

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

Original Application No. 350/00788/2015

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Sri Bhagaban Majhi

.....Applicant

-Vs -

Union of India & ors. (S.E.Railway)

.....Respondents

For the petitioner : Mr B. R. Das , Mr S.Bhattacharya, Counsel

For the respondents : Ms G. Roy & Ms S. Auddy , Counsel

Date of Hearing : 25-02-2016.

Date of Order : 03.03.2016

ORDER

JUSTICE V. C. GUPTA, JM:

This application has been filed by the applicant under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs :

- i) Rescind, recall and/or withdraw the Orders being Annexures-A1, A2 & A9 fixing the liability for Rs. 6,69,271 upon the petitioner and directing adjustment of the same as against the DCRG amount due to the petitioner including recovery of unadjusted amount of Rs.27,111/- from the pension
- ii) Release the DCRG amount due to the petitioner forthwith and also pay an interest on the DCRG amount of Rs.6,42,160/- payable since 04.05.2012 (after 3 months from retirement) at the rate of 10% per annum till actual payment.
- iii) Certify that transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) and (ii) above.

2. The brief facts of the case are that applicant was working as a Commercial Supervisor and posted at Balasore under the Senior Divisional Commercial Manager/Divisional Commercial Manager, South Eastern Railway, Kharagpur, District Paschim Midnapore. As per pleadings he fell ill on 12.05.2011. After relinquishing his charge and handing over all the keys of the office in his possession in official capacity to Mr S.K.Amanullah, Chief Commercial Clerk. After handing over of his charge he was not hauled up for any discrepancies whatsoever. He applied for voluntary retirement and when he was accorded the permission to retire as on 04.02.2012 all the retiral dues except gratuity was paid to the petitioner. Gratuity was not paid on account of non clearance of the commercial department as the department came to know that due to non handing over charge as required by him for money value books/tickets as per stock on his possession etc. huge money was shown to be due and liable to be paid by him which is in tune of Rs.6,42,160/- a letter was issued to the applicant. Aggrieved by the same he filed the O.A.350/01078/2014 which was disposed of by the order dated 13.11.2014 without expressing any opinion on the merit of the case and directing the authority concerned to decide his grievance in the form of representation by a speaking order. Thereafter, in pursuance of the aforesaid order dated 13.11.2014 a reasoned and speaking order has been passed on 13.04.2015 under intimation to the petitioner which is annexed as Annexure A-1 to this O.A. Extract of the said order is re-produced below :

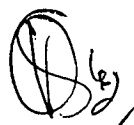
No. Com/G.29/Settlement/BM/298
Office of the Divisional Railway Manager,
Kharagpur Dt. 13.04.2015

To

Sri Bhagaban Majhi
Ex. CS under SMR/BLS
C/o. Sri Ruhia Hansda
At Ghiajodi (Kalayan Nagar)
Post: Jharpokharja
Dist- Mahyabhanj(Odisha)
Pin- 757 086

Reg: Order dated 13.11.2014 in OA No. 350/1078/2014 in the Hon'ble Central Administrative Tribunal, Kolkata Bench (Sri Bhagaban Majhi vs. UOI & Ors.)

The OA No. 350/1078/2014 was filed by you before the Hon'ble Central Administrative Tribunal, Kolkata Bench praying for payment of DCRG amount due to you.



The Hon'ble Tribunal vide its order dated 13.11.2014 in OA No. 350/1078/2014 has directed the Divisional Railway Manager/Kharagpur to consider your representation dated 26.12.2013 which was annexed as Annexure A/6 in the OA appropriately in accordance with law and to pass a reasoned and speaking order.

In obedience to solemn order dated 13.11.2014 of Hon'ble CAT/CAL bench in OA. No.350/1078/2014, I being the Divisional Railway Manager, South Eastern Railway, Kharagpur have considered the case. After having gone through your representation dated 26.12.2013 (Annexure A/6) of OA No. 350/1078/2014, relevant documents in the related files and other papers on record, the following orders are passed -

You had been posted as Commercial Supervisor (G) at Balasore booking office since 13.06.2004. Being CS(G)/Balasore, you were the stock holder of all money value books, printed card tickets etc at Balasore and you were required to maintain records of tickets and the cash transaction made therein.

It is established procedure that, when a Commercial Supervisor incharge of tickets of a station, leaves his post, he is required to hand over the charge of the tickets and all relevant records under his custody to the next incumbent, failing which, the cost of deficiencies which is a part of national exchequer, detected thereafter, if any, is charged on to the incumbent. Although you had applied for VRS, you had failed to hand over the charge during the period of your service or thereafter which was required to be done by you, more so, when all your retirement benefits had been paid to you, except your DCRG, which as per practice, was retained till such time the commercial clearance is issued. Since you had failed to hand over your stock of tickets and records, you had been advised to hand over your charge so that your DCRG could be settled at the earliest.

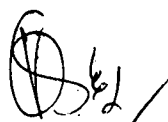
Since you had failed to hand over your stock of tickets and the relevant records thereof, a committee comprising of supervisory official of RPF, Traffic Accounts, Operating and Commercial, carried out an assessment of the stocks of tickets at Balasore. Accordingly, the debits under Admitted Head of Accounts were prepared and the onus of responsibility fixed on you for an amount of Rs. 6,56,430/-. Further a debit of Rs. 11,264/- for over payment of transport cost and a Commercial debit against CR note no. 546835, dt. 07.05.2011 for an amount of Rs. 1577/- was also outstanding against you. Thus a total debit amount of Rs. 6,69,271/- was outstanding against you.

The fact that voluntary retirement had been accepted, without taking requisite clearances does not absolve you of your responsibility of handing over of charge to your next incumbent. Therefore, your DCRG had been withheld only for adjustment of the outstanding, if any, while taking the requisite clearances.

Now as it stands, you have a total outstanding of Rs. 66,9271/- which is a part of national exchequer, which is due from you. A total of Rs. 6,42,160/- due to you as DCRG has been adjusted against outstanding against you. Therefore, there is no DCRG amount due to you for payment.

This disposes of Hon'ble CAT/CAL's order dated 13.11.2014 passed in OA No. 350/1078/2014."

2. From the contents of the letter it reveals that when a Commercial Supervisor in charge of tickets of a station leaves his post, he is required to hand over the charge of the tickets and all relevant records under his custody to the next incumbent, failing which the cost of



deficiencies which is a part of national exchequer detected thereafter, if any, is charged on to the incumbent and recovered from him. It is an admitted fact that handing over of charge is not available in this case nor any such document has been brought on record by the petitioner.

3. It has been clearly mentioned that as the voluntary retirement has been granted to the petitioner as there was no departmental proceeding pending against him and that too without giving clearance from commercial department the gratuity could not be withheld for want of commercial clearance.
4. The petitioner admittedly could not produce such clearance. Thereafter, a Committee comprising of supervisory official of RPF, Traffic Accounts, Operating and Commercial carried out an assessment of the stocks of tickets at Balasore and found transaction deficiency of Rs.6,56,430/- and it was further found a debit of Rs. 11,264/- for over payment transport cost and a Commercial debit against CR Note No.546835 dated 07.05.2011 for an amount of Rs.1577/-. Thus a total debit amount of Rs.6,69,271/- was outstanding against the petitioner. In pursuance thereof the amount was adjusted against such outstanding dues. As such the amount of Rs.6,42,160/- which was due as gratuity has been adjusted against the outstanding amount. This letter was communicated to the petitioner.
5. The reply has been filed by the respondents reiterating almost all the contentions of the letter dated 13.04.2015.
6. We have heard Mr B.R.Das, learned counsel appearing for the petitioner and Ms G.Roy and Ms S.Auddy, learned counsel appearing for the respondents and perused the records.
7. At the very outset it would be necessary to mention that so far as two amount of Rs.11,264/- for over payment of transport cost and Rs.1577/- on account of commercial debit against CR dated 07.05.2011 has not been challenged by learned counsel for the applicant and that too were not deposited by the applicant.
8. So far as the amount of gratuity is concerned, learned counsel for the petitioner submits that unless there should be a departmental disciplinary proceedings against the petitioner for causing loss was initiated and after conclusion of the disciplinary proceedings the findings



arrived at in those proceedings regarding alleged illegality of the petitioner only in that event the amount can be adjusted from the gratuity.

9. The learned counsel for the respondents submits that it is the discretion of the employer either to initiate disciplinary proceedings or to recover the amount after calculating the same. In this case the employer has exercised the option not to initiate disciplinary proceedings against the petitioner but to recover the amount. Before recovery of the amount a Committee was constituted to determine the actual loss to the national exchequer on the basis of that report the amount has been adjusted. It was further submitted that admittedly no charge has been handed over in terms of the procedure established in the department as such the burden lies on the petitioner to establish that he did not cause any loss to the department or to the national exchequer by his conduct, act or omission.

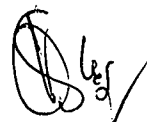
7. The Payment of Gratuity Act 1972 (hereafter referred as P.G.Act) contains the provisions in this regard, which is provided under Section 4 sub-section 6(a) & (b), which is extracted below for ready reference :

"(6) Notwithstanding anything contained in sub-section (1),-

- (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
- (b) the gratuity payable to an employee (may be wholly or partially forfeited) -
 - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
 - (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

The provisions of Section 4(i) provided that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for a specified period.

Sub-section 6 provides that at the time of termination of his service any act, wilful omission or




negligence has been caused resulting into damage or loss for destruction of property belonging to employer shall be forfeited to the extent of the damage or loss so accrued.

8. In view of the aforesaid statutory provisions, we are of the view that in absence of any commercial clearance and specially in absence of handing over of charge by the petitioner, the action of the employer in the present case cannot be said to be arbitrary or illegal. Hence we are of the view that petition lacks merit and liable to be dismissed.

9. O.A is accordingly dismissed. There will be no order as to costs.

(Jaya Das Gupta)
Administrative Member


(Justice V.C. Gupta)
Judicial Member