

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

OA/020/306/2018

**Reserved on: 02.04.2019
Order pronounced on: 04.04.2019**

Between:

T. Nageswara Rao,
S/o. Late Polaiah,
Age 61 years,
Retd. Senior Section Engineer/ P.Way/BVRM,
D.No.14-334-G 4, Rail Peta, Gudivada
Krishna District, AP

...Applicant

And

1. Union of India rep. by
The General Manager,
South Central Railway,
Rail Nilayam, 3rd floor,
Secunderabad – 500 025.
2. Sr. Divisional Personnel Officer,
Vijayawada Division,
South Central Railway,
Vijayawada.
3. Sr. Divisional Engineer (Co-ord),
Vijayawada Division,
South Central Railway,
Vijayawada.

...Respondents

Counsel for the Applicant ... Mr. G. Trinadha Rao

Counsel for the Respondents ... Mr. S.M. Patnaik, SC for Rlys.

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the withholding of an amount of Rs.26,88,083/- from the pensionary benefits of the applicant.
3. Brief facts of the case are that the applicant retired from the respondents organisation as Senior Section Engineer. At the time of his retirement a sum of Rs 26,88,083 was withheld from the terminal benefits without any notice. Applicant sought information under RTI about the reasons for withholding the amount but it was denied. Hence left with no other alternative filed the OA.
4. The contentions of the applicant are that the action of respondents in withholding his terminal benefits are violative of Principles of Natural justice and rule 9 of Railway Services (Pension) Rules, 1993. Pension is a property as per Article 300 A and no person can be deprived of the property save by law. Recovery has caused untold hardship to the applicant. Applicant has cited Supreme Court judgments and of this tribunal in support of his claim.
5. Respondents contend that at the time of the retirement of the applicant while handing over railway material on 30.7.2017 to his successor a shortage was noticed which was admitted by the applicant. As the applicant was retiring the next day the terminal benefits could not be granted immediately but later after assessing the loss and on vacation of the railway quarter , a sum of Rs 14,96,953 was withheld and the balance was released. Request for information under RTI was responded to as per provisions of RTI act. The process of certifying the

material by the inspector of stores and accounts has been undertaken and after completion of the same the issue will be finalised. Hence filing of the OA is premature and liable to be dismissed.

6. Heard both the counsel and perused the documents plus material papers submitted.

7. As seen from records the applicant has admitted that there is shortage of railway material while handing over charge a day before his retirement. This was not brought out in the OA and the applicant feigned ignorance about the same. Therefore he has not come with clean hands to the Tribunal. There being just a day left before retirement the respondents naturally could not initiate disciplinary proceedings by issue of notice followed by a charge memo and so on. The amount was withheld and not recovered awaiting certification of loss of material by the Inspector of store Audit. Besides the amount withheld was Rs 14, 96,953 and not Rs 26,88,083 as claimed by the applicant. The respondents have stated that soon after the certification of the shortfall of material, disciplinary proceedings will be issued as per rules on the subject. The applicant has retired on 31.7.2017 and not initiating disciplinary action till 2019 has not been explained and neither is it fair to delay the issue over the years. The respondents need to initiate appropriate action without further delay and definitely not beyond 3 months from the date of receipt of this order. The applicant has cited Hon'ble Supreme Court judgments and this tribunal verdict in support of his assertion. The same were perused and found that they were not relevant to the instant case as scribed herein after. It is true that there shall not be any recovery from pensionary benefits which are treated as a property without following the procedure prescribed. As the shortage

was found just a day before retirement, respondents after certification intend to act as per procedure prescribed under relevant disciplinary rules, which is a reasonable preposition to accept under the circumstances in which the shortage was noticed. It was the responsibility of the applicant before his retirement to verify the material under his charge and hand it over to his successor. Not doing so is dismal failure of duty. In fact, there has been no recovery but only the amount was withheld pending further action in the matter. Regarding the finding of the applicant being responsible, the process has been initiated by the respondents and only after such finding action appropriate would be initiated. For doing so, railways have been given 3 months time and initiate appropriate action as per extant rules. In regard to the verdict in OA 1025 of 2016 there was theft of railway material and hence is not relevant to the instant case. The applicant is holding a responsible position and has admitted in writing about the shortfall. It was his duty to safeguard railway material under his charge. Ld counsel for the applicant claiming that he has admitted out of fear that the pensionary benefits will be withheld does not project the applicant as a responsible railway servant. If he was not responsible for the loss he should have said so while handing over charge. Instead of taking such a stand at that juncture of time, taking the plea that he admitted out of compulsion is only an afterthought. Therefore there is no merit in the case for the Tribunal to intervene and hence the case is dismissed without any order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

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