

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.0290/00209/2015

Pronounced on : 26.07.2018
(Reserved on: 19.07.2018)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Y.C. Pathak, son of Shri Ram Charan Pathak, aged about 61 years, resident of 5/146, Sector 14, Goverdhan Vilas HIG Colony, 100 Feet Road, Udaipur-313002, last employed on the post of SSE (P Way), Rail Testing (HQW) at Ranapratapnagar, NWR, Distt. Udaipur.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra.

VERSUS

1. Union of India, through General Manager, HQ Office, North-Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur-17.
2. Divisional Finance Manager, North-West-Railway, Ajmer Division, Amer.
3. Shri S.S. Bhati, Senior Divisional Engineer (West), Ajmer, Ajmer Division, Ajmer, NWR.

RESPONDENTS

BY ADVOCATE: Mr. Girish Shankhala.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The applicant has filed the present Original Application (O.A.) challenging non-payment of terminal benefits and cheque details issued by Sr. DFM, Ajmer, NWR, dated 01.05.2014 (Annexure A1) at the time of his

superannuation dated 30.04.2014 which is legally due to him and the amounts which have been withheld / recovered is directed to be repaid along with interest @9%. He has also prayed that the amounts which have been withheld are due to malice of respondent no.3 and the amounts of interest to be recovered from 3rd respondent and has also prayed for reasonable compensation to the tune of Rs.5 lakhs to be paid by respondent no.3 to the applicant.

2. It is a case of the applicant that he was initially appointed as APWI on 07.06.1980 in Ajmer Division of erstwhile Western Railway. Thereafter he earned further promotion and he retired from service holding the post of SSE (P Way), Rail Testing (HQ) at Ranapratapnagar NWR, on attaining the age of superannuation on 30.04.2014.

3. While he was working as SSE at Mavli Jn., he was In-charge of the Section including the Stores, Establishment and Maintenance etc. during the years from 2005 to 2012. He was informed by the subordinate staff about the theft of Railway material took place at Nathduwara, Kankroli, Kheroda and Bulbhanagar. The stolen material consisted of Steel Sleeper (Released/old/scrap) for auction except at Kankroli, which were kept as second hand for reuse.

4. It was the contention of the applicant that he had reported the matter to his higher authorities as well as concerned RPF, immediately after the knowledge of the theft. He has also informed about the said theft and recorded the same in Crime Register with respect of Kheroda. The inquiry is going on at Railway Court at Ajmer. It is the submission of the applicant that items no.1,2,3 and 5 were cleared and excess were accounted for. As far as item no.4 is concerned, some of the stolen items

were recovered and rest of the items value of the same were recovered by RPF as per communication dated 28.02.2012 and a Criminal case is also pending to that effect.

5. As far as only one item outstanding at Sl.No.4, ST Sleeper 203 Numbers under theft case No.07/2010 is still pending at Railway Court at Ajmer. It is informed by the applicant that he is a complainant in the said case. So no action against him in respect of the same can be taken either in the form of disciplinary proceedings or criminal proceedings. It is his submission that he has not caused any loss to the Railways due to his negligence or fraud on his part while he was in service. Also, the question of recovery from him did not arise on account of any shortage of Stores which is the subject matter in the Criminal case and in that also the stolen items or their value had already been recovered by the RPF from the accused persons. It is his contention that settlement dues were sought to be stopped, which was evident from letter dated 13.03.2014 (Annexure A4) issued by the immediate Controlling Authority of the applicant to the ASC RPZ to furnish details of theft of 203 Numbers ST Sleeper from Kheroda station so that his settlement dues could not be released. The said dues were impliedly withheld in the present case. His controlling authority immediately replied to the concerned authority vide letter dated 14.03.2014 (Annexure A5) that an amount of Rs.42,000/- was recovered towards cost of 180 ST sleepers and rest 23 sleepers were recovered and the same have been deposited in Malkhana under custody of Railway Court.

6. It has been averred by the applicant that he has been paid his retiral dues vide letter dated 01.05.2014 and an amount of Rs. 3,62,565/- has already been deducted as deposited amount and Rs.28,865/- has been

withheld as recovery towards RELHS and miscellaneous expenses. He has also averred that towards the said recovery, no show cause notice has been given to him for the said deduction / recovery and no details about the amounts to be recovered were given to him. He has averred that no proceedings are pending. The competent authority has not taken the judicial notice of Rule 9(1) and 15.4 of Railway Service (Pension) Rules, 1993. The extract of Rules 9(1) and 15.4 are as follows:-

“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 letter No.2011/F(E)III/I(1)9, dated 23.09.2013.

15 (4). (i). 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;
- (b) Other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premium, or outstanding advance,
- (c) Non-Government dues.

(ii) Recovery of losses specified in sub-clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in items of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject

to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.”

It is his contention that the said recovery is illegal and the same has to be refunded to him. He has also averred that after retirement no dues can be withheld as there is no question of any grave misconduct.

7. The respondents in the written statement have averred that the applicant has directly approached this Tribunal without exhausting any remedies and the present case is required to be dismissed on this ground itself since the present OA is premature. He has also stated that the applicant did not make any representation to the respondents Railways, and therefore, the said OA need not be heard even on merits.

8. He has contended that the applicant has failed to discharge the duties in a proper manner while working as SSE at Mavli Jn., as Incharge of Section including the Stores, Establishment and Maintenance. It is due to his negligence that the incidence of theft occurred at Udaipur City, Nathdwara Station, Kankroli Station and Vallabnagar Railway Station wherein he was the duty Incharge Officer. He has given a brief of the theft including Stock sheet no.SSE/P Way/Mavli/COFF/1-5/1-12 dated 17.11.2012 and Stock sheet no.PA/SV/Ajmer/PWI/Mavli/HP way/1-18/9-10, dated 22.08.2009, wherein it has been made about the items stolen and where the goods of theft and accused both have been seized and arrested. He also submitted that the accused has sold the 180 item of ST Sleepers for an amount of Rs.42000/- and remaining 23 Sleepers have already been recovered and presently such amounts and goods both are lying under the possession and deposition of competent Court of Additional

Chief Judicial Magistrate, which is about cost of Rs.1,62,400/- and the said case is pending before the competent Court.

9. He has also averred that item No.8 of the Stocks sheets dated 24/25.01.2008, the 280 items of ST Sleepers 50 R were stolen from the Nadhwara Railway Station, which were lying there since last two years. In this regard FIR were lodged at Railway Police Force P.S. Udaipur City as a CR No.03/2009 by the Chief Rail Inspector Mavli Junction and Special report of the case UDZ/CR-1/2009 special/066, dated 25.01.2008 have also been lodged. Here, neither goods have been recovered nor the accused has been arrested, therefore, the Criminal case No.1/2010 under Section 379 of the IPC were lodged on 13.04.2010 against unknown accused at GRP Mavli Junction. The concerned GRP Mavli Junction has lodged an FIR No.1A/2010 on 31.08.2010 at ACJM Court Railway and the same has been accepted by the competent Court vide order dated 09.07.2013 where a liberty has been granted that the search warrant shall remain continued since neither the goods have been recovered nor accused has been arrested. Therefore, the loss caused due to such theft was Rs.1,04,523/- and a Resolution to that effect has been signed to the General Manager of the respondent Department vide Resolution dated 30.03.2015 at Headquarter, Jaipur. The investigation is still continuing for the search of goods and accused as per the assurance given by GRP Mavli Junction.

10. It has also been averred by the respondents that item no.18 of said Stock sheets found on 27.07.2008 at Kankroli Station near to Midget No.37 the 455 item of CST-9 are Sleepers which were stolen and for which FIR has also been lodged at IPF Railway Police Force at Udaipur City bearing No.UDZ/CR-03/2008, dated 28.07.2008 by the concerned agency

of police. Here, the said assts of Railway has been recovered by the RPF Jaipur and also accused has been arrested vide Criminal case No.10/2008 under Section 3 RP (UP Act) dated 28.07.2008 as CC No.(906/2008) by the Inspector of RPF, Gandhi Nagar, Jaipur. The RPF, Jaipur has informed vide letter no.CADJ/56/2013 dated 24.12.2013 that the competent Court has directed to deliver and handover the seized goods to the Railways concerned Department after keeping the samples, therefore, the concerned PWI have obtained 450 items of CST-9, 90 R MG Sleepers from the concerned GRPF.

11. It is also averred that 16 items of CST/9 Sleepers were stolen on 05.02.2008 at midnight from Vallabhnagar Railway Station for which the concerned PWI lodged the case on 07.02.2008 at IPF Udaipur City, whereby the CR No.1/2008 has been marked and neither goods have been recovered nor the accused has been arrested. Here, the Inspector of Railway Police Force, Udaipur City vide its letter dated 22.03.2008 has lodged an incident pertaining to theft. The said investigation is pending before the competent Agency.

12. The respondents have averred that the applicant has failed to discharge his duty in a proper manner, such an incident of theft would not have been occurred. The applicant failed to control the staff, though he was warned by the competent authority time and again for his negligence. Memorandum dated 23.02.2010 was served on the applicant under Rule 12 of the Railway Servant (Discipline and Appeal) Rules, 1968 for the charge of imposing a minor penalty. It is the contention of the respondents that though recovery of Rs.42,000/- has been done but that said amount is not the actual amount of stolen sleepers (goods) as well as the said amount is lying under the deposition of the competent Court.

Also seized 23 Sleepers are lying under the deposition of competent Court. Therefore, it cannot be said that the entire dues have been recovered. The respondents said that a show cause notice dated 28.02.2013 (Annexure R9) was given by the competent authority.

13. It is a submission that the recovery has been made by the competent authority in accordance with the circular issued by the competent authority as the applicant was warned for not discharging his duties in a proper manner, therefore, the action of the respondents is just and proper in the eyes of law. He has also averred that the case of the present applicant is not of simple retirement but he has been warned and departmental inquiry proceedings are pending against him, therefore, till the decision of the above Criminal cases as well as the departmental inquiry whereby memorandum dated 23.02.2010 has been issued against him under Rule 12 of Railway Servant (Discipline and Appeal) Rules, 1968, is pending, no retiral dues can be granted to the applicant.

14. Heard learned counsel for the parties and perused the pleadings of respective parties and documents annexed therewith.

15. On considering submissions of both the parties, it is clear that the letter dated 28.02.2013 cannot be said to be a show cause notice, in fact, it was a simple letter of warning given to the applicant to be careful in future for the negligence on his part. Therefore, it cannot be said that it is a proper show cause notice given to the applicant, and therefore, the recoveries / adjustments done from his retiral dues are not just and proper. The applicant on attaining the age of superannuation retired on 30.04.2014 and vide order dated 01.05.2014, the recoveries effected from his terminal benefits are not just and proper.

16. Accordingly, I dispose of the OA by quashing and setting aside the order dated 01.05.2014 (Annexure A1), as no proper show cause notice has been served to the applicant and no justification has been given by the respondents for the amounts recovered from his retiral dues and about the amounts withheld towards RELHS. I hereby direct the respondents to remit the said amount withheld / recovered from the retiral dues within a period of two months' from the date of receipt of a copy of this order. However, the respondents are at liberty to issue proper show-cause notice and take further course of action in accordance with law.

17. Accordingly, the O.A. is hereby allowed. No order as to costs.

(HINA P. SHAH)
MEMBER (J)

Dated: 26.07.2018

Place: Jodhpur

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