OA by invoking the provisions of Rule 15 of the Central Administrative Tribunal (Procedures) Rules, 1987. Heard the learned counsel for the parties and carefully perused the records.

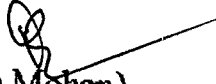
4. The learned counsel for the respondents argued that in compliance with the order passed by this Tribunal on 30.7.2003 in OA No.644/98, the amount of Rs. 18,000/- has been refunded to the applicant vide cheque No. 043676 dated 24.11.2004 and the interest thereon cannot be granted to him according to the rules. He further argued that during the sickness of the applicant all the Section PW I & PW II – incharge has been utilized for store and day-to-day Sectional

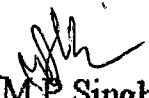


work. The applicant was under sick list and not under suspension. The entire withheld payment have been released in favour of the applicant along with the amount of Rs.18,000/- which was recovered from the applicant's salary. However, the question of interest does not arise. The appellate authority quashed and set aside the order passed by the disciplinary authority vide order dated 17.10.2003 on technical grounds. He was not exonerated by the appellate authority on merits. Hence, he is not entitled for any interest for the period as claimed by him in this Original Application.

5. After hearing the learned counsel for the respondents and on careful perusal of the records and pleadings, we find that in compliance with the order of the Tribunal the ADRM (appellate authority) has decided the appeal of the applicant and set aside the punishment imposed on him vide his order dated 17.10.2003 (Annexure A-1). In this order he has mentioned that the charged employee during the course of enquiry had asked for certain documents and requested to arrange for presence of prosecution witnesses for cross examination. However, charged employee could not cross-examine the prosecution witness Shri B.R. Gupta due to absence of Shri B. R. Gupta from enquiry. As the charged employee could not cross examine the prosecution witness B.R. Gupta, natural justice was not given to the charged employee. Hence, he feels justified in setting aside the punishment imposed on the charged employee. The argument advanced on behalf of the respondents that the appellate authority did not pass the order on merit and the order passed by him is merely on technical ground seems to be correct on perusal of the aforesaid order of the appellate authority dated 17.10.2003 (Annexure A-1). Hence, there was no fault on the part of the respondents in delaying the alleged payments to the applicant.

6. For the reasons recorded above, we do not find any merit in this OA. Accordingly, the same is dismissed.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman