

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 545/2016

Date of C.A.V. : 29.06.2018

Date of Order : 17.08.2018

Between :

T.V.S.Prakasa Rao, S/o Late T.V.Ramana Murthy,
Aged 63 years, Chief Depot Materials Superintendent (Retired),
Office of AMM/ELS/Angul, East Coast Railway,
C/o.A.J.Sagar, Flat No.304, Vindhya Vihar,
Plot/Block No.105 A, Pragati Nagar, G.P.No. 7-94,
Behind Sri Krishna Gardens (Kukatpalli),
Hyderabad, Telangana – 500 090. ... Applicant

And

1. Government of India, rep. by
The General Manager,
East Coast Railway, Bhubaneswar, Odisha – 751 017.

2. Sr. Divisional Finance Manager,
East Coast Railway, Kurda Division,
Kurda Road, PO Jatny, Odisha – 752 050.

3. Chief Material Manager-II,
East Coast Railway, Bhubaneswar, Odisha – 751 017.

4. Deputy Chief Material Manager (Systems),
East Coast Railway, Bhubaneswar, Odisha – 751 017.

5. Sr.Divisional Personnel Officer,
East Coast Railway, Kurda Road,
At/Po Jatny, District Kurda, Odisha – 752 050.

6. Sr.Materials Manager, DLS,
East Coast Railway, Diesel Loco Shed,
PO Kancharapalem, Visakhapatnam – 530 008. ... Respondents

Counsel for the Applicant ... Mr. V.Ravindranath Reddy, Advocate
Counsel for the Respondents ... Mrs.A.P.Lakshmi, S.C.for Rlys.

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Member (Judl.)

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant filed the OA to declare the action of the 6th respondent in imposing the punishment of recovery of Rs.1,78,549/- from the retiral benefits without authority and jurisdiction and without conducting any fact finding enquiry as arbitrary, illegal and to set aside the proceedings dated 27.11.2015 where under the amount was sought to be recovered.

2. The brief facts necessary for considering the issue involved in the present OA may be stated as follows :

The applicant was issued with a major penalty charge sheet dated 26.12.2012 by the 3rd respondent alleging that as a result of his neglect of duties resulted a loss of RR-606 Lubricant oil which occurred during 2007. The said charge sheet was issued 08 months prior to the retirement of the applicant. The Charge memo dated 23.08.2013 was issued to the applicant relating to the minor penalty alleging that he did not account for the Flexible Cable 1000V for 105 mts. From M/s Skytone Electricals India Limited, Faridabad dated 24.10.2007. The applicant submitted an explanation stating that he had not seen the item at all and there was no neglect of duty or lack of supervision on his part as Chief Depot Material Superintendent. The explanation was not accepted by the 6th respondent who is the Disciplinary Authority and he directed recovery of an

amount of Rs.1,78,549/- from the retiral benefits of the applicant. The said order of recovery is impugned in the present OA.

3. The applicant retired from the respondents organization w.e.f. 31.08.2013. As the pensionary benefits were not paid to him on the ground that the disciplinary action was pending against him, he filed OA.759/2014 and the Tribunal by order dated 20.08.2015 directed the respondents to conclude the disciplinary proceedings within a period of three months. The respondents subsequently sought extension of time and the same was granted. Ultimately the respondents communicated an order passed by the Hon'ble President of India dated 10.05.2016 whereby and where under the disciplinary proceedings against the applicant in respect of major penalty charge sheet were dropped.

4. The 6th respondent however rejecting the explanation submitted by the applicant passed an order dated 27.11.2015 directing recovery of an amount of Rs.1,78,549/- from the pensionary benefits of the applicant. The contention of the applicant in the present OA is that the respondents undertook before the Tribunal in the earlier OA.759/2014 that they would initiate disciplinary proceedings in respect of both the charges and conclude the same within the period specified by the Tribunal, but contrary to the undertaking, the 6th respondent passed the impugned order of recovery without conducting any fact finding enquiry.

5. The respondents in their reply statement contended that since the recovery relates to a minor penalty charge memo, the 6th respondent can direct recovery without conducting any enquiry and therefore the amount proposed in

the order passed by the 6th respondent has necessarily to be recovered from the pension amount of the applicant.

6. I have heard Mr.V.Ravindranath Reddy, learned counsel for the applicant and Mrs.A.P.Lakshmi, learned standing counsel for the respondents.

7. The version of the applicant is that he has not seen the material in question at any point of time, the CDMS was actually responsible for any loss on account of lack of supervision and directing recovery from the pensionary benefits of the applicant is illegal and unsustainable in law. On the other hand it is the version of the respondents that the acknowledgment which was signed by the CDMS was written by the applicant himself, the applicant was supposed to check the consignment and ought to have made remarks if any by signing in the tally book and put up the same before the Depot Officer for approval. According to them the very fact that he did not see the material at all does not relieve him of the liability and more over he failed to discharge his duties as DMS/RS.

8. The respondents undertook before the Tribunal in OA.759/2014 that they would conduct disciplinary enquiry in respect of both charge sheets issued against the applicant, but they did not conduct any enquiry into the allegations in the minor penalty charge sheet. As to this, the contention of the respondents is that in respect of a minor penalty charge sheet no disciplinary proceedings need to be initiated and on receiving the explanation of the applicant, straightaway penalty can be imposed. As regards the contention of the respondents it requires to be stated that even though no regular disciplinary proceedings are necessary in respect of a minor penalty charge sheet, the applicant shall not be deprived of his

pensionary benefits without proving the allegation against him in a fact finding enquiry. In the order dated 27.11.2015 the 6th respondent stated that it is seen from the records that the acknowledgment was signed by CDMS, but it was written by the applicant in his own handwriting. But no notice was issued to the CDMS seeking his explanation about acknowledging the material. No reason has been assigned in the impugned order as to why no action was taken against CDMS. Further admittedly as seen from the impugned order there was a theft in the unit and the culprits were caught by RPF personnel. The 6th respondent mentioned in his order that there was no material seized from the culprits, the applicant who was responsible for supervising the delivery of the item cannot plead ignorance of the existence of the said item. Therefore, according to the 6th respondent it appears from his order that the conduct of the applicant shows his lack of devotion to the duty. It seems that on account of missing of the item, M/s Skytone Electricals India Limited initiated Arbitration proceedings and by virtue of the award in the Arbitration proceedings the respondents railways suffered loss to the tune of Rs.1,78,549/-. Since the respondents incurred loss, the 6th respondent directed recovery of the amount from the pensionary benefits of the applicant without conducting any fact finding enquiry.

9. From the material available on record and also from the averments of the counter, it is obvious that no enquiry of any sort was conducted in respect of the missing of the material to fix the responsibility. In my considered view without a fact finding enquiry fixing responsibility on the applicant for the loss occasioned due to loss of material, he shall not be deprived of his pensionary

benefits. The impugned order therefore is illegal and also unsustainable in law.

10. Consequently the impugned order dated 27.11.2015 is set aside. The respondents are directed to pay the pensionary benefits which remained unpaid to the applicant, however without any interest thereon within a period of two months from the date of receipt of a copy of this order.

11. The OA is allowed accordingly. There shall be no order as to costs.

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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