

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 04th day of September 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No. 330/01564/2012

Brijesh Kumar Tiwari son of Late Ram Dutt Tiwari Retired Senior Section Engineer/P. Way, Viraul, East Central Railway, Samastipur.

.....Applicant

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through General Manager, East Central Railway, Hazipur.
2. The Divisional Railway Manager (P), East Central Railway, Samastipur.
3. Chief Administrative Officer (Construction), North Eastern Railway, Gorakhpur.

. . . Respondents

By Adv: Shri Raj Kamal Srivastava

ORDER

1. The present O.A. has been filed by the applicant Brijesh Kumar Tiwari seeking following reliefs:-

- "i. to issue an order or direction in the suitable nature quashing the order impugned dated 28.08.2012 issued from the office of respondent No. 2 (Annexure No. A-1 to the Original Application with Compilation No.1).
- ii. to issue an order or direction in the suitable nature direct the respondents authorities to refund the entire recovered amount and also paid the entire post retiral dues to the applicant with the 18% market rate of interest.

- iii. to issue any order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- iv. to award the cost of the application to the applicant".

2. As per the O.A, case of applicant Brijesh Kumar Tiwari is that he did not get his salary from 01.09.2005 to 24.12.2008 when he was on out station duty as per order dated 25.05.2005 of Divisional Manager, Samastipur to hand over the charge of Construction P.Way materials and so attended the office of Dy. CE and handed over the P.Way materials and got the documents of handing over of the store material and thereafter submitted letter dated 15.04.2009 seeking release of his pay. (It is strange and no explanation is forthcoming from applicant as why did not seek his salary for about 3 years and why it took him 3 years to hand over the stock sheet/material of the store at Chhapara and Ballia Railway Station). It is the case of applicant that he was issued a charge sheet dated 09.06.2009 alleging therein that he had failed to clear the stock sheet which could not be finalised and is still pending.
3. It is the further case of applicant that Letter dated 9/11.11.2009 (Annexure No. A3) was issued to Senior Divisional Engineer, Safety E. C. Railway, Samastipur apprising therein that due to shortage of stock sheet, recovery of Rs. 1544149/- is to be made from the salary of applicant but no explanation was sought from the applicant. Thereafter a show cause notice dated 6.7.2010 (Annexure – A4) was issued to applicant to submit his reply within 5 days otherwise recovery of Rs.1544149/- would effected from his salary to which he submitted his reply dated 13.9.2010 (Annexure – A5) and without passing any order, applicants started recovery. That the Finance Advisor & chief Accountant (Construction) vide Letter dated 14.09.2010 (Annexure No. A6) informed Divisional Finance Manager, E. C. Railway, Samastipur that all the stock

sheets have been submitted by applicant and further recovery be stopped.

4. It has been also averred in the O.A. that despite the letter dated 14.9.2010 (Annexure A6), recovery was started from his salary and vide letter dated 25.1.2011 sought stopping of the recovery. The applicant retired on 31.8.2012. The impugned order dated 28.8.2012 (Annexure A1) was issued from the office of respondent No. 2 averring therein that amount of Rs.150000/- has been recovered from the applicant and Rs. 1394149/- is yet to be recovered from his post retiral dues and to submit his reply within 3 days otherwise recovery would be initiated. That the entire amount has been recovered from the applicant and as per Settlement dues dated 31.8.2012 (Annexure A12) he has been paid Rs.51932/-.
5. Applicant seeks quashing of the impugned order dated 28.8.2012 on the ground that the charge sheet dated 9.6.2009 was issued to him and the inquiry pursuant to the charge sheet is still pending against him and no finding has been given in the inquiry to come to the conclusion that the recovery is to be effected from the retiral dues of the applicant.
6. It would to be pertinent to note that the applicant has not attached the copy of charge sheet issued to him to enable this tribunal to know about the nature of the charges levelled against him. The impugned order dated 28.8.2012 (Annexure A1) reads as under:

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28-08-2012

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fn 09@11@11@09 ,oa15@5@10

2- miepZ@fuekZk @l i;k xkj[kij dk i= l 0 MCY;w 247@chth@
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सन्दर्भ के द्वारा आपके विरुद्ध स्टॉक शीट में कमी रहने के 1544149 की कटौती हेतु पत्र प्रवर मंडल इंजीनियर समन्वय समस्तीपुर को प्रेषित किया गया था इस सम्बन्ध में मुख्या इंजीनियर निर्माण मुख्या ११ गोरखपुर में भी अपने पत्र सन्दर्भ के द्वारा उप मुख्या इंजीनियर निर्माण पूर्व गोरखपुर के पत्र दिनांक 9-11-2009 का हवाला देते हुए उपरोक्त राशि की कटौती के सम्बन्ध में सूचित किया है

बिल देयता के अनुसार उक्त कटौती के मद में अभी तक आपके वेतन से कुल 150000 की कटौती की जा चुँकी है जो शेष राशि 1394139 कटौती अभी भी बाकी है

अतः आपकी संदर्भित पत्र के अलोक में सूचित किया जाता है की उपरोक्त बचे हुए कटौती हेतु शेष राशि 1394139 की कटौती आपके समापक भुगतान से यथा सेवा उपदान पेंशन सरशिकरण एवं अवकाश नगदीकरण की राशि से की जा रही है और आपको उक्त कटौती के सम्बद्ध में कोई प्रतिवेदन देना चाहे तो तीन दिनों के अंदर देवे अन्यथा समझ जायेगा की इस पर सहमति प्राप्त है सुलभ सन्दर्भ हेतु सन्दर्भित पत्र का छायाप्रति संलग्न है".

7. In the counter affidavit, it has been averred that applicant was Incharge cum Custodian in Chhapra- Aurihar Section and on his transfer, without verification and handing over of the permanent material joined the Division Safety Officer as a Safety Counselor in Samastipur Division. In pursuance of request of Deputy Chief Engineer (Construction) East, N.E. Railway, Gorakhpur vide letter dated 2.5.2005 (Annexure CR-1) for sparing the applicant for handing over/taking over of the material, applicant was directed vide letter dated 18.7.2005 (Annexure CR-2) to report to the aforementioned Dy. Chief Engineer (Construction) for handing over the charge of store materials and records. However, the applicant absconded from the office of said Dy. Chief Engineer

(Construction), Gorakhpur and joined North East Railway Gorakhpur on 24.12.2007 after a gap of 2 years 6 months without information to his parent department at Samastipur vide letters dated 24.1.2008 and 29.2.2008 (Annexure CR-3). It is the further case of respondents that applicant submitted the fraudulent letter cum clearance certificate dated 21.8.2012 (Annexure CR-5) regarding the SPE/Vigilance/DAR/Store at the verge of his retirement in the office of Personnel Department for concealment of facts regarding Rs.1544149/- only was debited against him. On doubt being raised in the parental department, an officer with the letter was sent to Dy. Chief Engineer, Construction, Gorakhpur who informed that stock sheet for Rs.1544149/- is pending against the applicant for misappropriation of permanent way material and store debit vide letter dated 25.8.2012 (Annexure CR-6). It is also mentioned in the counter affidavit that a letter cum notice dated 28.8.2012 was given to the applicant (Annexure A-1) mentioning therein that Rs.1544149/- had to be recovered but the Railway Administration deducted Rs. 150000/- from salary of applicant whereas the balance amount of Rs.1394149/- has been adjusted against the retiral benefits.

8. As per Annexure A-1, due to shortage in the stock sheet for deduction of Rs. 1544149/- a letter was sent to Pravar Divisional E.G. (Coordination/Samastipur). In this connection, Deputy Chief Engineer/Construction/Chief -11 Gorakhpur had also informed regarding above deduction vide letter No.2 of Deputy Chief Engineer/Construction/East/Gorakhpur dated 9/11.11.2009. That Rs. 150000/- has been deducted from the salary of applicant whereas the balance amount of Rs.1394149/- is yet to be deducted. Therefore, vide letters applicant was informed that amount of Rs.1394149/- is being deducted from his retiral benefits. If the applicant wants to file any objection against the deduction, he may do so within 3 days otherwise it would be assumed that he was consented to the said deduction.

9. That the applicant never claimed the salary for the period 1.9.2005 to 24.12.2008 during his service period and has claimed the salary after a gap of two years without giving any explanation. It has been averred in the C.A. that in the inquiry, punishment has been imposed upon the applicant vide NIP dated 13.8.2012 (Annexure – CR7).
10. Reference may be made to the correspondence of the respondents-department as under:
 - A. Letter dated 2.5.2005 (Annexure CR-1) written by Dy. Chief Engineer, Construction East Gorakhpur to Head Chief Engineer, East Central Railway, Hazipur that the applicant was posted in Chhapra having the charge of the store. On his transfer from E.N. Railway to East Central Railway, the applicant did not handover the store and record and works under the control of Divisional Engineer, Samastipur and due to non handing over the record and store, the audit is raising this objection repeatedly. Therefore, applicant be directed to handover the store and record.
 - B. letter dated 17.5.2005 Annexure CR-2), office of Divisional Railway Manager (Engineer) Samastipur to Divisional Railway Manager (Safety), Samastipur that photocopy of referred letter has been attached, which is self explanatory therefore you are directed to Shri B.K. Tiwari to immediately transmit the store and record to East North Railway, Construction Department.
 - C. Letter dated 18.7.2005 (Annexure CR-2) of D.R.M. (Safety), Samastipur to the applicant that applicant was relieved to handover the charge of store and records.
 - D. Letter dated 24.1.2008 (Annexure CR-3) written by Dy. Chief Engineer Gorakhpur to Divisional Railway Manager (Safety) East Central Railway, Samastipur that Shri B.K. Tiwari, Safety

Counselor was sent to take charge of Store and Record, who was present in the office on 24.12.2007 for disposal of Stock-sheet and on the liaison of Accounts Department, he is doing the disposal stock sheet.

- E. Letter dated 29.2.2008(Annexure CR-3) written by Dy. Chief Engineer Gorakhpur to Divisional Railway Manager (Safety) that please refer your letter dated 24.1.2008 and it is to inform you that Shri B.K Tiwari who is working under you and posted as Safety Counselor had presented himself on 24.12.2007 in the office to handover the charge of store and related documents to Dy. Block Engineer (Construction) and issuance of stock sheet for disposal. In this regard, it is to request you that his presence may be verified at your end from the record.

- F. Letter dated 26.6.2008/1.7.2008 Annexure CR-4) of Senior Divisional Engineer (Coordination), East Central Railway, Samastipur to Dy. Chief Engineer/Construction/East, East North Railway, Gorakhpur that through letter dated 18.7.2005 of Divisional Railway Manager, Shri B.K. Tiwari was relieved to handover the charge of Store and record to your office but he was present in your office on 24.12.2007. You are directed to inform to this office regarding attendance and disbursement of salary from 18.7.2005 to 24.12.2007. Kindly relieve Shri B.K. Tiwari to present in this office within 10 days otherwise his salary will be stopped.

- G. Letter dated 25.8.2012 (Annexure CR-6) from Dy. Chief Engineer, Construction, Gorakhpur to Assistant Divisional Engineer –II Darbhanga regarding presence of applicant from 18.7.2005 to 24.12.2007 and non handing over the store, it is written that the record of the office of Gorakhpur does not reflect the presence of applicant in the Gorakhpur Office from 18.7.2005 to 24.12.2007. Applicant during his

posting was incharge of Chhapra- Aurihar and during this period the applicant did not deposit the ledger and record of the store in the Division. Vide letter of Dy. Chief Engineer, Construction, East Gorakhpur letter dated W/247/BG/S-10 dated 9/11.11.2009 Shri B.K. Tiwari was directed to deposit Rs. 15,44,149/- in the Rail Account and thereafter intimate the office but the information of deduction is still awaited.

11. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record. Learned counsels for the parties have all filed their written arguments.
12. It has been argued by learned counsel for applicant that he retired from the services on 31.8.2012 and his retiral benefits have been withheld without issuing any notice for deducting Rs.1544149/-.
13. This contention of applicant cannot be accepted since respondent-department had been issued notice dated 28.8.2012 (Annexure A1) prior to his retirement that due to shortage of stock sheet to tune of Rs.1544149/- out of which Rs.150000/- has been deducted from salary of applicant and balance amount of Rs.1394149/- is to be deducted from your retiral benefits and if he has any grievance, applicant can file his reply within 3 days. Applicant has not filed his reply and straightaway filed the O.A. It is to be noted that during the service of applicant, Rs. 150000/- was deducted from his salary w.e.f. 14.9.2010 but strangely enough during his service, applicant did not file any representation or take recourse to legal remedy to dispute the allegation of department that a loss was occasioned to the department due to shortage of stock sheet during his tenure in the said Store room and therefore did not raise the question of deduction of Rs.150000/- from his salary.

14. Therefore, the contention of the respondents that the applicant acquiesce in the allegation that there was a loss caused to the department due to his action has force and to be accepted. It is only after his retirement that the applicant has filed the present O.A. Perusal of the O.A. and the documents attached by the applicant show that he has not presented the entire facts or the documents of the case before this tribunal and conveniently twisted the facts and documents to his advantage. Applicant has not shown as to why on being transferred to Samastipur, he left the post of Incharge Store Stock Sheet material of permanent way at Chapra and Ballia at Railway Station , Gorakhpur without handing over the charge of the said store. Even when the applicant was directed to report at Gorakhpur in 2005, he absconded and joined Gorakhpur in 2007. It shows his intention to stall the proceedings which normally happens when its a large organization like the Railways.

15. Applicant has relied upon Letter dated 14.9.2010 (Annexure A6 of the O.A.) to submit that he had filed all the documents related to Stock sheet have been filed by the applicant. However, this letter does not give a clean chit to the applicant since it also says that the documents are being verified. Therefore, this letter does not give a clean chit to the applicant that he had filed all the stock sheets and did not cause any monetary loss to the department. Even so, as per Letter dated 25.8.2012 (Annexure CR6) of Deputy Chief Engineer (Construction), Gorakhpur to Assisst. Divisonal Engineer, Darbhanga, the same mentions that the record of the office of Gorakhpur does not reflect the presence of applicant in Gorakhpur Office from 18.7.2005 to 24.12.2007 and that applicant during his posting was incharge of Chappra-Aurihar and during this period the applicant did not deposit the ledger and record of the Store in this Office. Vide letter dated 9/11.11/2009, Shri B.K.Tiwari was directed to deposit Rs. 1544149/- in the Rail account and intimate this office but the information of deduction is still awaited.

16. Handing-over and taking over charge: The record in shape of handing over and taking over documents reveals that the applicant had handed over the charge on 10.7.2007, 27.2.2006, 5.3.2006, 21.6.2004 and 4.3.2006. It is surprising that applicant took such a long time to hand over the charge and that too in piece-meal. As argued by learned counsel for respondents that reliance cannot be placed upon the authenticity of the handing/taking over certificates since they have not been attested by the authorized officer.
17. It was further argued by learned counsel for applicant that the respondents failed to initiate any departmental inquiry against the applicant as to whether he handed over the charge of the entire stock to his successor or whether there was any shortfall in the store material due to conduct of applicant which resulted in loss to the Railways. Learned counsel for applicant further argued that no inquiry or procedure was held against him and nor the responsibility fixed. The orders of the recovery were passed without any intimation to him and without giving him any opportunity to defend himself. This is against the principles of natural justice.
18. Rebutting the arguments of applicant, learned counsel for respondents submitted that the procedure contemplated for recovery from applicant is governed by Rule 15 of Railway Services (Pension) Rules, 1993 (hereinafter referred to as the 'Rules').
19. Rule 15 is the provision regarding mode of recovery of Railway dues from pensionary benefits, which reads as under:-

"15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) It shall be the duty of the Head of Office to ascertain and assess

Government or Railway dues payable by a railway servant due to retirement.

(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression railway or Government dues includes-

(a) dues pertaining to railway or Government accommodation including arrears of license fee, if any;

(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, 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.

(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 Premia, or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of 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 terms 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.

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -

(a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule-

(1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bond in Form 2.

(2) If the retiring railway servant is unable or not willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3) The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) In respect of the dues as mentioned in sub-clause (c) of clause (i) The Quasi- Government and non-Government dues, such as amounts payable by a railway servant to Consumer Cooperative Societies, Consumer Credit Societies or the dues payable to an autonomous organisation by a railway servant while on deputation may be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he gives his consent for doing so in writing to the administration.

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amounts are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the concerned authorities:-

(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the

estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (l) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer”.

20. From above, it is clear that under the rule 15(1) in respect of a retired railway servant, the loss to the Railways on account of store or otherwise, such dues have to be assessed and adjusted from the pensionary benefits of the applicant. In the present case, the respondents have assessed the dues to be recovered from the applicant on account of the shortage in stores and the intimated the recovery of same to the applicant and also sought his reply otherwise it would be presumed that the applicant is agreeable to this deduction (Annexure No. A I to the O.A.).
21. The recovery which is contemplated under Rule 15 may be permissible only when the fact of misappropriation by the

delinquent officer is not disputed or proved against him or in cases like overpayment or in cases of admitted dues. It is well settled that unless defalcation etc. is proved and the quantum of loss is attributed or ascribed directly to the delinquent Government official, no recovery order can be passed. Again no punishment of recovery of any amount can be imposed upon a Railway employee without giving him opportunity to put forward his explanation or reply.

22. In the present case, applicant by way of impugned order was given an opportunity to show cause against the said deduction, which the applicant failed to avail of. The applicant did not submit his representation to dispute the amount of loss ceased to the government by shortfall of stock under his charge or seek details of inquiry which had held that Rs. 1544149/- is due to government dues to loss ceased by government or even show cause against said direction.
23. Learned counsel for applicant relied upon State of UP v/s Dharendra Pal, SLJ 2017 (2) 192 (SC) and State of Punjab v/s Rafiq Masih, (2015) 4 SCC 334. However, the facts of both the cases are distinguishable from the facts of the present case and would not apply to the present case.
24. In the case of Rafiq Masih (supra), the Hon'ble Supreme Court contended that recovery of excess payment cannot be made from a retired employee and therefore to be distinguished. In case of Dharendra Pal (supra), the facts of the case are different from the present case and Article 351-A of UP Civil Service Regulations was the subject matter of the litigation and which provision is totally different from applicability of Rule 15 of the Rules in the present case.
25. In view of the facts and circumstances of the case as discussed above, the O.A. being meritless is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

Manish/-