

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,

CIRCUIT COURT SITTING AT BILASPUR

Original Application No 557/2003

Bilaspur, this the 10th day of May, 2005.

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

D.K. Choudhary,
S/o Late Kalidas Choudhary
Aged about 63 years,
R/o Narayandighi(Uttarpara),
Post & District Burdwan(W.B.)

Applicant

(By Advocate – Shri S.Paul)

V E R S U S

1. Union of India
Through General Manager,
South Eastern Railway,
Kolkata.
2. General Manager,
South Eastern Central Railway,
Bilaspur.
3. Divisional Railway Manager,
South Eastern Central Railway,
Bilaspur.
4. Finance Advisor & Chief
Accounts Officer,
14, stand Road, 11th Floor,
Kalighat, Kolkata.

Respondents

(By Advocate – Shri A.K. Singh on behalf of
Shri N.S. Ruprah)

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ORDER

By Madan Mohan, Judicial Member -

By filing this original application, the applicant has sought the following main relief :-

"(ii) Direct the respondents to pay DCRG of Rs.1,52,978/- to the applicant with 18% interest".

2. The brief facts of the case are that the applicant was initially appointed in the Commercial Department of Southern Railway on 30.4.1965. He retired on 30.6.2001 and at the time of retirement, the applicant was holding the post of Catering Inspector in the pay-scale of Rs.5500-9000/-. The FA & CAO Pension has issued an order Annexure-A-2 by which the DCRG of the applicant was calculated as Rs.1,62,806/- but the said amount of DCRG has not been paid to the applicant. A charge sheet was issued to the applicant on 30.7.1990. The departmental inquiry was conducted against the applicant. Thereafter, the disciplinary authority has passed the order dated 21.11.1995(Annexure-A-3) imposing the penalty of withholding of increment for two years without cumulative effect. Against this the applicant preferred an appeal and the appellate authority passed its order by which the punishment was reduced to withholding of increment for one and a half years. According to the applicant, after lapse of six years from 1995, the Dy CAO(T) GRC, Kolkata issued a letter dated 18/19-7-2001(Annexure-A-5) by which list of outstanding catering debits upto the end of March, 2001 was disclosed, wherein Rs.43,539=72 was figured against the name of the applicant without mentioning any specific period of debit and without indicating any reason. The aforesaid debits of Rs.43,539=72 shown as outstanding against the applicant has been recovered from the salary of the applicant from June, 1997 to March, 1999 @ Rs.2,000/- per month. In spite of recovery still debit has been shown against him due to inaction of the administration. Feeling aggrieved with the action of the



respondents, the applicant has preferred representations dated 30.5.2002 and 4.9.2002 to the Chief Catering Manager, Kolkata, but no action has been taken so far. When the DCRG of the applicant was not released by the department, the applicant preferred representation dated 10.5.2003(Annexure-A-10) to the respondents. However, the DCRG of the applicant was not released so far. Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. The learned counsel for the applicant argued that there is no order of President of India to withhold the amount of DCRG of the applicant, as he retired on 30.6.2001. This order of withholding the amount of the DCRG of the applicant was passed by the Sub-Divisional Manager in administrative side. The respondents have not given any opportunity to the applicant in this regard and even no show cause notice was issued to him. Hence, the OA deserves to be allowed and the applicant is also entitled for interest on the withheld amount at the rate of 18% per annum.

5. In reply, the learned counsel for the respondents has argued that some complaints were received against the applicant with regard to Commercial Debt and Railway dues (house rent and electrical). Moreover when the new zones were created in Jabalpur and Bilaspur the papers and files were disturbed and there was a delay due to non receipt of commercial clearance from the Financial Advisor and Chief Accounts Officer, Kolkata. After Commercial clearance the retiral dues of the applicant have been released. Therefore, the OA has become infructuous and is liable to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant retired on



superannuation on 30.6.2001. The Dy. CAO(T) GRC, Kolkata vide letter dated 18/19-7-2001 has informed that there was an outstanding catering debits amounting to Rs. 43,539=72 against the applicant. Because of this the respondents have withheld the gratuity amount of the applicant. Now the respondents have released the balance amount of DCRG of the applicant, Thus we find that recovery against the applicant at the time of retirement was not ascertained and assessed. We also find that a similar matter came before the Hon'ble Bombay High Court in the case of **N.C. Sharma Vs. Union of India & Ors.**, 2004(1) A.T.J. 481 wherein their lordships observed as under :-

“11. For property appreciating the rival contentions, it is necessary to refer to the Manual of Railway Pension Rules, 1950 issued by the Government of India, Ministry of Railways and more particularly clause 323 therein. The relevant portion of which reads thus:-

“323(i)A claim against the Railway servant may be on account of one of the other of the following :-

- a) losses(including short collection in freight charges shortage in stores) caused to the Government as a result of negligence or fraud on the part of the Railway Servant while he was in service;
- b) other Government dues such as overpayment on account of pay and allowances, or admitted and obvious dues such as house rent, Post Officer Life Insurance premia, outstanding advance, etc;
- c) non-Government dues.

(ii) Recovery from recurring pensions as also commuted value thereof, which are governed by the Pensions Act, 1871, can be made only in terms of para 315 accordingly, a recovery of only item(a) may be made from these provided the conditions laid down in para 315 are fulfilled. A recovery on account of item(a) which cannot be made in terms of Para 315, and any recovery on account of items(b) and(c), cannot be made from these even with the consent of the Railway servant. The amount due on account of item(a) which cannot be recovered from these and/or on account of item(b), can, however, be recovered from ordinary/terminal/death/death-cum-retirement gratuity which are not subject to the Pensions Act, 1871. It is permissible to



make recovery of Government dues from the ordinary/terminal/death/death-cum-retirement gratuity due even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased Railway servant."

12 Since a reference is also made to Clause 15 of the Railway Service Pension Rules 1993 the same is also reproduced herein below:

"15. Recovery and adjustment of Government of railway dues from pensionary benefits:-

- (2) The railway or Government dues are ascertained and assessed, which remain outstanding till the date of retirement or death of the 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 due" includes:-
 - (a) dues pertaining to railway or Government accommodation including of arrears of licence fee, if any;
 - (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 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 railway as a result of negligence or fraud on the part of the railway servant while he was in service."

13. In our view, clause 323 of the Railway Pension Rules 1950(for short the 1950 Rules) provide for recovery of Government dues and vide clause(b) thereof recovery of admitted and obvious dues such as house rent etc.

14. In the case of Union of India Vs. Madan Mohan Prasad(supra) ambit and scope of Rule 323 of 1950 Rules was considered by the Supreme Court. After referring to the said rule this is what the Supreme Court has observed in paras 2 and 3 of the said judgment:-

"The learned counsel for the applicants relied upon the decisions of this Court in Union of India Vs. Sisir Kumar Deb(1999(1) SCC L & S 781), Director of Technical Education V.K. Sita Devi (1991 Supp.(2) 386) and Wazir Chand Vs.



Union of India & Ors. (JT 2000 (Suppl 1) SC 515) in none of these decisions, the actual import or the effect to the relevant rules regarding payment of DCRG had been considered. In that view of the matter, these decisions cannot be of much help to the appellants. The relevant rule applicable so far as the respondent is concerned is rule 323 which is available in the manual of Railway Pension Rules, 1950. It is made clear therein that claim against the railway servant may be on account of three circumstances;

- (a) losses(including short collection in freight charges shortage in stores) caused to the government as a result of negligence or fraud on the part of the railway servant while he was in service;
- (b) other government dues such as overpayment on account of pay and allowances, or admitted and obvious dues such as house rent, post office, life insurance premia, outstanding advance etc.
- (c) Non government dues.

21. There is another angle from which this controversy can be appreciated. Assuming that Rule 15 of the 1993 Rules would apply, even then, a bare perusal of the Rule indicates that the railway or Government dues should be (a) ascertained and assessed and (b) they should remain outstanding till the date of retirement or death of railway servant. Only then it is permissible to adjust the same against the amount of retirement gratuity or terminal gratuity and (c) recovery of all dues against railway servant shall be regulated in accordance with the provisions of sub-rule 4 of Rule 15. Now, it is well settled that whenever the Legislature uses the words "ascertained and assessed" pertaining to the dues, they necessarily pre-suppose crystallization of the dues after adjudication. That such an adjudication only will result in ascertainment and assessment of the dues is apparent. Further, that such an adjudication should be prior goes without saying. We are supported in these conclusions by the law laid down in two Supreme Court decisions reported in AIR 1998 SC 2885 and AIR 1999 SC 1381.

22. Therefore, it is obvious that principles of natural justice have to be adhered to and an opportunity will have to be given to the concerned employee before recoveries or adjustments are effected by the Railway or Government. In the instant case, in our view, merely addressing the letters as noted above, would not by any stretch of imagination mean compliance with the principles of natural justice. There is nothing in the order dated

31st October 1996 which would indicate that prior opportunity was given to the petitioner before adjustments were made from the terminal dues/benefits admissible to him. In this view of the matter, the conclusion of the Tribunal that opportunity was given or that there was no dispute about the dues is contrary to the material placed on record and wholly erroneous. It is difficult to agree with the conclusion of Tribunal on this aspect.

7. In the instant case, we find that it is an admitted fact that no opportunity has been given to the applicant before making recovery and adjusting the outstanding dues from the DCRG of the applicant. In view of the aforesaid decision of the Hon'ble High Court in the case of N.C.Sharma(supra), the action of the respondents of making recovery from the DCRG of the applicant is not ^{arbitrarily} sustained. Hence, the respondents are directed to pay full amount of DCRG to the applicant alongwith interest at the prevalent rate prescribed for GPF within a period of three months from the date of receipt of a copy of this order. The respondents are however at liberty to proceed against the applicant for making recoveries against the so called commercial debits in accordance with the rules and procedures.

8. In the result, the OA is allowed with the directions contain in the preceding paragraph. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

दृष्टांकन सं ओ/व्हा.....जबलपुर, दि.....
प्रतिलिपि अच्युत जिल:-

- (1) सचिव, उच्च अदायकानाम दारे एसोसिएशन, जबलपुर
- (2) आमदाद एवं विकास बोर्ड, जबलपुर
- (3) प्रत्यक्षी एवं विकास बोर्ड, जबलपुर
- (4) बंधुवाल, दोपां, जबलपुर, जबलपुर

सूचना एवं आवश्यक संपर्कों के लिए

उपर रजिस्ट्रर

J. P. Singh B/No. 0237

X. S. Ruprah B/No. 0137

Issued

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