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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

LIBRARY

O.A. No.350/0 9 11 of 2018

M.A. 350/23/2019

Mukta Medda, son of Sri Hari

Sadhan Medda, aged about 50

years, residing at Village & Post

Dullya, Via Andul Mouri, P.B.

Sankrail, District Howrah, Pin-

711302, presently posted at Senior

Section Engineer (C&W),

Santragachi, under Sr. DME

(Coaching) Santragachi,

Kharagpur Division, South

Eastern Railway.

... Applicant

VERSUS

1. Union of India, service
through the General Manager,
South Eastern Railway, having
office at 11, Garden Reach Road,
Kolkata-700043.

2. The Financial Adviser &
Chief Accounts Officer (WS), South
Eastern Railway, having

office at 11, Garden Reach Road,
Kolkata - 700043, presently
designated as Principal F.A &
C.A.O (WS);

3. The Area Railway Manager,
Santragachi, South Eastern
Railway, having office at
Santragachi, Post Jagacha,
District Howrah, Pin 711111.

4. The Chief Mechanical
Engineer, South Eastern Railway,
having office at 11, Garden Reach
Road, Kolkata - 700043,
presently designated as Principal
CME/GRC/S.E. Railway.

5. The Chief Rolling Stock
Engineer (Coaching), South
Eastern Railway, having office at
11, Garden Reach Road, Kolkata
- 700043.

6. The Senior Divisional Mechanical Engineer/KGP, South Eastern Railway, having office at Divisional Railway Manager's Building, Kharagpur, District Paschim Midnapore, Pin 721301.

7. The Sr. Divisional Mechanical Engineer (Coaching), Santragachi, South Eastern Railway, having office at Santragachi, Post Jagacha, District Howrah, Pin 711111, presently designated as DME/Chg/SRC.

8. The Senior Stock Verified (SVR), South Eastern Railway, having office at 11, Garden Reach Road, Kolkata - 700043.

9. The Additional Divisional Railway Manager, Kharagpur, South Eastern Railway, having

office at Kharagpur, District
Paschim Midnapore, Pin 721301.

10. The Senior Assistant
Financial Adviser (WS&SV) Stock
Verifier, South Eastern Railway,
having office at 11, Garden Reach
Road, Kolkata - 700043.

11. Financial Advisor & Chief
Accounts Officer, South Eastern
Railway, having office at 11,
Garden Reach Road, Kolkata -
700043, presently designated as
Principal F.A & C.A.O.

12. Divisional Financial Manager,
Kharagpur, South Eastern
Railway, having office at
Kharagpur, District Paschim
Midnapore, Pin 721301.

..... Respondents

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/911/ 2018
M.A.350/23/2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

MUKTA MEDDA
Vs.
Union of India & Others
(S.E. Railway)

For the applicant : Mr.S.K. Datta, counsel
Mr. B. Chatterjee, counsel
For the respondents : Mr. S. Banerjee, counsel
Mr. A.K. Banerjee, counsel

Heard on : 26.03.2019

Order on : 8.5.19

ORDER

Bidisha Banerjee, Judicial Member

The applicant has filed this original application aggrieved by and dissatisfied with the advice of recovery of alleged shortage of stores material from the salary of the applicant. The applicant has sought the following reliefs:-

"(A) To quash and set aside the impugned Order dated 12.09.2017 issued by DFM/C/KGP, South Eastern Railway, Kharagpur being No.DAK/Effy/SS & AN/662 and Order dated 29.05.2017 issued by Sr. AFA/WS &SV/GRC being No.SV/AN/KGP/HWH-BZN/14-15/12/234 and Order dated 20.09.2017 issued by Sr. AFA/WS&SV/GRC for FA&CAO/WS/GRC being No.SV/GRC/AN/KGP/HWH-ULB/14-15/12/437;

B) An order be passed commanding the respondent authorities and each one of them, their men, agents, staffs, subordinates and associates to immediately set aside, quash, withdraw, rescind and cancel the purported Accounts Note, being ANNEXURE 'A-12' hereof;

C) An order be passed commanding the respondent authorities and each one of them, their men, agents staffs, subordinates and associates to abstain themselves from taking any further measure for recovery of the said sum of Rs.59,02,402/-, as indicated in paragraph 48 above or any portion thereof from your applicant in any manner whatsoever;

D) An order be passed commanding the respondent authorities and each one of them, their men, agents, staffs, subordinates and associates to reverify the stock at the main store of South Eastern Railway at Santragachi and to scrutinize all the relevant documents, as mentioned under the relevant provisions of the Indian Railway Code for the Store Department. Most of the shortage items (shortage is not actual shortage) for

an amount of Rs.59,02,402/- is "SUBSUMED, CLERICAL MISTAKE, Stock Verifier(SVR) Mistake, Physically found items & Free Supply material, which is not taken into "BIN CARD" for Account in the EXCESSES of an amount of Rs.1,46,68,406/-, but nobody including the Stock Verifier(SVR) and the higher official is keen to investigate and reverify the shortage in light of that, instead creating a horrified situation by pressing hard to recovery the amount from the salary which causing incremental unbearable growing mental agony."

2. The case of the applicant in a nutshell is as under:-

The applicant belongs to Mechanical Department of South Eastern Railway, Kharagpur Division. He is aggrieved with an impugned advice for recovery of shortage quantified at Rs.59,02,402/- on the basis of Stock Verification which shows an excess of store materials quantified at Rs.1,46,68,406/-, which is more than the amount of shortage and as such he has pleaded that the question of any recovery was uncalled for. The applicant was provided with a Stock Verification Report which was duly acknowledged by him. He was asked to offer his remarks and in the said communication itself there was an advice to realize the shortage of stores amounting to Rs.58,61,292/- which is impugned in the present O.A.

It has been pleaded that after receipt of the comments the ADME/SRC wrote a letter dated 21.04.2015(Annexure A/6) where in his conclusion he requested a fresh Stock Verification to be conducted for correct findings while calling in question the Stock Verification itself. Further, another communication was made by the Senior DME(Chg) South Eastern Railway, Santragachi dated 23.04.2015 pointing out inter-alia, the discrepancies and irregularities in the Stock Verification and requesting a fresh Stock Verification by the Accounts Department vide Annexure A/7. Accordingly, the ARM/SRC by letter dated 23.04.2015 wrote to the concerned Head of the Accounts Department vide Annexure A/8. The applicant also made a representation dated 11.11.2015 after which the

Senior DME(Coaching)/SRC wrote a further letter to the concerned Accounts Department on 16.11.2015 vide Annexure A/10.

In terms of the aforesaid correspondences, the stock sheet was returned for necessary follow up action to the Mechanical Department by the concerned Accounts Department vide communication dated 18.03.2016 at Annexure A/11 but subsequently the concerned Accounts Department suddenly raised their objection vide Annexure "A-12" apparently projecting a conflict between the two departments. Thereafter the applicant preferred a representation dated 12.09.2016 seeking natural justice and disputing the objection raised by the Accounts Department but without conducting a fresh Stock Verification as requested by the Mechanical Department. By a communication dated 12.09.2017 the Accounts Department advised recovery of a sum of Rs.59,02,402/- vide Annexure A/13.

The applicant has further averred that not only a fresh Stock Verification was never conducted but also the applicant was held responsible for the alleged shortage without holding any departmental enquiry as per provisions of Railway Servants (Discipline & Appeal) under Rule 6(ii) of the R.S.(D&A) Rules, 1968 and as such, the decision for recovery as impugned in the original application is not sustainable in the eye of law. He placed reliance on the decisions of this Tribunal in O.A.No.189 of 2013 , O.A.NO.426 of 2011, O.A.No.913 of 2008 and decision of the Hon'ble High Court at Calcutta in WPCT No.180 of 2015.

3. The decisions are discussed hereunder:

(a) In **O.A.No.189 of 2013** cited by the applicant herein, an employee had challenged the letters dated 19.10.2012 & 18.12.2012 issued by the Sr. DEN(West)CKP and Sr.DPO/CKP respectively, whereby and whereunder, he was intimated about a shortage of stores reflected in the stock sheets and in connection thereto a decision of the Sr. DEN(West)/CKP to recover an amount of Rs.30,34,855/- towards stores debit from his salary at the rate of Rs.19,000/- per month w.e.f. November, 2012. The grounds of challenge inter alia were as follows :-

- (i) Such alleged amount could not be recovered straightway from substantive pay of employee;
- (ii) Recovery from substantive pay had to be preceded by issuance of a charge-sheet , holding of an inquiry and putting the applicant to notice thereof;
- (iii) No rule permits issuance of suo-motu order directing recovery from substantive pay.

This Tribunal considered and discussed the decisions rendered in the following matters:-

- (i) OA.No.178 of 2005 rendered on 16.11.2007;
- (ii) OA No.118 of 2010, along with OA 822 of 2007 and other OAs, order dated 27.03.2012;
- (iii) OA No.426 of 2011 on 18.06.2012 by this Bench;
- (iv) OA434 of 2011 rendered on 18.02.2013 affirmed by the Hon'ble High Court of Calcutta in WPCT No.120 of 2015.

It accordingly directed the respondents to refund the recovered amount within three months with liberty to act in accordance with law.

(b) In O.A.No.426 of 2011 this Tribunal held as under:-

"14. We are concerned that a large stock amounting to more than Rs.60 lakhs has not been accounted for. No inquiry has been conducted to fix responsibility on a person or persons . The applicant came from Danapur Division in 2005 and retired in 200..(not legible). During this gap period of four years no charge sheet has been filed against him or no FIR has been lodged. In the absence of a charge sheet it is not permissible as per Railways Service(Pension) Rules to hold back the retiral dues of the applicant. Disciplinary proceeding should have been done as per rules and this should have been done as per Disciplinary Rules before the applicant retired. In the absence of such proceeding recovery of amount is not tenable. We, therefore, direct that the retiral dues of the applicant should be

released by the Railway respondents within a period of three month from the date of issue of this order.

15. In parting we are constrained to observe that despite several directions given to the Railway Board by this Tribunal regarding setting up of an appropriate machinery in respect of shortage of materials, nothing has been done. As a result, the public exchequer continues to suffer loss. This is deplorable. It is time that the authorities responsible for audit of the Railways should look into this matter seriously. Registry is directed to send a copy of our orders in this case to both the Member (Finance), Railway Board as well as the Principle Director of Audit for taking action. OA is allowed."

(c) In O.A.No.913 of 2008, where an office order dated 28.10.2003 issued by the Senior Divisional Engineer II, Eastern Railway, Howrah holding the applicant solely responsible for the shortage of rail as reflected in the stock sheets of 1998-99 was assailed, it was held :-

"12. It, therefore, becomes difficult to agree with the respondents that based on the inquiry report the applicant has been held to be solely responsible for the shortage of rail for which an amount of Rs.51,22,493/- is sought to be recovered from him.

13. In any case Rule 6 of the RS(D&A) Rules provides that the railway authorities can impose minor penalties for good and sufficient reason. Rule 6(iii) has the following provisions:-

" Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

When this provision exists in the RS(D&A) Rules the respondents could have proceeded under it and imposed the penalty after giving the applicant a full hearing. This was not done.

14. In order to come to the conclusion that the applicant was solely responsible for the shortage of rail, since there was no system in place for actual verification of stocks on the ground and since large sums of government money was invoked, when the shortage of stocks was detected in 1998-99, the railway authorities should have requested the concerned Accountant General to hold a Special Audit in the matter. The Special Audit would have pointed out the systematic failures as well as apportioned responsibility in the instant matter between different persons. It has to be determined for instance whether the supervisory officers had discharged their proper role. Since government stock was missing it was also incumbent on the authorities to file a F.I.R. on the subject.

15. Based on the finding of the special audit disciplinary proceedings could have started against all those involved in the case. It is difficult to believe that shortage of rails i.e. 271 metric ton of rail or whatever quantity involved could have been done by the applicant alone. We are pained to see that disappearance of stocks and consequential action is being taken in such a cavalier fashion by the railway administration. We direct that this matter may be brought to the attention of Member(Finance) in the Railway Board for his urgent intervention.

16. So far as the present case is concerned, we set aside the office order of 28.10.2003. The respondents will take immediate steps to request the concerned

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Accountant General to institute a special audit in the matter so as to fix responsibility between different members and staff as also to suggest systematic changes so as to ensure that such matters do not happen again. Charge handing over and taking over has to be done on the basis of actual verification of stocks on the ground. After special audit has been done, the respondents will be free to institute disciplinary proceeding as per R.S.(D&A) Rules on those found responsible.

17. With the above order the O.A. is disposed of. There will be no order as to costs."

(d) In **W.P.C.T.No.352 of 2012, in Union of India & Ors. Vs. Samiran**

Ghosh, this Tribunal's decision by its order dated 18th June, 2012 to release the retiral dues was assailed before the Hon'ble High Court. Hon'ble Court found that "although the respondent retired from service on 30th October, 2009, he was not paid any amount under the Death-cum-Retirement Gratuity Scheme or his Leave Salary. An amount was sought to be recovered from the respondent by the Railways in contravention of the Railway Service (Pension) Rules, 1993. The Tribunal has accepted the argument made on behalf of the respondents that the pension was not a bounty and was protected as per the provisions of the Railway Service (Pension) Rules, 1993. The Tribunal further observed that without any charge sheet or hearing afforded to the respondent, neither could any recovery be made from him nor could his retiral benefits be withheld" and held "we do not see any reason to interfere with the order of the Tribunal as it is well reasoned."

(e) Again in **W.P.C.T. No.180 of 2015 (Union of India & Others Vs. Sasanka**

Sekhar Sarkar) Hon'ble High Court upheld the decision of this Tribunal in O.A., the relevant portion whereof reads as follows:-

"9. The present recovery has been made from the payable retiral dues of pension and gratuity of a retired railway employee long after his retirement, giving a complete go bye to the relevant rules. Since, action against a retired employee is governed by Pension Rules, what is not expressly permitted under the rule 9 of Pension Rules cannot be allowed to be undertaken in the garb of

exercise of power under Rule 15 of Pension Rules. Even Rule 15(ibid) has been wrongly invoked as already stated hereinabove. The recovery therefore was grossly illegal.

10. *The gratuity and commutation of pension was erroneously withheld wrongly invoking a provision which did not apply to the applicant. As such I am of the considered opinion that disbursement of recovered amount should be visited with penalty of payment of interest.*

11. *In such view of the matter the respondents are directed to release the recovered sum within one month with interest @8% p.a.*

O.A. is accordingly allowed. No costs."

(f) In **W.P.C.T.120 of 2015(Union of India & Ors. versus Sri Prabir Kumar Chandra)** having noted the decision of this Tribunal "that the aforesaid dues of the respondent cannot be withheld as there was no departmental proceeding pending against him under the Railway Servants (Discipline & Appeal) Rules, 1968", the Hon'ble Court held :-

"We do not see any reason to interfere with the order passed by the Tribunal. The learned Counsel for the Railways candidly states on instructions obtained from the Railways that no charge sheet has been issued even till today. In these circumstances the order of the Tribunal is upheld.

Accordingly, The Petition is dismissed with no order as to costs."

4. Per contra the respondents would vociferously defend their action by making oral submissions. No decisions in support were cited.

5. A communication dated 23.04.2015(Annexure A/7) relied upon by the applicant reveals the following :-

"3. Considering the increased trend of workload in stores management, the process for handing over the stores to newly established Stores depot under AMM(Chg.)/SRC was going on during the period of stock verification. At present, most of the materials are being indented & stocked by AMM(Chg)/SRC.

During departmental verification by ADME-II/SRC, it is seen that most of the short/excess items as found to be available were due to wrong posting in the Bin cards. Certain materials which were actually issued but not entered in Bin cards as evidenced from individual day wise abstract register was due to clerical mistake and lead to the discrepancies. As majority of discrepancies have been sorted out, therefore, a fresh stock verification may be asked for to resolve the matter immediately.

This is for your information & necessary action please."

6. The explicit provisions of Railways are noted as under:-

(a) "3261. Register of Stock Sheets – As a check on the disposal of stock sheets, the authorised Inspector should maintain a manuscript register in Form S.3261 containing the following columns:

1. Register Serial number.
2. No and date of stock sheet.
3. Group of Stores.
4. Name of Verifier.
5. Date of submission of original copy to the Computer Centre.
6. Date of submission of duplicate and triplicate copies to the Depot Officer.
7. Date of submission of duplicate and triplicate copies of stock sheet (printed by computer Center) to the Depot Officer.
8. Date of return of duplicate copy by the Depot Officer.
9. Date of final disposal.
10. Remarks

The stock sheets should invariably be finalised within a period of 6 month's. In this regard it should also be ensured that where any employee, responsible for shortage is to retire, this matter should be finalised before his retirement so that suitable punitive action, if any, may be ensured.

(Authority:- Railway Board's letter No.96/AC-II/46/1 dated 15.1.98)—acs no.2"

Therefore, the shortage calls for punitive action. Further,

(b) "3262. Scrutiny of explanations of discrepancies—The Stock sheets on return to the Stores Accounts Office, after explanation by the Depot Offices, should be carefully scrutinised by the authorised Inspector to see that every discrepancy has been explained. Further explanation should be called for in regard to remarks that are unsatisfactory. Accounts Note will be issued in such cases.

None:- See the note under rule 3255(d)

3263. Important points for scrutiny – While scrutinising the stock sheets, the authorised Inspector should see:

- (i) that explanations recorded against discrepancies represent facts;
- (ii) that they are clear, intelligible and definite;
- (iii) that independent explanations are furnished against individual discrepancies and that excesses under some items are not adjusted against shortages in dissimilar items. In case of analogous items (where sizes only differ) such adjustments may be passed upto 2% of the transaction since the date of last verification.
- (iv) That in case of items accounted for in numbers large differences do not arise:- that where shortages found as a result of stock verification are attributed to the neglect of the subordinate holding charge of stores, the cost of the missing articles is invariably recovered from the parties at fault. The amount so recovered should be noted in a manuscript register of recoveries (S.3263) maintained in the following form."

7. In the aforesaid backdrop, we note that in the instant case, fresh stock verification was ordered but never conducted.

That apart, recovery was apparently ordered without appropriate proceedings attributing the shortage to the applicants' neglect without which no recovery is sustainable.

Various pronouncements of coordinate Benches affirmed by higher fora as enumerated supra, are in favour of the employees who have been visited with penalty of recovery without proceedings.

8. Accordingly I allow the O.A. and direct that recovered amount shall be refunded to the applicant within 1 month from the date of communication of this order. Consequently the M.A. also stands disposed of.

However, we make it clear that the Respondents shall be at liberty to act in accordance with law. No costs.

(Bidisha Banerjee)
Judicial Member