

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.4391/2013
MA No.3357/2013

Order reserved on 03.05.2016

Order pronounced on 16.05.2016

Hon'ble Mr. V.N. Gaur, Member (A)

R.D.Saxena,
S/o Sh. S.S.D. Saxena,
R/o Flat No.1306, Neel Padam-II, Aparmtments,
Sector-4, Vaishali,
Ghaziabad (UP).

.. Applicant

(By Advocate: Mr. Yogesh Sharma)

Versus

1. Union of India
Through The General Manager
Northern Railway, Baroda House
New Delhi
2. The FA&CAO,
Northern Railway, Baroda House,
New Delhi.
3. The Dy. Chief Accounts Officer/T,
Traffic Accounts Office, Northern Railway,
State Entry Road,
New Delhi.

..Respondents

(By Advocate: Mr. Shailendra Tiwari)

O R D E R

The applicant has filed this OA with the following prayers :-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents not releasing the retirement gratuity amount (DCRG) of the applicant is illegal, arbitrary, and against the rules and consequently, pass an

order directing the respondents to release the retirement gratuity amount of the applicant immediately with 18% interest.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

2. Heard the learned counsels and perused the record.
3. The learned counsel for the applicant submitted that the applicant was working as Account Assistant and honorary Secretary of the Co-operative Store. He superannuated on 31.07.2011 after handing over charge to one Shri Rajiv Kumar Aggarwal on 28.07.2011. On 17.11.2011 he was informed by the respondents that in Sale and Purchase Register entries were not complete and certain statements and expenditure statements were also not available. He was also asked to submit the decision of Executive Body with reference to the charging of 18% interest rate on the loan. The applicant replied that he had completed all the ledgers for cooperative store and the audit of the same had also been completed. He was not able to substantiate his claim as all the documents were kept with Secretary, Cooperative Store, Delhi Kishan Ganj, access to which were denied to him by the Secretary. On 31.02.2012, the applicant was informed that Rs.66,561/- had been shown as a difference in balance sheet of 2007-2008 and there was a loan outstanding of Rs.70,000/-. The applicant clarified the position vide letter dated 05.03.2012 (Annexure.A/11).

Thereafter, the respondents asked him to attend the office on 14.05.2013 at 11.00 hrs. in the chamber of Senior AFA/T. On that date, though the applicant was present, Shri Rajiv Aggarwal, the present Secretary, Cooperative Store was not present. He referred to a letter dated 14.05.2013 issued by AFA/T addressed to Shri Rajiv Aggarwal in support of his contentions that he has been cooperating with the authorities all along but it was the present Secretary, Cooperative Store who has been obstructing furnishing of the necessary papers. According to the learned counsel, since the applicant had already retired about five years back, all the records and papers are available with the authorities. In case they wanted to conduct any enquiry, it should have been possible for them to do the same and ascertain if there is any loss during the period the applicant held the post of Secretary, Cooperative Society. At the time of retirement, the applicant had submitted an undertaking in terms of Rule 15(4) (i)(c) of Railway Service (Pension) Rules 1993, that if there was any recovery for the period he served in the Cooperative Society that could be recovered from his retirement dues. However, it did not mean that the respondents who have alleged discrepancy to the tune of Rs.66561/- should have held gratuity amount of more than Rs.4,50,000/-. The learned counsel admitted, as claimed by the respondents in their counter, that since then the respondents have released a sum of Rs.2,96,260/- after retaining a sum of Rs.1,94,970/- from DCRG

of the applicant. According to the learned counsel, it is a well settled law that the administrative authority should not delay the payment of retirement dues to the employee on superannuation and in the event there is long delay, the employee shall be entitled to interest on the amount held back by the respondents. The learned counsel relied on on the following judgments in support of his contentions :-

- (i) **S.K. Dua Vs. State of Haryana** (2008) 3 SCC 44;
- (ii) **A.S. Randhava Vs. State of Punjab & Ors.** 1974(4) SLR 617;
- (iii) **Nalini Kant Sinha Vs. State of Bihar & Ors.** 1993 Supp. (4) SCC 748;
- (iv) **Punjab State Electricity Board & Others Vs. Kuldip Singh** (2005) 13 SCC 372;
- (v) **Grammon India Limited Versus Niranjan Das** (1984) 1 SC 509;
- (vi) **Parmasivan & Others Versus Union of India & others** (2003) 12 SCC 207;
- (vii) **Government of West Bengal Versus Tarun K. Roy & Others** (2004) 1 SCC 347.”

4. When the matter was heard on 03.05.2016, the learned counsel for the respondents sought time to get instructions with regard to the status of audit enquiry for the period the applicant held the charge of Secretary, Cooperative Store. However, when the matter was taken up on 03.05.2016, learned counsel could not enlighten the court about the current status of the audit enquiry, if any, in the matter. He only referred to the counter reply dated

17.07.2014 wherein, it had been stated that there were some bungling in the accounts during the period the applicant was posted in the Cooperative Society. It has been stated that the applicant did not get the accounts audited from the CA as per the requirement of the Rules and did not submit any balance sheet in the office of Registrar, Cooperative Society. There was also a manipulation of accounts by showing the loan account in his name in the books of account/balance sheet without informing the department, as per Service Conduct Rules. The respondents had nominated Shri Rajiv Aggarwal, Accounts Assistant to enquire into the illegalities committed by the applicant but the applicant did not cooperate with him by not responding to the letters written to him on 24.07.2013 and 26.07.2013. Again, one Shri R.C. Khurana, SSO/Accounts also could not carry out the audit for the period 2008-09 to 2010-11 because of non-cooperation of the applicant. The respondents have withheld the amount of Rs.1,94,970/- in terms of the provisions of Rule 15 4(I)(c) of Railway Service (Pension) Rules, 1993 and released the balanced amount of DCRG to the applicant.

5. I have heard the learned counsels and perused the record. From the submissions made by both the sides, it is apparent that the grievance of the applicant is now confined to release of amount of Rs.1,94,970/- i.e. the withheld amount of DCRG. The learned counsel for the respondents has stated that the applicant had given

consent for withholding the amount that was recoverable on account of railway dues. However, it is noticed that the applicant had agreed to the said course of action with a rider that if there was any such recoverable amount against him. The respondents have taken a plea that they have not been able to quantify the loss in the Cooperative Store because of non-cooperation of the applicant. On the other hand, the applicant has shown with the support of correspondence placed on record that even the present Secretary, Cooperative Store was also not forthcoming in getting the matter settled.

6. At this stage, these allegations and counter allegations can hardly resolve the issue. If there was any wrong doing in the affairs of the Cooperative Store and the money of railway employees had been swindled, it is incumbent upon the concerned administrative authorities to vigorously pursue the same and complete the audit at the earliest. If any misuse of funds or defalcation is discovered, the disciplinary action has to be taken against those responsible for the same.

7. The conduct of the respondents in letting the matter to linger on for the last 5 years does not reflect any seriousness, concern or urgency on their part. It is unbelievable that the audit of the accounts of Cooperative Store cannot be conducted without the cooperation of the applicant, who has already retired from service,

as claimed by the respondents. The authorities cannot be so helpless and let go a case of misuse/defalcation of funds by default.

8. I, therefore, consider it appropriate to direct the respondent No.1 to conduct a proper enquiry in the matter in a time bound manner and initiate action against any person who is responsible for misappropriation of funds, as alleged. However, after the enquiry if nothing is proved against the applicant, the withheld amount of the applicant should be released forthwith along with interest equal to the interest payable on GPF. The aforesaid enquiry may be completed within a period of two months from the date of receipt of certified copy of this order. With this direction, the OA stands disposed of. No costs.

(V.N. Gaur)
Member (A)

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