

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

Original Application No.20/846/2018

Date of C.A.V.: 30.08.2019

Date of Order: 04.09.2019

Between:

A. Satyanarayana, S/o A. Mutyam,
Aged about 67 years, Occ: Retired Booking Supervisor, Gr. C
R/o House No.42-10-37, Randhi Appana Gari Street
Mangalavarapupeta, Rajahmundry
East Godavari District, Andhra Pradesh-53310 Applicant

AND

1. Union of India
Represented by the General Manager
South Central Railway
Rail Nilayam, Secunderabad.
2. The Senior Divisional Commercial Manager
South Central Railway
Vijayawada Division, Vijayawada
Krishna District, Andhra Pradesh.
3. The Senior Divisional Personal (Personnel) Officer
South Central Railway
Vijayawada Division, Vijayawada
Krishna District, Andhra Pradesh. ... Respondents

Counsel for the Applicant ... Mr.M.C.Jacob
Counsel for the Respondents ...Mr. Jose Kollanoor proxy of Sh. T.
Hanumantha Reddy, SC for Railways.

CORAM:

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

ORDER

2. The OA is filed challenging the orders of the recovery of Rs.6,62,308/- from the withheld amount of DCRG and Leave Encashment of the applicant.

3. Brief facts of the case are that the applicant joined the respondents organization as a Commercial Clerk on 22.11.1971. While he was working at Rajahmundry in 2006 as Booking Supervisor, cash worth Rs.12,97,895/- was stolen from the booking office. Respondents proceeded against the applicant for the loss of cash, vide Charge Memo dated 03.07.2009, and after due enquiry the disciplinary authority, imposed the penalty of compulsory retirement vided Memo dated 29.11.2011. Thereafter, sought release of retirement benefits, and in response, he was informed that an amount of Rs.12,97,895/- has been withheld since a criminal case in regard to loss of cash was pending in the Hon'ble Court of II Metropolitan Magistrate Court, Vijayawada. However, he was paid pension vide proceedings dated 18.04.2012. Further, vide proceedings dated 09.01.2015, applicant was informed that the respondents have decided to recover an amount of Rs.6,62,308/- from the withheld amount of gratuity and leave encashment and released the balance amount Rs.1,76,565/-, referring to the presidential order issued to another official involved in the

same incident. It was also adduced that an amount of Rs.3 lakhs, which was recovered from the accused in a criminal case, has been deposited in the bank and on completion of the litigation, the said amount would be apportioned among those, who have been made accused in the criminal case. The criminal case ended in acquittal of all the accused on 20.03.2015. Applicant, on knowing of the same in 2018, has filed the present OA.

4. The contentions of the applicant are that applicant was penalized for the loss of cash by imposing the penalty of compulsory retirement and, therefore, it is not fair to impose another penalty of recovery for the same lapse. Respondents have also not issued any proceedings in regard to recovery of the amount. It was also stated by the respondents that after the criminal case is settled, the amount recovered from the accused would be apportioned, but the same was not done.

5. Respondents, in their reply statement, state that the applicant on 12.01.2009, has reportedly kept Rs.12,97,895/- and a DD for Rs.5000/- in a suit case for remitting the same to State Bank of India, Rajahmundry. Applicant kept this suit case on table in the cash room of the booking office of Rajahmundry Railway Station and went out without locking the room, to

inform the Chief Booking Supervisor, Sri K.V.P.Ratnaraju, that he is going over to State Bank of India to remit the amount. However, when he returned to the cash room, he found that the suitcase was missing. The lost amount of Rs.12,97,895/- was shown as 'Station Outstanding' in Railway Station records since it was not remitted to the Government treasury. As the applicant has handled the cash, he has to own responsibility for the loss of the said amount. Respondents also stated that the OA has not been filed within the time limit prescribed under Section 21 of the Administrative Tribunals Act, 1985. Recovery has been ordered after initiating proper disciplinary proceedings and that Rule 15 of the Railway Services (Pension) Rules, 1993 plus Para 2734 of Indian Railway Commercial Manual Vol.II permit recovery of pecuniary loss caused to the respondents organization. The applicant has also not preferred any appeal against the penalty of compulsory retirement. Besides, Railway Protection Force (RPF), has filed a charge sheet against the three employees in the competent court, but they were all acquitted on 20.03.2015. In the criminal case before the II Metropolitan Magistrate, it was argued that the case was fabricated by the Railway Protection Force to save the applicant and the Chief Booking Supervisor (CBSR). While imposing the compulsory retirement, it was also informed to the applicant, that the withheld amount

of Rs.12,97,895/- will be released subject to the outcome of the criminal case pending before the Hon'ble II Metropolitan Magistrate. On the representation of the applicant, disciplinary authority, taking into consideration the proceedings in the trial court, has released the settlement benefits to the applicant by ordering adjustment of pecuniary loss caused to the respondents organization, in tune with the observations of the Fact Finding Committee, which has gone into the loss of cash. Applicant did not seek refund of Rs.6,62,308/- when the penalty of compulsory retirement was imposed in 2011, but he waited upto 2018 to claim the same. The Chief Booking Supervisor, i.e., co-accused of the applicant, was also proceeded for the loss of cash and his pension was cut by 5%, besides the recovery of the loss to the extent of around Rs.6,35,587/- sustained by the respondents organization. The amount of Rs.3 lakhs, which was recovered, was credited to the state treasury instead of Railways, hence, this amount could not be refunded, as proposed. The Railway Board Establishment Circular (RBE No.22 of 2001) permits recovery of pecuniary loss caused by any employee to the respondents organization. The Master Circular No.66 of the Railway Board on penalties, has clarified that penalty of recovery with other penalty mentioned in the RS (D&A) Rules, 1968, would not amount to double punishment. Further, DoPT has clarified under

Rule 8 of CCS (Pension) Rules, future good conduct is an implied condition of pension and its continuance under CCS (Pension) Rules, 1972. The respondents have also cited the observations of the Hon'ble Principal Bench of this Tribunal in **Raj Dev Mishra v. Union of India**, in OA No.29/2010, wherein it was upheld that the OA filed after expiry of three years could not have been admitted and disposed of on merits in view of the Section 21 (1) of the Administrative Tribunals Act, 1985. One another Judgement of the Hon'ble Principal Bench of this Tribunal in OA No.1432/2010 (**Charan Singh v. Union of India**), was cited wherein it was held that delay defeats justice. Besides, the observation of this Tribunal in MA No.937/2016 in OASR 4261/2016 was cited wherein the Hon'ble Supreme Court's observation in Capt Harish Uppal v. Union of India, JT 1994 (3) SC 126 was referred to, wherein it was held that "if the party chooses to sleep over his right for an inordinately long time, the Court may well choose to decline to interfere in its discretion under Article 226 of the Constitution of India.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The applicant while discharging his duties was found involved the loss of cash of Rs.12,97,895/-. Consequently, he was proceeded on

disciplinary grounds and imposed the penalty of compulsory retirement. The disciplinary authority, while imposing the penalty, has observed as under:

“The whole enquiry has shown and established the facts that the CE Mr. Satyanarayana was negligent while dealing the cash which had led to the theft. So I am hereby imposing a penalty of “Compulsory Retirement” on the CE with immediate effect. “

The Order of penalty was imposed for the negligence exhibited by the applicant in discharging of his assigned duties. However, the order does not speak about any recovery to be made. Disciplinary authority, while settling the case of Shri K.V.P.Rathna Raju, who was the Chief Booking Supervisor and a co-offender/co-accused in the case, vide order dated 09.01.2015, has observed as under:

“The Criminal case filed on account of theft of Railway cash is still under trail. It is understood that an amount of Rs.3,00,000/- was recovered from the accused and same was deposited in Bank by the Hon’ble Trial Court according to Sr DSC/BZA letter No.SR/BZA-01/RJY-01/2009/2014 dt.26.12.2014 (copy enclosed). It is decided to refund the said amount equally among both the above named retired employees if the said amount credited to Railways on completion of litigation.

In view of the above it is requested to recover the Railways dues i.e. pecuniary loss caused to the administration by way of their negligence, which was proved by the respective Disciplinary Authorities from the above named two retired employees and to release the balance amounts as admissible.”

Therefore, the respondents have withheld a sum of around Rs. 6 laks and released the balance.

(II) Respondents contend that as per Rule 15 of Railway Services (Pension) Rules, 1993, they are empowered to adjust losses to the respondents organization from the employees who were found to be negligent in discharging their duties:

“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 for 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, **as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period after the date of retirement of allottee) if any; --** (Authority: Railway Board letter No. F(E)III/2010/PNI/4 dated 28.03.12)

(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 if 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.

Invoking this clause, the respondents ordered recovery. However, as per Master Circular on penalties and disciplinary authorities, bearing No.66

referred to above, clarifies that Para 11 in regard to recovery of loss as under:

“ 11. Recovery of loss:

(i) In cases of loss caused to the Government by negligence, breach of orders, etc, on the part of an employee, it would be open to the competent authority to inflict, in addition to the penalty of recovery from pay of the loss caused, any one of the penalties specified in clauses I(i), (ii) and (iv) and clauses 2 (i) and (ii) of Rule 1707-RI (1959 Edition) (equivalent to the penalties specified in Rule 6 (i), (ii), iii(a), iii(b), (iv) and (vi) of RS(D&A) Rules, 1968), by way of one and the same order and in pursuance of one and the same proceedings. It would not amount to double punishment,

(Board's letter No.E(D&A)62 RG 6-26 dt. 17.5.62).

(ii) In the case of large sums of recovery of losses, the installments can be so fixed as not to cause undue hardship to the Railway Servant and his family.

[Board's letter No.E(D&A) 2000 RG6-64 dt. 30 .1.2001]”

The said clause axiomatically states that it would be open to the competent authority that in addition to penalty of recovery from pay for the loss caused, competent authority can impose penalties specified in Rule 6((i) (ii)(iii)(a), (iii)(b), (iv) and (vi) of RS (D&A) Rules, 1968. However, there is no such provision for recovery of the loss while imposing penalty of compulsory retirement, as per the cited provision. Probably, penalty of compulsory retirement, terminates the employee and employer relationship and therefore the clause of recovery along with the penalty of compulsory retirement would not have been permitted. Thus, under this clause,

respondents are not empowered to recover any loss to the respondents organization from the applicant.

(III) Respondents have also referred to the RBE No.22/2001, circulated vide Serial Circular No.42/2001, dated 14.03.2001, wherein it was mentioned, as under:

“3..... While it is expected that in imposing the penalty of recovery of pecuniary loss the disciplinary authority should not display such severity that Government servant suffers hardship disproportionate to his negligence/misconduct that led to the loss, it is not necessary to fix a rigid limit for the purpose of such recovery.. The DGP&T instructions would, therefore, be treated as unwarranted. Therefore, the implication of this OM is to recover the entire loss from the delinquent official but the recovery may be spread over till entire loss is recovered.”

The sum and substance of the order is that there cannot be any rigid limit for ordering recovery of the loss sustained by the respondents organization due to the negligence of its employees. In the present case, the applicant was imposed with the penalty of compulsory retirement and, therefore, as per clause 11 of the Master Circular No.66 cited above, the respondents do not have the authority to make any further recovery from the applicant.

(IV) Respondents have taken objection of limitation by stating that there is a delay in filing the OA for claiming release of the withheld amount. The amount withheld is from the pension and pensionary benefits which constitute a continuous cause of action, hence, the objection that the OA is

afflicted under limitation clause of Section 21 of the Administrative Tribunals Act, 1985 is unsustainable. Further, the respondents while ordering recovering of such a huge amount after imposing the penalty of compulsory retirement, need to have followed the procedure prescribed by law. Respondents ought to have issued a show cause notice and thereupon initiate appropriate disciplinary process for recovery of the loss. There is no doubt that the amount was a loss due to the negligence of the applicant but he has paid for the folly in inviting the penalty of compulsory retirement. Nevertheless, respondents are empowered to invoke Rule 15 of Railway Servants (Pension) Rules, 1993 and Paras 2734 and 2735 of Indian Railway Commercial Manual Vol.II, for taking action to recovery of the loss. To do so, they have to follow the prescribed disciplinary process and in accordance with law. Respondents have failed to do so.

V) Respondents also referred to the Judgement of this Tribunal in OA 306/2018 but the same is not relevant to the present case since in the said case, the applicant was proceeding for not handing over the charge to his successor which has caused loss of some assets of the respondents organization. In the said OA, it was also observed that the respondents are at liberty to proceed against the applicant therein on disciplinary grounds. Other Judgements cited by the respondents are not relevant to

the present case since the clause of limitation does not operate in the present case as the issue relates to withholding of some pensionary benefits.

(VI) Hence, in view of the above, the OA succeeds. The impugned order is quashed to the extent, applicant's issue has been dealt with. Thereupon the respondents are directed to consider as under:

- a) To refund the amount of Rs.6,62,308/- withheld from the DCRG and Leave Encashment of the applicant.
- b) It is left open to the respondents to proceed against the applicant as per disciplinary rules and in accordance with law to recover the reported loss sustained by the respondents organization.
- c) The time calendared to implement the judgement is within 3 months from the date of receipt of a certified copy of the order.
- d) No order as to costs.

With the above directions, the OA is allowed.

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

Dated, the 4th day of September, 2019

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