

**Central Administrative Tribunal
Principal Bench**

OA No.2751/2014

New Delhi this the 6th Day of May, 2016.

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Srivastava, Member (A)**

Vijay Masih,
S/o Shri Prakash Masih,
Retd. As Chief Booking Supervisor,
R/o House No.421,
Rama Apartments, Sector-11,
Dwarka,
New Delhi-110075.

-Applicant

(By Advocate Shri M.S. Reen)

-Versus-

Union of India & Others

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Ferozpur Division,
Ferozpur
(Punjab)

-Respondents

(By Advocates Shri V.S.R. Krishna with Shri A.K.
Srivastava)

O R D E R (ORAL)

Mr. K.N. Shrivastava, Member (A):

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for read as under:

“ 8.1 That this Hon’ble Tribunal may graciously be pleased to allow this Original application and set-aside the impugned order dt. 31.12.2013 with all consequential benefits.

8.2 That this Hon’ble Tribunal may graciously be pleased to direct the respondent no.2 to release the withheld amount, i.e, Gratuity & restore the full pension of the applicant along with 18% simple interest in the interest of justice.

8.3. That this Hon’ble Tribunal may graciously be pleased to direct the respondents to produce all relevant records before this Hon’ble Tribunal in the interest of justice.

8.4 That any other or further relief which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case may also be granted in favour of the applicant.

8.5 That the cost of the proceedings may also be awarded in favour to the applicant.”

2. The brief facts of the case are as under.
3. The applicant has worked as a Chief Booking Supervisor (CBS) at Pathankot Railway Station from 22.03.2005 to 23.08.2006. He was incharge of the supervisory work of the counter Clerks at the booking counters and also responsible for remitting the proceeds collected at the counters through the booking transactions. A short remittance amounting to Rs.3,38,787/- (Rupees three lakhs, thirty eight thousand seven hundred and eighty seven) was detected attributable to the

applicant. The CBS, Pathankot vide Annexure A-2 letter dated 08.06.2012 reported the short remittance, a copy of which was marked to the applicant. The applicant vide his Annexure A-3 letter dated 09.06.2012 explained his position and stated therein that he was not responsible for the said short remittance. The contents of his letter addressed to Senior Deputy Commercial Manager (Sr. DCM) read as under:

“Most meekly and humbly I Vijay Masih CBS/PTK here by want to Explain some facts for your kind and sympathetic consideration please.

1. That according to the above stated letter by CBS/PTK, outstanding of Rs.2,19,502 is lying against me in current Balance Sheet of BO/PTK. The period mentioned of this outstanding is year of 2006.
2. That according to the Dr.DPO/FZR letter no.940-E/23/PIA/-7 dated 15/3/2007 at Sr No 8 Sh. Mata Parsad was working as CBS-I (Incharge) at PTK and he was worked as Incharge up to the year March-2007. I was working as CBS-II under Sh. Mata Parsad now working as CBS at JAT (photo copy of letter is attached for consideration). Hence Sh. Mata Parsad CBS/JAT is wholly-solly responsible for the above said Debit.

Looking in to above stated facts please withdraw debt against me in current Balance sheet of Pathankot Station. As I am going to be retire on 30-6-2012 so no objection certificate be issued with earliest time to conclude my service financial dues.”

2.2 Not satisfied with the explanation of the applicant, the Disciplinary Authority (DA), i.e. Senior Divisional Commercial Manager, issued Annexure A-4 charge-sheet to the applicant, which reads as under:

“That the said Sh. Vijay Masih, CBS/PTK while working under SS/PTK as such has committed the following serious irregularities:-

An amount of Rs.3,38,787/- lying in coaching balance sheet on account of less receipt of vouchers raised by the office of Dy. CAO(T)/NDLS through TA-2 of 04/2009 bearing

no.18/TA/NDLS/TRB/BSC/FZR/Chg./ PTK/09 Sh. Vijay Masih has not made any efforts for clearance of outstanding.

It is a defalcation of Govt. money & has reflected in the outstanding list of the station due to his indiscreet and irresponsible working.

He has thus worked in negligent manner unbecoming of a railway servant & is therefore, held responsible as para 3.1 (i), (ii) & (iii) of Rly. Service conduct Rule, 1966.”

2.3 The statement of imputation framed against the applicant, reads as under:

“Statement of imputation framed against Sh. Vijay Masih, CBS/PTK.

That the said Sh. Vijay Masih, CBS/PTK working under SS/PTK while functioning as such has committed to create the outstanding of Rs.3,28,787/-

This amount pertains to the period from 22.03.2005 to 23.08.2006. Sh. Vijay Masih, CBS/PTK made no efforts to clear the outstanding while working as CBS during the said period. It was the duty of incharge (CBS) to clear the station outstanding soon after the receipt of TA-2/Error sheets. But no efforts were made to clear the outstanding with wastage interest and ultive motive. It is a defalcation of Govt. money and has reflected in the outstanding list of the station due to his indiscreet and irresponsible working.

By the above acts of omission & commission, Shri Vijay Masih, CBS/PTK has failed to maintain absolute integrity devotion to duty and acted as unbecoming of a Rly. Servant, thereby contravened rule no.3.1 (i), (ii) & (iii) of Rly. Service conduct Rule, 1966.”

2.4 The applicant retired on 30.06.2012. The DA appointed an Enquiry Officer (EO). The applicant vide his Annexure A-8 letter dated 23.02.2013 submitted his defence statement. The EO submitted his Annexure A-9 report dated 23.03.2013 in which he held that the charge of short remittance of Rs.3,38,787/- (Rupees three lakhs, thirty eight thousand seven

hundred and eighty seven) attributable to the applicant **stands proved.**

2.5 The DA passed Annexure A-1 punishment order dated 31.12.2013 ordering recovery of the short remitted amount of Rs.3,38,787/- (Rupees three lakhs, thirty eight thousand seven hundred and eighty seven). The applicant filed Annexure A-15 appeal against the punishment order passed by the DA before the departmental Appellate Authority (AA), i.e., Divisional Railway Manager (DRM), Ferozepur on 04.03.2014 against the punishment order passed by the DA. The said appeal has not yet been disposed by the AA. The applicant has filed the instant OA praying for the aforementioned reliefs, *inter alia*, seeking setting aside Annexure A-1 order dated 13.12.2013 passed by the DA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. They also filed a counter-affidavit, confirming therein that the short remittance attributable to the applicant indeed is Rs.3,38,787/- (Rupees three lakhs, thirty eight thousand seven hundred and eighty seven). The applicant, thereafter, filed his rejoinder. After the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 06.05.2016. Shri M.S. Reen, learned counsel for the applicant and Shri V.S.R. Krishna with

Shri A.K. Srivastava, learned counsel for the respondents argued the case.

4. After hearing the learned counsel for the parties and perusing the records, we have come to know that the Death-cum-Retirement Gratuity (DCRG) amount due to the applicant from the respondent-department is Rs.6,03,579/- (Rupees six lakh three thousand five hundred seventy nine) whereas the short remitted amount, sought to be recovered from the applicant, is only Rs.3,38,787/- (Rupees three lakhs, thirty eight thousand seven hundred and eighty seven). It was also confirmed by both the parties that the appeal of the applicant before DRM, Ferozepur, has not yet been disposed of. The learned counsel for the respondents agreed that the balance amount i.e., Rs.6,03,579/- - Rs.3,38,787/-=Rs.2,64,792/- (Rupees two lakh sixty four thousand seven hundred ninety two only) can be released to the applicant by the respondents pending disposal of the Annexure A-15 appeal dated 04.03.2014 by the AA.

5. In view of the above, we issue the following directions:

i) The respondents are directed to release Rs.2,64,792/- (Rupees two lakh sixty four thousand seven hundred ninety two only) being the difference of DCRG due to the applicant minus the alleged short remitted amount, within a period of two

months from the date of receipt of a certified copy of this order, as there was no justification for the respondents to withhold this differential amount. We also direct that on this differential amount of Rs.2,64,792/- (Rupees two lakh sixty four thousand seven hundred ninety two only), the respondents shall pay interest @9% per annum to the applicant with effect from 01.07.2012 and up the date on which the payment is actually made, noting that the applicant retired from the service on 30.06.2012.

ii) The AA, i.e., DRM, Ferozepur is directed to dispose of the Annexure A-15 appeal of the applicant within a period of three months from the date of receipt of a copy of this order. Needless to say that a copy of such order shall be sent by the DRM to the applicant.

6. With the above directions, the OA is partly allowed. If the applicant is aggrieved by the order to be passed by the AA, he has the liberty to challenge the same at the appropriate forum, if so advised.

7. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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