

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00776/2015

Friday on this the 28th day of September, 2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

1. S. Vijayakumar,
Aged 49 years, S/o. G. Sreedharan Nair,
(Retd Executive Engineer/Southern
Railway/Construction/Survey/Madras Egmore)
Residing at: "Lekshmi Vihar", T.C. No. 20/189 (4/488),
Kowdiyar, Trivandrum – 695 003.
- **Applicant**

(By Advocate – Mr. T.C.G. Swamy)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
 2. The Financial Adviser & Chief Accounts Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
 3. The Chief Administrative Officer (CAO),
Construction, Southern Railway, Egmore,
Chennai – 600 008.
 4. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
 5. The Deputy Chief Personnel Officer,
Southern Railway/Construction, Egmore,
Chennai – 600 008.
- **Respondents**

(By Advocate – Mrs. K. Girija)

These Original Applications having been heard on 21.09.2018, the Tribunal on the 28.9.2018 day delivered the following:

ORDER

Per : ASHISH KALIA, JUDICIAL MEMBER -

Applicant is seeking the following reliefs:

- (i) Call for the records leading to the issue of Annexures A1 and A2 and quash the same;
- (ii) Declare that the recovery of an amount of Rs. 13,06,066/- (Rupees thirteen lakhs, six thousand and sixty six only) from the applicant's retirement benefits (retirement gratuity, leave encashment and arrears of pension) is arbitrary, discriminatory, without jurisdiction, opposed to the principles of natural justice and hence, unconstitutional;
- (iii) Direct the respondents to refund the amount of Rs.13,06,066/- (Rupees thirteen lakhs, six thousand and sixty six only) recovered from the applicant's retirement gratuity leave encashment and arrears of pension and allowances forthwith;
- (iv) Direct the respondents to pay leave encashment for the balance of 35 days (total 300 days) within a time limit as may be found just and proper by this Tribunal.
- (v) Direct the respondents to pay forthwith composite transfer grant arising out of the applicant's voluntary retirement on 23.11.2012;
- (vi) Direct the respondents to pay interest @ 9% per annum on the applicant's pension arrears falling due month after month, retirement gratuity, leave encashment, composite transfer grant etc. to be calculated with effect from 01.06.2013 up to the date of full and final settlement of the same;
- (vii) Award costs of and incidental to this application;
- (viii) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case;

2. The applicant is a retired Executive Engineer of Southern Railway is challenging the illegal and arbitrary recovery of an amount of Rs. 13,06,066/- (rupees thirteen lakhs, six thousand and sixty six only). The entire retirement gratuity, the entire leave encashment and also substantial amount from the applicant's arrears of pension which was paid inordinately late. The applicant is also aggrieved by the denial of interest on the delayed payment of pension and other retirement benefits and also non-payment of composite transfer grant and leave encashment for a period of thirty days. Annexure A1 and Annexure A2 are the communications by which the amount as aforesaid

was withheld received by the applicant .

3. Briefly stated the facts are that initially the applicant was promoted as Chief Bridge Inspector during the year 1999 and further to Group B (Gazetted Service) during the year 2004. Later on he was promoted to the Senior Scale in PB 1 + GP Rs.6600/- and his designation was Executive Engineer in the Construction Organisation of Southern Railway and took voluntary retirement from service with effect from 23.11.2012. He has submitted that in case of voluntary retirement, the retiral benefit should normally be supplied within a period of six months. Despite making repeated representations pensions benefits are not paid. Finally the applicant made representation to Hon'ble Prime Minister with a copy to General Manager, Southern Railway, on 15.1.2015 and finally in the month of April 2015, the applicant's pension and pension arrears were paid. Out of the pension arrears, an amount of Rs. 1,69,425/- has been recovered. Feeling aggrieved by this he has approached this Tribunal for redressal of his grievances.

4. Notices were issued. Respondents filed detailed reply contesting the claim of the applicant.

5. Respondents raised preliminary objections and submitted that when the applicant was working as Bridge Inspector/Cannanore, Palghat Division during the period from 17.08.1995 to 23.03.1999 was the sole responsible custodian of the materials (1) Temporary Girder drawing No. PG.1-228/84 – 60'-0" – 1 Number (37.00 Metric Tonne) and other class-III Permanent Way materials which were dispatched to Deputy Chief Engineer/Construction/Bangalore on 31.01.1997 as per the instructions of Chief Bridge Engineer/Madras. However the material was not received by

Deputy Chief Engineer/Construction/Bangalore. As per the procedure in vogue all material transaction should following with the challan form ST 47 and the consignor should ensure that the consignment received by the consignee and the accepted copy of the challan received back to the consignor in time. Since the applicant has failed to take action above, responsibility was fixed on him and it was decided to recover the cost of the materials from the settlement dues and accordingly the same was done.

6. It is submitted on behalf of the respondents that on 30.11.2012 the office received a letter No. P.535/PTJ/Admn dated 29.11.2012 issued by Senior AFA/W&S/TPJ addressed FA&CAO/PEN/MAS and copied to Dy. CPO/Gaz. In the aid letter, it was mentioned that Shri S. Vajayakumar had worked as BRI/CAN and during that period a case of non-paring of chalan No. BRI/CAN/96-97 dated 28.03.1997 towards transfer of one temporary Girder along with P.Way materials valuing approximately Rs. 8,50,000/- to BRI was noted. Further it was stated in that letter that the issue has not yet been settled and in view of the above, a no claim certificate may be insisted from DRM/Works/PGT before releasing the DCRG of Shri S. Vijayakumar. Finally the respondents have prayed for dismissal of the original application.

7. Applicant has filed rejoinder refuting the averrments made in the reply statement and reiterating the pleadings in the O.A.

8. In the rejoinder the applicant has submitted that the materials in question i.e. the temporary girder etc. mentioned in t his paragraph are railway materials and they are railway materials consignment for the purpose of booking the same from one station to another. The consignment was booked through the Station Master, Kuttipuram, i.e. from Kuttipuram to Bangalore City. Kuttipuram is the place where the concerned girder and other materials

were remaining. The booking was done by the SM, Kuttikipuram as per Railway Receipt bearing No. 035213 of 31.01.1997 addressed to the Sr. Divisional Engineer/Bangalore City. The consignment, admittedly, viz. The temporary girder is of the length of 60 feet meaning thereby height of about a six storied building. The said girder can be loaded only in three open wagons coupled together and these open wagons in railway parlance are called as "BFR/BRH". Three such wagons in which the consignment was loaded are numbered as SE BFR (South Eastern Railway BFR) 48897, SE BRH49001 and SE BRH 60005. In view of the slight error in the address shown, the applicant wrote Annexure A9 letter under No. 37 dated 04.02.1997 addressed to Se/ Bridges/SBC.

9. The consignment to the best information of the applicant was received at Bangalore City Railway Station and unloaded immediately after 15.2.1997. The supervision of preliminary work associated with unloading of temporary girder was attended to by the SE/Bridges/Bangalore City on 14.02.1997. It is to be submitted, since the consignment was intended for construction of a road under ridge near Yelahanka near the work spot. Hence such unloading can be done only after obtaining a line block, which means, during such period, the entire section would remain closed for movement of other train services. The chalan in ST-47 is sent only for the purpose of record and the said Chalan was prepared by the applicant on 28.03.1997 and sent by the applicant through special messenger Shri A. Mohanan and acknowledged by the Se/Bridges Shri Vedavanam on 05.04.1997. It is not as if a train consisting of an Engineer and Brake Van and three BFRs would disappear into thin air having been undisputedly despatched from Kuttipuram Railway Station. Return of the chalan is only a formality to be undertaken by the

consignee/receiver Shri Vedavanam SE/Bridges/SBC. In the light of the above factual position, the contention that, “the material was not received by Deputy Chief Engineer/Construction/Bangalore” is factually and legally incorrect, misleading and unsustainable. The only step the applicant could have taken in the circumstances is proper booking of the consignment in accordance with the railway rules relating to the same under Chapter 21 of the Store Code which deals with movement of Annex A.10 Railway consignment through the railway material consignment note.

10. It is submitted by the applicant that the Railway Material Consignment note (RMC) is in lieu of “Forwarding Note” used by public for movement of their consignment from one place to another. Once the RMC Note and the materials are handed over to the SM on duty and the Railway receipt obtained in lieu thereof, then the SM and the Transportation department become the custodian of the consignment as the liability of a common carrier. It is the liability of the Transportation/Traffic department to deliver the consignment at the destination station. In other words, once the consignment is booked and railway receipt obtained, by the applicant for the movement of the consignment from Kuttipuram to Bangalore City, the applicant ceases to be the custodian of the same. At any case, the applicant submits that the consignment was received by the consignee and that the accepted copy of the chalan was not received back in time is incorrect and hence denied by the applicant. It is submitted by the applicant that the consignment was booked under the orders of the Chief Bridge Engineer for a specific work at Bangalore. Certainly there has to be a direction to the Sr. Divisional Engineer, Bangalore and also to the Bridge Inspector at Bangalore. If the consignment had not been received action would have

been taken in time immediately thereafter; not 15 years thereafter. The applicant submits that the respondent authorities of the department are aware of the same and the whole action is now being taken only at the instance of Assistant Financial Advisor of the accounts department.

11. Learned counsel for the applicant has cited the order in O.A. 1403 of 1995 dated 26.2.1997 of this Tribunal in support of his arguments.

12. Heard the learned counsel appearing on both sides at length and perused the records and appreciated the legal position.

13. The question posed before this Tribunal by the applicant is as under:

Whether respondents can make recovery from pensionary benefits without giving an opportunity of being heard?

Whether the recovery can be made after 15 years of the incident took place without taking the assent of the President of India in case of retired employee. ?

14. Even after retirement an official can be proceeded against under certain circumstances. This Tribunal is concerned with one of those as far as the case at hand is concerned. As per Rule 15 (4) (I) of Railway Services (Pension) Rules, 1993:

“a claim against the railway servant may be on account of all or any of the following:-

(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service....”.

15. According to the respondents, the loss sustained by the respondents will come within the scope of the said rule, but it is to be remembered that one condition has to be fulfilled before resorting to this provision. That condition is laid down in Rule 15 (4) (iv) (b):

“Dues mentioned in clause (I) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.”

16. Though the Railways has got the right to recover the loss sustained, that right is subject to the condition that the loss should be assessed and adjusted within a period of three months from the date of retirement of the railway servant. There is no case for the respondents that the liability outstanding was assessed within the prescribed period of three months from the date of retirement of the applicant. The admitted case of the respondents is that the liability of the applicant was fixed only on 20.3.2015 and 23.3.2015 whereas the applicant has voluntarily retired from service on 23.11.2012.

17. Rule 9 of Railway Servants (Pension) Rules reads as under:

“9. Right of the President to withhold or withdraw pension.

(1) The President reserves to himself the right of withholding or withdrawing a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Railway, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement; Provided that the Union Public Service Commission shall be consulted before any final orders are passed. Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three thousand five hundred per mensem. (Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

18. The allegation against applicant is that while he was working as Bridge Inspector he has despatched the Temporary Girder 60 ft long had not reached to its destination. Then what action Railways has taken whether F.I.R. was lodged and criminal investigation was done? The respondents are silent on this. The learned counsel for the applicant submits that once applicant has handed over above said girder to Station Master after taking Material Receipt Note then Station Master becomes the custodian of the said

material. The question comes to one's mind then entire staff from Station Master, Driver, Railway Protection Force, Guards are not equally responsible for the non receipt of the despatched item. What action has been taken against them is not disclosed by the Respondent Railways. They have simply recovered the dues from the applicant's retiral benefits.

19. This is quite clear the Railways have not made recoveries within three months of the retirement of the applicant rather after 15 years of the incident of recoveries were made. It is at the whim of the Railways to recover dues as and when they want. That after retirement recoveries can only be made after taking assent of President of India in accordance with the Railway Servants (Pension) Rules 1993.

20. This Tribunal is of the view the recovery made from the pensionary benefits of the applicant does not stand in the eye of law and hence not sustainable. Similar view was taken by this Tribunal in O.A. 1403/1995 relied upon by the learned counsel for the applicant and the same is applicable in the facts and circumstances of the present case.

21. In view of the above findings, this Tribunal hereby quash and set aside the impugned Annexe A.1 & A2 order of recoveries. The respondents are hereby directed to release the amount so recovered from the pensionary benefits of the applicant with interest at the rate of 8% to the applicant within 60 days from the date of receipt of a copy of this order.

22. The O.A. is allowed on the above terms. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

sj*/

List of Annexures of the applicant

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| Annexure A-1 | - | True copy of the letter bearing No. P500 /HQ /Pen/ PPO 06102 11920 dated 20.03.2015 issued by the 2 nd respondent. |
| Annexure A-2 | - | True copy of the letter bearing No. P.500/HQ /Pen/ PPO 06102 11920 dated 23.03.2015 issued by the 2 nd respondent. |
| Annexure A-3 | - | True copy of the representation dated 15.01.2015 submitted to the Hon'ble Prime Minister, with copy to the General Manager/Southern Railway. |
| Annexure A-4 | - | True copy of the letter bearing No.P(Cord)RTIA/ 2015/6024 dated 08.07.2015, issued by the Dy. Chief Personnel Officer/I & PIO. |
| Annexure A-5 | - | True copy of the updated re-coded leave position of the applicant as on 01.07.2012 maintained in Dy. CPO/CN/MS office as communicated by the 2 nd respondent. |
| Annexure A-6 | - | True copy of the representation dated 03.08.2015 addressed to the 3 rd respondent. |
| Annexure A-7 | - | True copy of the representation dated 03.08.2015 addressed to the 5 th respondent. |
| Annexure A-8 | - | True copy of the representation dated 06.08.2015 addressed to the 5 th respondent. |
| Annexure A-9 | - | True copy of letter under No. 37 dated 04.02.97 addressed to SE/Bridges/SBC fro the applicant. |
| Annexure A-10 | - | True copy of the Chapter 21 of the Stores Code. |
| Annexe A-11 | - | True copy of Rule 1461 of the Code for the Engineering Department of the Railways. |

List of Annexures of the Respondents

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| Annexure R-1 | - | True copy of the O.O.No. HPB(O) 262/2010 dated 05.05.2010 (Annexure R.1.) |
| Annexure R-2 | - | True copy of the office order No. HPB(O)722/2012 |

dated 23.11.2012 (Annexure R.2)

- Annexure R-3 - True copy of the office order Dy.CPO/CN/MS letter No.P.500/I/CN/MS/Pension dated 12.12.2012 (Annexure R.3)
- Annexure R-4 - True copy of the Senior AFA/W&S/TPJ letter No.P.534/PTJ/Admn dated 29.11.2012 (Annexure R.4)
- Annexure R-5 - True copy of the letter No. P (G)500/V-64/855/2012-13 dated 21.02.2014.
- Annexure R.6. - True copy of the D.O. Letter dated 07.03.2014
- Annexure R.7 - True copy of the the reminder dated 19.03.2014.
- Annexure R.8 - True copy of the reminder dated 17.06.2014.
- Annexure R.9 - True copy of the letter No.P(G) 500/V-51887/2012-13 dated 17.06.2014.
- Annexure R.10. - True copy of the Sr. DPO/PGT letter No.J/P483/Bills II/GAZ dated 19.06.2014
- Annexure R.11** - True copy of the DO letter No. P (G)500/V-64/855/2012-13 dated 26.06.2014.
- Annexure R.12.** - True copy of the Sr.DEN/Co-ord/PGT DO letter No.J/S339/IR dated 25.06.2014.
- Annexure R.13.** True copy of the letter No.J/S339/IR dated 01.09.2014
- Annexure R.14.** True copy of the letter No. P(G) 500/V-51/887/2012-13 dated 5.09.2014
- Annexure R.15.** True copy of the letter No. P(G)500/V-51/887/2012-13 dated 05.09.2014.
- Annexure R.16.** True copy of the letter No. P(G)500/V-64/855/2012-13 dated 24.12.2014.
- Annexure R.17.** True copy of the letter No. P(G)500/V-64/855/2012-13 dated 24.12.2014.
- Annexure R.18** True copy of the letter No. DRM/Works/PGT letter No.J/S33 /IR dated 31.12.2014.
- Annexure R.19** True copy of the letter No. P(G)500/V-64/855/2012-13 dated 07.01.2015.
- Annexe R. 20** True copy of the letter No.G.25/PGT/FBX/Misc dated

- 20.01.2015.
- Annexure R.21** True copy of the Sr.AFA/W&S/PTJ letter No.J/S339/IR dated 29.01.2015.
- Annexure R.22 –** True copy of the representation of Shri S. Vijayakumar dated 15.01.2015.
- Annexure R.23 -** True copy of the Dy.CPO/Gaz's letter No. P(G)500/V-64/855/2012-13 dated 09.02.2015
- Annexure R.24 -** True copy of the Sr.AFA/W&S/PTJ.DRM/Works/PGT letter No.J/S339.IR dated 12.02.2015
- Annexure R.25 -** True copy of the letter No. P500/HQ/Pen/SVK dated 18.02.2015.
- Annexure R.26 -** True copy of the letter No. p(G) 500/V-64/855/2012-13 dated 11.03.2015.
- Annexure R.27 -** True copy of the Dy. CPO/CN/MS letter No.P500/I/CN/Settlement/Ms/Vo.IX dated 12.03.2015.
- Annexure R. 28 -** True copy of the Sr. AFA/Pension letter No.P500/Hq/Pen/PPO 0601211920 dated 26.03.2015.
- Annexure R.29.** True copy of the PPA No.0601211920 dated 26.03.2015.
- Annexe R. 30.** True copy of the Sr. AFA/Pension letter N. P500/HQ/pen/PPO 060111920 dated 23.03.2015.
- Annexure R.31.** True copy of the letter No.P(G)500/V-64/855/2012-13 dated 10.07.2015.
- Annexure R.32.** True copy of the Service Certificate dated 30.07.2015.
- Annexure R.33.** True copy of the letter No.P(G)500/V-64/855/2012-13 dated 10.07.2015.
- Annexure R.34.** True copy of the letter dated 02.02.2016 advising the balance of Leave on Average Pay and Leave on Half Average Pay at credit.
- Annexe R. 35.** True copy of the Railway Board's letter No. F(E) III/2008/LE-1/2 dated 13.04.2010 (RBE.No.53/2010)
- Annexure R.36.** True copy of the Rule 15 of Railway Services (Pension) Rules, 1993.
- Annexure R.37.** True copy of the Rule 87 of Railway Services (Pension) Rules, 1993.

Annexure R.38. True copy of the para 36(d) of Schedule of Powers .
