

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

Original Application No. 020/00263/2016

Date of C.A.V. : 09.04.2018

Date of Order : 16. 07.2018

Between :

S.Radha Krishna, S/o Late S.V.N.Sarma,
aged 62 years, retired Office Superintendent,
Deputy CSTE/CN/S&T/BZA, S.C.Railway,
R/o H.No.24-9/1-3A, Rama Nagar
Near Ramakoti Temple,
S.N.Puram, Vijayawada – 3.

... Applicant

And

1. Union of India, rep. by General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.

2. The Chief Signal & Telecom Engineer (Maintenance)
South Central Railway, Rail Nilayam,
Secunderabad.

3. The Divisional Railway Manager,
S.C.Railway, Vijayawada.

4. The Senior Divisional Signal and
Telecom Engineer (Maintenance),
S.C.Railway, Vijayawada.

5. The Divisional Signal Telecom and
Engineer/Special Works
S.C.Railway, Vijayawada. ... Respondents

Counsel for the Applicant ... Mr. J.M.Naidu, Advocate
Counsel for the Respondents ... Mrs.Vijaya Sagi, S.C. for Rlys.

CORAM:

ORDER

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

The OA is filed to declare the action of the 4th respondent in withholding an amount of Rs.1,78,448/- towards shortage of materials and an amount of Rs.4,06,808/- towards shortage of stock sheet materials from the pensionary benefits of the applicant without giving him any opportunity as illegal, arbitrary and unconstitutional and to direct the respondents to pay the settlement benefits including DCRG to the applicant with interest.

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

While working as Station Master the applicant suffered from severe heart ailment and underwent bypass surgery. In consequence thereof he was medically decategorized vide office order dated 21.03.2005. While working as Head Clerk under the control of Senior Section Engineer/SIG/M/BZA, he was transferred as Store Keeper to the office of the 4th respondent on administrative grounds vide proceedings of the 3rd respondent dated 30.03.2010. He submits that he suddenly fell sick on 16.03.2012 due to heart attack and admitted into private heart care centre, Vijayawada by his family members and he was bedridden upto 21.04.2012 and again from 28.05.2012 to 10.07.2012. According to him while he was hospitalized, the authorities have authorized Mr.M.Deepal

Naik to discharge the duties of Store Keeper and the said Deepal Naik by misutilizing his powers had not accounted for the materials which he took from the applicant without proper verification by the officials. The applicant was transferred on administrative grounds to work under 4th respondent vide proceedings dated 29.03.2012 and he was relieved on 08.08.2012 from the post of Store Keeper.

3. The version of the applicant is that Mr.Deepal Naik took charge duly verifying all the stocks and found them to be correct. On the very same proceedings dated 29.03.2012 Mr.Deepal Naik was transferred to his place to work as Store Keeper. One year thereafter the Accounts Stock Verifier verified the stocks and found that there was shortage of stocks worth about Rs.4,06,808/- and issued stock verification sheet to Mr.Deepal Naik. In this context it is submitted by the applicant that the 5th respondent vide proceedings dated 26.02.2014 informed the 2nd respondent that the applicant had not handed over the materials worth about Rs.4,06,808/- and according to the applicant the said proceedings were issued only to protect Mr.Deepal Naik. Basing on the report of the 5th respondent, the 2nd respondent issued proceedings dated 05.03.2014 to the effect that there is shortage of material of stock sheet for worth about Rs.4,06,808/- and the said stock was not handed over by the applicant to Mr.Deepal Naik.

4. Nextly it is submitted that the 4th respondent issued proceedings

dated 04.06.2014 advising the 3rd respondent to withhold an amount of Rs.5,59,656/- from the settlement benefits of the applicant. Accordingly the respondents withheld the aforesaid amount from the pensionary benefits and gratuity payable to the applicant in violation of payment of Gratuity Act.

5. Aggrieved by the action of the respondents the applicant filed OA.493/2015 before the Tribunal and the Tribunal disposed of the OA by order dated 13.11.2015 directing the respondents to consider the representation dated 20.03.2014 in accordance with Railway Rules and to pass appropriate orders. It is submitted by the applicant that the 4th respondent without properly verifying the facts and without taking into consideration the admitted fact that the applicant fell sick and hospitalized during the relevant period i.e. from 16.03.2012 to 21.04.2012 and 28.05.2012 to 10.07.2012 and also ignoring the fact that Mr.Deepal Naik did not give any complaint regarding shortage of material till 21.11.2013, straightaway rejected the claim of the applicant by proceedings dated 30.12.2015.

6. It is under these circumstances the applicant filed the present OA seeking the aforementioned relief.

7. The respondents have admitted the hospitalization of the applicant on account of illness under sick list upto 21.04.2012 and subsequently from 28.05.2012 to 10.07.2012. According to them the applicant handed over the keys

of the stores to Mr.Deepal Naik without taking prior permission from the higher officials and also ignoring the guidelines under the Stores Code. After Mr.Deepal Naik was posted as regular Store Keeper by transferring the applicant to the office of the 4th respondent, the Senior Divisional Personnel Officer Vijayawada has been advised vide letter dated 04.06.2014 to withhold an amount of Rs.5,59,656/- from the settlement dues of the applicant who retired from service on 30.06.2014 on attaining the age of superannuation. According to the respondents as the applicant handed over the Stores to Mr.Deepal Naik while he was sick without taking prior permission of the higher officials and without following the Stores Code lead to ambiguity as discrepancies were found in the ground as well as the book balance of the materials during the stock verification. They stated that during the handing over and taking over the stores between the applicant and Mr.Deepal Naik some items were found deficit and were shown as not not yet handed over. The handing over note containing such shortage of materials was signed by both the applicant and Mr.Deepal Naik. It is further submitted that the applicant and Mr.Naik signed the HOC/TOC statement except for the items which were not tallying with the ledger balance as well as ground balance and the same were listed and given to the applicant to make good the deficit. It is further stated that as borne out from the records that out of 16 items found shortage of, only 3 items were made good by the applicant due to arithmetical calculation.

8. The version of the respondents seems to be that the applicant was unable to give sufficient and suitable reasons for the differences pointed out by

the department as well as stock verifier and it is also stated that though the applicant was given ample time and opportunity to prove his innocence and make good the deficit before withholding the amount from the retiral benefits, the applicant failed to prove his innocence and therefore the amounts were withheld from the pensionary benefits and the gratuity of the applicant.

9. Contending as above the respondents sought to dismiss the OA.

10. I have heard Mr.J.M.Naidu, learned counsel for the applicant and Mrs.Vijaya Sagi, learned standing counsel for the respondents.

11. It is argued by the learned counsel appearing for the applicant that if at all there is any shortage of stocks, Mr.Deepal Naik was responsible and to protect him the department made huge recovery from the retiral benefits of the applicant without providing him any opportunity to defend his case not even by issuing any notice to him. According to the learned counsel, without there being any enquiry no liability can be fastened on the applicant.

12. On the other hand it is contended by the learned standing counsel for the respondents that the deficit of stock was found and as the applicant handed over the charge of the stocks to Mr.Deepal Naik without taking prior permission from the higher officials and without following the Stores Code and therefore if there is any discrepancy or deficit found in the stock the applicant must be held

responsible.

13. There is no dispute about the fact that the applicant at the time of handing over the stocks to Mr.Deepal Naik was hospitalized with heart attack and Mr.Deepal Naik without raising any protest received the stocks from the applicant. Because the applicant was in a serious condition it could not have been possible for him to obtain prior permission from the higher officials before verifying the stock. In any event the handing over of the stock by the applicant was only on the direction of the higher officials but not on his own. The department authorized Mr.Deepal Naik to take over the stocks from the applicant. The amount was recovered from the retiral benefits of the applicant long after he was transferred to work under the 4th respondent vide proceedings dated 29.03.2012. The version of the applicant is that for a period of one year the respondents did not raise the issue of deficit of stocks. In this context it is also relevant to mention that Mr.Deepal Naik after taking over the stocks did not complain to the department about the deficit of stocks. Much reliance has been placed by the respondents on Anx-A-6 which is a stock verification sheet where under the applicant handed over the stock to Mr.Deepal Naik. But there is no mention in the document about the deficit of stock or any noting made by Mr.Deepal Naik that he received the stock under protest. Therefore the document is not helpful to the respondents to substantiate their version.

14. One of the contentions raised by the respondents is that when the

fact regarding the deficit of stock was informed to the applicant the loss of Rs.1,50,000/- was made good by him. But the said fact itself does not enable the the respondents to fasten the liability on the applicant without fixing the responsibility on him. The respondents directly served an order of recovery on the applicant and recovered the amounts from the retiral benefits. In OA.493/2015 filed by the applicant earlier to the present OA the Tribunal directed the respondents to dispose of the representation submitted by the applicant and pass a reasoned order. Even after the order passed by the Tribunal in the earlier OA, the respondents mechanically rejected the representation submitted by the applicant without passing a reasoned order.

15. In a matter of this nature even though a regular departmental enquiry is not required in the strict sense, there must be some sort of enquiry involving examination of witnesses and verification of documents which is necessary to fix responsibility either on the applicant or on Mr.Deepal Naik, but no such enquiry is conducted in the instant case. Without fixing the responsibility and fastening liability after an enquiry conducted by the department, withholding huge sum from the retiral benefits of the applicant is unjust and illegal. There must be some order by the competent authority showing the manner in which the applicant was held responsible for the shortage of stocks.

16. The contention of the respondents that the applicant was given ample opportunity to prove his innocence and to make good the deficit before

withholding the amount from the retiral benefits, but the applicant failed to prove his innocence is without any substance since the burden is on the department to prove that the applicant is responsible for shortage of stocks. As already held, in the instnat case, no enquiry was conducted into the shortage of stocks and no attempt was made to fix responsibility either on the applicant or on Mr.Deepal Naik. The contention of the applicant is that to save Mr.Deepal Naik the department made him a scapegoat.

17. Having gone through the facts and circumstances of the case and the documents filed by the respondents, I am of the view that absolutely there is no material in this case to show that the applicant was responsible for shortage of stocks and therefore the respondents are not justified in withholding the amount of Rs.5,59,656/- from the retiral benefits of the applicant.

18. The OA therefore deserves to be allowed, accordingly the same is allowed. The action of the 4th respondent in withholding of an amount of Rs. 5,59,656/- from the pensionary benefits of the applicant is illegal and without any basis. The respondents are directed to pay the retiral benefits including DCRG to the applicant without any deduction, within a period of two months from the date of receipt of a copy of this order.

19. There shall be no order as to costs.

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

sd