

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. O.A. No.350/01638 of 2016

Date of Order: 29.06.2018

Gangadhar Roy, son of
Late B.L. Roy, aged about
60 years, residing at Village
And Post Office – Naranda,
District Purba Midnapur,
Pin 721 139, West Bengal.

.....Applicant

-versus-

1. The Union of India, through
General Manager, South
Eastern Railway, Garden Reach,
Kolkata 700 043.
2. The Divisional Railway Manager,
South Eastern Railway, Kharagpur,
Post Office and P.S. – Kharagpur,
District – Paschim Midnapur,
Pin 721 301, West Bengal.
3. Senior Divisional Personnel Officer,
South Eastern Railway, Kharagpur,
Post Office + P.S. – Kharagpur,
District – Paschim Midnapur,
Pin 721 301, West Bengal.
4. Senior Divisional Commercial Manager,
South Eastern Railway, Kharagpur,
Post Office and P.S. – Kharagpur,
District – Paschim Midnapur,
Pin 721 301, West Bengal.

.....Respondents

For the Applicant : Mr. A. Chakraborty

For the Respondents : Ms. G. Roy

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

1. This O.A. has been filed in order to seek the following reliefs:

An order do issue directing the respondents to release DCRG in favour of the applicant at an early date with interest @ 12% per annum from the date of entitlement till the date of actual payment.

2. The respondents have averred and indicated as under –

While Sri Gangadhar Roy, Ex. CS(P)/MCA was working as Commercial 4.3 Supervisor at MCA Parcel Office under SMR/MCA, a periodical checking was conducted by Sr. TIA – Howrah at Howrah Parcel Office and Mecheda Parcel Office. During the cross checking of Manifests from the period 15.05.2008 to 31.07.2008 it was observed that overloading has been done by lease holder M/s Ravi Enterprise/Howrah beyond the carrying capacity of leased consignment by train No.12834 in SLR compt. for which the debit amounting of Rs.1,79,786/- was raised against the Howrah and Mecheda Parcel. Vide Sr.TIA/Howrah – II debit Memo Dtd. 21.09.08/20.10.08.

The Sr. TIA/HWH – II advised CS(P)/Mecheda and CPLI/E. Railway – Howrah to realize the debit amount from the lease holder M/s Ravi Enterprise but the applicant Sri Roy failed to account the debit and realize it from the lease holder in time.

The agreement period of lease of SER of M/s Ravi Enterprise-Howrah expired on 12.04.2010 but the outstanding debit is still pending against Howrah Parcel and Mecheda Parcel as a result the debit amount of Rs.1,79,786 has been raised out of which CPLI/Howrah, E. Railway is responsible for Rs.11,241/- for making wrong endorsement of the manifests for excess loading on 15.06.08. The debit amount of Rs.11,241/- has been paid by E. Railway – Howrah Staff Concerned. The remaining amount of debit Rs.1,68,545/- is of Mecheda Station.

While working as Supervisor the then CS(P)/MCA -
Sri Gangadhar Roy is found to have failed to supervise the staff to detect overloading as per manifest and realize the proper Railway dues in time.

Out of the debit amount of Rs.1,68,545/- outstanding against Mecheda Parcel for non-realization from lease holder till date, Rs.25,000/- has been recovered from deposit of M/s Ravi Enterprise.

All error sheets or other advices of debits received at the station should be taken to account immediately in the first balance sheet under preparation.'

3. The respondents have further contended that 'as a CS(P), Parcel, Sri Gangadhar Roy did not take any action to realize the debited amount and did not account for the debited amount of Rs.1,73,786/- against overloading by M/s/ Ravi Enterprises in leased 4 tonnes rear SER space of train No.12834.

'As a result, the Competent Authority decided to pay all the retirement due including the DCRG amount of Sri Gangadhar Roy, ex- CS(P)/MCA except the debit amount of Rs.1,43,545/- which has been recovered from his DCRG amount for the above said lapses.'

4. The applicant has pleaded that he retired from service on superannuation on 31.01.2016. His DCRG money is still withheld without any rhyme and reason. No disciplinary proceeding is pending against him. He is not occupying any Railway Quarter. The retirement gratuity on retirement is to be paid equal to one-fourth of his emoluments for each completed six monthly period of qualifying service subject to a maximum of 16 ½ times the emoluments provided that the amount to Retirement Gratuity payable shall, in no case, exceed Rs.10 lakhs. An interest or delayed payment of DCRG, at the rate applicable to SRPF deposit compounded annually for the period beyond three months after the date of retirement, provided DCRG was delayed on account of administrative lapse or for reasons beyond the control of Railway servant and also action should be taken to fix the responsibility and disciplinary action taken against the officer responsible for the delay. Upon his retirement with effect from 31.01.2016, pensionary benefits except DCRG was released in his favour. DCRG was certified to the tune of Rs.9,02,291/. He preferred several representations as DCRG was unlawfully withheld, but to no avail.

5. In course of hearing, the respondents were directed to produce the rules which authorized the said "competent authority" to withhold the DCRG amount of Rs.9,02,291/- without inquiry, show-cause, proceedings and without fixing responsibility upon the applicant by a due process of law.

6. The respondents neither justified by way of reply nor produced any circular or authority permitting such course of action other than placing the following provision:

"Accounting and scrutiny of the error sheets :- Error sheets or other advices of debits received at the station should be taken to account immediately in the first balance sheet under preparation."

7. Para 2709-2714 of Indian Railway Commercial Manual (Vol-II) envisages the following:

2709. Every debit or disallowance against a station of the Traffic Accounts Office or cash office, whether arising from error in charging fare or freight, short remittance of cash, base coins or other causes, is payable by the person through whose fault it has been occurred. It is, however, the duty of the Station Master that on receiving the advice of internal check error sheet or any other advice of debit, he should thoroughly check the same with the connected initial comments and in case the debit is admitted, to determine by whom the amount is payable. In disputed or doubtful cases, the Traffic Commercial Inspector may be consulted.

2710. If the admitted debit is against the person working at the station, his name, father's name, designation, staff No. etc., should be noted on both the foils of the error sheet and his signature obtained thereon in token of his acceptance of the debit. The employee concerned should also give in writing whether he proposes to clear debit by cash payment or agrees to a deduction through his salary bill.

2711. In case the admitted debit is against an employee who has since been transferred to another station, the procedure laid down in paras 2716 to 2718 below will be followed. When admitting debits on behalf of the staff no longer at the station, the Station Master must exercise special care to ensure that the responsibility is fixed against correct person and that only correct debits are admitted against such staff.

2712. If a debit is objected to, detailed reasons of the objection must be clearly stated, quoting tariff authority in support thereof on both the foils of the error sheet. If necessary, copies of the supporting documents, if any, should be enclosed with that foil of the error sheet which will be returned to the Divisional Commercial Superintendent.

The name of the staff responsible for the debit, his father's name, designation, staff No., and the station at which working must also be shown on the error sheet. If the person concerned is still working at the station, his signature must also be obtained on the error sheet, in other cases the name of the station at which he is working should be shown on the error sheet.

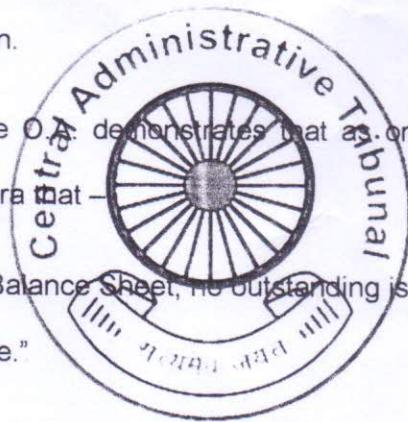
2713. One foil of each error sheet must be returned by the Station Master to the Divisional Commercial Superintendent within 30 days of its receipt at the station, the other foil being retained as station record. In the case of objected debits, the DCS will also scrutinize the grounds of objection and advise the Accounts Office to withdraw the debit and issue credit Advice.

2714. The time limit within which objections from stations may be entertained in respect of the debits raised by the Traffic Accounts Office is 30 days from the date of receipt of the error sheet at the station.

8. Annexure A-2 to the OA demonstrates that as on 26.5.16 it was certified by Station Manager-1, Panskura Station -

"As per our Station Balance sheet, no outstanding is lying against Sri Gangadhar

Roy, ex-CS/MCA as on date."



Similar certification has been given on 25.5.16 by Commercial Supervisor Bagnan (A-2).

9. On 26.5.16 (A-2), Commercial Supervisor Mecheda certified as under-

"Ref: Sr. DCM/KGP's Letter No.Com/G-29/Sett/GDR/15 dt: 24.05.2016.

Reference to above letter and according to this office records, this is to inform you that there is no Parcel Debit lying outstanding against Gangadhar Roy, ex-CS(P)/MCA during the period from 04/12/2014 to 31/01/2016.

Regarding the undercharge of Rs.1,68,545/- (vide case TA/SI/Misc/KGP/Parcel lease/OL/HWH) has been accounted for in CB5/MCA under the head of Admitted debit which is lying outstanding.

The responsibility fixed over the following Name:

(I) A. Ghoshal Rs.81,471

(II) D. Prasad Rs.75,823

(III) Raj Gopal Rs.11,241.

All are now working as Goods Guard under KGP/Division and above amount is still not recovered from their salary due to Court case."

Therefore, indubitably and inarguably no responsibility was ever fixed upon the applicant.

10. Annexure A-2 dated 2.2.16 manifests that the admitted debit was raised against the following:

(1) Sri Raja Gopal, (2) Sri A Ghosal and (3) Sri Durga Prasad.

Applicant was never the one against whom the admitted debit was raised.

11. A letter dated 29.1.16 manifests that A Ghosal against whom debit was raised preferred an O.A. before this Tribunal against the order dtd 16.10.2012 issued by CS(P)/MCA to deduct the debit amount of Rs. 1,68,545/- from his salary.

The O.A. was disposed of vide order dtd. 01.05.2015 with the following directions that "the amount sought to be realized from the applicants tantamounts to a penalty imposed on them. In such cases deducting of amount directly from the salary of the applicants without conducting any enquiry or without giving proper notice to the applicants will be a negation of the principles of natural justice. Therefore, we are of the view that the impugned order will not be sustainable in the eyes of law. Hence, we hereby quash Annexure – A/4 series communication issued to the applicants in this case.

As per order of the Competent Authority a writ application was filed by Railway Administration before the Hon'ble High Court/Calcutta against the impugned order passed by Hon'ble CAT/CAL.

The said appeal was dismissed with the following directions:

"Being aggrieved by the said order of Tribunal, Petitioners have preferred the instant writ petition. On perusal of the judgment and order so rendered by this Tribunal

and after hearing the learned counsel for the respondents herein, admittedly no notice was issued and no opportunity of hearing in any manner whatsoever has been afforded by the respondents herein.

"In view of the above, we do not find any illegality or infirmity of the order so passed by the Tribunal and accordingly, the writ petition is devoid of any merit and the same is hereby dismissed.

"However, it will be open for the authorities, if they so desire to proceed in accordance with the provision of the law." (emphasis added)

11. Despite such leave no proceedings were initiated against the three staff against whom admitted debit was raised, instead the Railways sought to punish the present applicant against whom no debit was ever raised at any point of time.

12. Further, contents of Annexure A-2 series as set out supra, have not been denied or disputed by the respondents.

13. It is evident that the debit was raised against three other persons but realized from applicant without enquiry whether there is a clear and unambiguous direction from the Hon'ble High Court to initiate one. Such act or action in depriving the applicant without any basis is arbitrary, shocking and appalling. It is a glaring example of administrative highhandedness. Therefore, the said "competent authority" who has advised withholding of gratuity of the applicant and has ordered realization of the debit amount is wholly responsible for the unlawful withholding in violation of and in non-compliance of the direction of the Hon'ble High Court, as also of the delay in making payment.

14. In the aforesaid backdrop, O.A. is allowed.

The said "competent authority" is directed to release the entire withheld DCRG of the applicant forthwith with interest @ 6% p.a. which sum in regard to interest is to be paid from his own pocket.

No costs.

(Bidisha Baherjee)
Member (J)

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