
(2016) 10 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Service Bench No. 558 of 2004.

**Khem Singh Arya - Petitioner @HASH Union of India Through The
General Manager North Eastern**

Date of Decision : 26-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9

Citation : (2016) 11 ADJ 319 : (2017) 1 AllWC 101 : (2017) 1 ESC 23

Hon'ble Judges : Sudhir Agarwal and Ranjana Pandya, JJ.

Bench : Division Bench

Advocate : K.S. Rastogi, Ausaf Ahmad Khan, J.J.R. Seth, Jai Singh Arya and R.C. Gupta, Advocates, for the Petitioner; A.K. Chatruvedi, Manik Sinha, Pratul Kr. Srivastava and Ved Prakash, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Jai Singh, Advocate, for petitioner and Sri Asit Chaturvedi, learned Senior Advocate, assisted by Sri A.K. Chaturvedi and Sri Pratul Kumar Srivastava, Advocates for respondents.

2. The writ petition is directed against the judgment and order dated 23.03.2004 passed by Central Administrative Tribunal, Lucknow Bench, Lucknow dismissing Original Application No. 271 of 2000 of petitioner and confirming the order dated 18.04.2000 passed by Government of India, Ministry of Railways communicated by Joint Director Establishment (D&A), Railway Board imposing punishment of deduction of 20 per cent pension of petitioner on permanent basis.

3. Factual matrix giving rise to entire dispute is in a narrow campus. Petitioner was initially appointed as Electric Fitter (Power) on 01.09.1955 and promoted to the post of Mistri in 1968, Chargeman in 1974, Chargeman Grade-A in 1980 and then as Assistant Electrical Foreman in 1983. He was given officiating promotion as Electrical Foreman (Power) in February" 1988. He tendered application for voluntary retirement on 31.10.1989 which was accepted by Divisional Railway Manager (P), N.E. Railway, Lucknow and the acceptance was communicated to

petitioner vide letter dated 04.12.1989 (Annexure-5 to writ petition). Petitioner, thus, stood voluntarily retired with effect from 31.01.1990. However, before that petitioner had already submitted another letter dated 12.01.1990 withdrawing his request for voluntary retirement but the said application was rejected by Divisional Railway Manager (P) Lucknow vide order dated 01.02.1990. Petitioner then appealed to General Manager (Electrical), N.E. Railway, Gorakhpur vide letter dated 06.02.1990 and explained that in the light of Railway Board's Circular dated 01.06.1981 a Railway servant has a right to withdraw notice of voluntary retirement before expiry of notice period and acceptance of voluntary retirement. Petitioner also moved to Railway Ministry. Railway Board made an enquiry from Chief Personnel Officer, North Eastern Railway Gorakhpur as to whether petitioner has submitted any letter on 12.01.1990 seeking withdrawal of his notice for voluntarily retirement and also whether petitioner has received his settlement dues or not. In reply to the aforesaid letter dated 26.03.1990 Chief Personnel Officer vide Radiogram dated 29.03.1990, communicated that petitioner actually submitted application on 12.01.1990 seeking withdrawal of request for voluntary retirement and also till that date, i.e., 29.03.1990, his settlement dues were not paid. He also informed that Divisional Railway Manager is being asked to review the case of petitioner. Consequently vide order dated 07.09.1990 passed by Divisional Railway Manager (P) petitioner was taken on duty and period of absence was directed to be considered as leave due. Petitioner then made a request by letter dated 08.09.1990 that period of absence being not attributable to him should be treated as on duty and also requested for payment of salary. In the meantime, it also appears that petitioner's settlement dues to the tune of Rs. 1,55,888/- were forwarded to him vide two cheques dated 27.03.1990 and 06.04.1990 which were deposited in Bank for collection. Petitioner claims to have sent a letter dated 07.09.1990 to Divisional Railway Manager requesting to inform him as to under which head the said amount were paid and whether it is to be refunded to department or not and if so under which head and in which department. Petitioner ultimately on attaining the age of superannuation retired on 30.11.1991. However, on the last date of retirement, he was served with a charge-sheet under Rule 9 of Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as "Act, 1968"). It is pursuant to the aforesaid charge-sheet, after retirement, impugned order of punishment has been passed deducting pension by 20 per cent on permanent basis.

4. Leaned counsel for petitioner contended that neither there was any concealment on the part of petitioner nor he has caused any loss to respondents nor there was any misconduct on the part of petitioner, what to say of grave misconduct, so as to justify deduction of pension after retirement. He submitted that authorities have completely misdirected themselves and for their own lapses and fault have punished the petitioner and Tribunal also having failed to consider this aspect of the matter has erred in law.

5. Learned Senior Counsel appearing for Railway, however, submitted that petitioner made a false declaration that he has not received any settlement dues,

whatsoever, and this shows grave misconduct on his part and an attempt to defraud Railway and hence punishment imposed upon him is just, valid and in accordance with law.

6. The details of allegations contained in the charge-sheet as stated in Annexure-1 to Charge-sheet in Standard Form No. -5 reads as under:

HINDI MATTER

"Shri Khem Singh Arya, Electrical Chargeman "A", working under Senior Divisional Electrical Engineer, North Eastern Railway, Lucknow, by his application dated 31.10.1989 sought voluntary retirement, which was allowed on 31.01.1990. Thereafter, all dues payable to Shri Khem Singh Arya were finalised and he received them through cheque no. 002983/D.149123 dated 27.03.1990, and cheque no. 002990/D.149475 dated 06.04.1990 and PP No. Pu.U.Re./Luck./pe/4/90/ Dated 14.04.1990. Again, consequent upon the instruction of the Railway Board, Shri Khem Singh Arya was reinstated vide demi-official letter no. E/255/7/Tek/1/part III, dated 30.07.1990 of the Headquarters and office order no. E/11/210/tek/1, dated 07.09.1990 of the Divisional Railway Manager (personnel)/Lucknow; but Shri Arya, despite the fact that he should have returned the final payments made to him, did not return such payments and illegally retained them to himself, while continuing to receive regular payments from the Railway administration. On attaining the age of 58 years, Shri Arya again submitted pension documents. A no-dues certificate dated 25.11.1991 was submitted by him that he had not received any dues payable to him. In this way, Shri Khem Singh Arya, Electrical Chargeman "A" by playing a fraud with the Railway administration, has tried to obtain the payments again; which is an instance of gross misconduct and a glaring example of doubtful integrity, which is at all not desirable for a railway employee. It is evident, Rule 3(1) sub Rule (I)(II) (III) of the Railway Services (Conduct) Rules, 1966 has been clearly violated by Shri Khem Singh Arya."

(English Translation by the Court)

7. The same charge in slightly different language has been repeated in Annexure-2 to Charge-sheet and reads as under:

HINDI MATTER

"Shri Khem Singh Arya, Electrical Chargeman "A", Sitapur, while working in Gonda, prayed for voluntary retirement by an application dated 31.10.1989 which was allowed by the Divisional Railway Manager (personnel), North Eastern Railway, Lucknow by office order no. E/11/PC/Khem Singh Arya/89, dated 04.12.1989; consequent upon which he received all final payments too. Again, on the prayer of Shri Arya, his retirement was cancelled. However, on his retirement on 30.11.1981 in a regular course, he again submitted pension papers and other documents as also no dues certificate despite the fact that he had already received all payments. His behaviour is reflective of doubtful

integrity and amounts to serious misconduct, which is at all not desirable for a railway employee. Such an act of Shri Arya is a clear violation of Rule 3(1) and Sub Rule (I)(II)(III) of Railway Services (conduct) Rules, 1966."

(English Translation by the Court)

8. There was no oral evidence relied in support of charge-sheet but seven documentary evidences were relied which are as under:

HINDI MATTER

"1. Application of Shri Khem Singh Arya dated 31.10.1989 for voluntary retirement.

2. Cheque No. 002983/D.149123 dated 27.03.1990

3. Cheque No. 002990/D.149475 dated 06.04.1990

4. PPO No. Pu.U.Re./Luck./Pe/4/90/B-98/,66 dated 14.04.1990

5. A.S.P. No. E/255/7/Tek/1/part III dated 30.07.1990 from the Headquarters

6. Office Order no. E/11/210/tek/1 dated 07.09.1990 of Ma. Re. Pra.(ka.)/Lucknow

7. No dues Certificate dated 25.11.1991 (given by the employee)"

(English Translation by the Court)

9. The documents relied by learned Senior Counsel appearing for Railway in order to show act of grave misconduct on the part of petitioner is certificate dated 25.11.1991 submitted by petitioner which reads as under:

HINDI MATTER

"It is certified that I had taken voluntary retirement earlier on 31.01.1990, but after my reinstatement in Railways, I, as per rules, am retiring from services on 30.11.1991 on attaining the age of 58 years.

On my retirement earlier on 31.01.1990, I have not received any kind of retiral payments; if it was not true, I am myself responsible for this."

(English Translation by the Court)

10. Chronological details of facts as emerge from pleadings and documents available on record are as under:

31.10.1989: Application submitted by petitioner stating that due to domestic affairs, he is not in position to serve Railway Administration and he has completed 35 years of service and retirement is due on 30.11.1991, he therefore tendered three months" notice for voluntary retirement. Notice period admittedly would have expired on 31.01.1990.

04.12.1989: Divisional Railway Manager passed Office Order accepting

petitioner's request for voluntary retirement with effect from afternoon of 31.01.1990.

12.01.1990: Petitioner submitted letter withdrawing request for voluntary retirement in the Office of Senior Divisional Electrical Engineer, North Eastern Railway, Lucknow.

22.01.1990: The aforesaid letter of petitioner was forwarded by Officer concerned.

01.02.1990: Divisional Railway Manager rejected withdrawal request of petitioner and made his voluntary retirement final.

06.02.1990: Petitioner represented the matter to General Manager (Electrical) Northern Railway, Gorakhpur and also to Railway Board.

26.03.1990: Deputy Director, Establishment (R)-II Railway Board sent a wireless to Chief Personnel Officer making Enquiry in the petitioner's case referring to petitioner's representation and enquired whether request for withdrawal of voluntary retirement was received on 12.01.1990 and settlement dues have been paid or not.

29.03.1990: Chief Personnel Officer informed Railway Board that withdrawal application was given by petitioner on 12.01.1990 and settlement dues were not paid till that date, i.e., 29.03.1990. It is admitted by Railway that both the aforesaid cheques were sent to petitioner at his residential address, i.e., B-223, Rajajipuram, Lucknow.

14.04.1990: Railway authorities worked out retirement dues of petitioner to Rs. 36,300/- towards death cum retirement gratuity, Rs. 73,018/- towards 3rd commutation of pension and Rs. 46,570/- towards provident fund, i.e. total Rs. 1,55,888/-. Two cheques dated 27.03.1990 and 06.04.1990 forwarded to petitioner were received at his residence. Cheque dated 27.03.1990 for Rs. 82,870/- included gratuity and pension commutation amount. Cheque dated 06.04.1990 was received in provident fund for Rs. 73,018/-.

14.04.1990: Pension payment order was also issued to petitioner pursuant where to petitioner's pension was credited in his account for the period February 1990 to November 1991.

07.09.1990: Petitioner was taken in service revoking voluntary retirement order by Divisional Railway Manager.

08.09.1990: Pursuant to aforesaid revocation of voluntary retirement, petitioner joined in the Office at Anwarganj, Kanpur.

11. Petitioner claimed that on 07.09.1990 itself he submitted a letter in the Office of Divisional Railway Manager informing that he has been paid Rs. 1,55,888/- vide two cheques dated 27.03.1990 and 06.04.1990 and whether the said amount has to be refunded and if so where and in what manner. We have

seen inquiry report dated 07.02.1990 submitted by N.K. Grower, Assistant Electrical Engineer, Lucknow but do not find anything therein to show whether petitioner was paid salary, if any, or any amount for the period from 01.02.1990 to 07.09.1990 during which period he remained out of Office pursuant to acceptance of his voluntary retirement and when he rejoined, though the aforesaid period was directed to be treated as leave due, there is nothing to show that absence was treated as leave with full pay or half pay or without pay. Further petitioner made representation that said absence was not for any fault on his part, therefore must be treated as on duty but whether any action was taken thereon is also not clear.

12. The factum that petitioner was taken in job back pursuant to order passed by Divisional Railway Manager it was well known to Railway itself and still petitioner was paid pension subsequently. It is difficult to understand as to how for that, petitioner is responsible and not the Railway authorities, who had all the facts within their knowledge, still did not take any action in the matter including stopping payment of pension to petitioner.

13. Petitioner had specifically stated before Enquiry Officer that on 07.09.1990 itself he informed Divisional Railway Manager about payment of retiral dues and whether same has to be refunded and if yes, how and where vide letter dated 07.09.1990 but in this regard we find not even a whisper on the part of Enquiry Officer in his report and there is nothing to show that this letter was ever denied by Railway during the enquiry proceedings. Petitioner's statement before Enquiry Officer to this regard is contained in his letter dated 04.01.1993 and is reproduced as under:

HINDI MATTER

"In order to know the heads under which payments had been made through the aforesaid cheques, I, before on 07.09.1990, prior to my joining at Kanpur, had sent a letter to the Divisional Railway Manager, North Eastern Railway, Lucknow requesting him to intimate me as to the heads under which payments had been made against the aforesaid cheques and also to tell whether the said amount is required to be returned to the administration. However, it is a matter of regret that no competent officer of the administration took pains to respond to the said letter of mine."

(emphasis added)

(English Translation by the Court)

14. Railway authorities kept mum in respect to said letter even till the date petitioner retired on attaining the age of superannuation on 30.11.1991. No dues certificate submitted by petitioner on 25.11.1991 i.e. before actual retirement, which has been heavily relied by learned Senior Counsel appearing for Railway was for the purpose of retiral dues after retirement and was submitted on prescribed format by petitioner. We presume that declaration that he has not

received any retiral dues after voluntary retirement on 30.11.1991, is incorrect, then at the best he was responsible to make a wrong statement, still the fact remains that every information was already available with Railway authorities and there was no occasion for petitioner to conceal any thing. It is not that petitioner detained any information which was not already known to Railway authorities. It is also not the case that due to the aforesaid wrong declaration, petitioner was paid amount of gratuity, provident fund etc. again and there was a double payment.

15. Respondents have taken declaration made by petitioner on 25.11.1991 as such a grave misconduct so as to attract penalty of deduction by 20 per cent in pension while despite knowledge of everything to Railway authorities, they continued to pay pension to petitioner after revocation of order of voluntary retirement and also kept mum instead of replying petitioner's letter dated 07.09.1990. Neither any action appears to have been taken by respondents against any authority nor anybody has been held responsible and if taken from the standard on which petitioner has been held guilty and imposed punishment, we find that fault on the part of some Railway authorities is such so as to deserve a major penalty of dismissal but no action has been taken and even warning has not been given to anyone.

16. We enquired learned counsel appearing for Railway as to what misconduct has been committed by petitioner when every fact was in the knowledge of Railway authorities to which he could not reply at all. He also could not dispute that there is no concealment and no loss of revenue to Railway.

17. Thus, in our view it is not a case where petitioner could have been held responsible instead Railway authorities were responsible for alleged lapse and of not taking any correction measure thereafter. Enquiry Officer has proceeded simply on the presumption that mere fact that petitioner received settlement dues but made a wrong declaration is sufficient to hold him guilty without looking into other aspects of matter and in our view, has misconstrued and misunderstood the real issue in the matter. The element of wrong doing, whether it was on the part of petitioner or Railway authorities has not been appreciated and distinguished at all and he has also not looked into the specific defence taken by petitioner that he required authorities to tell whether amount is to be refunded or not but they did not respond and have been completely ignored the same.

18. Even it is not the case of respondents that at any point of time, any Railway authority required petitioner to refund settlement dues or pension amount, paid rightly or wrongly to petitioner, as the case may be. There was neither any such direction nor request and instead there was a complete conspicuous silence which shows that here is a case where some higher authorities in Railway were responsible to do something which was wrong and instead taking any action against such authorities, petitioner has been made scapegoat for something for which he cannot be held, as such, responsible, particularly looking into his

request made vide letter dated 07.09.1990 making enquiry from Railway authorities as to what he is supposed to do with respect to payment he has received.

19. Tribunal has completely failed to appreciate these crucial aspects actually involved in the matter and, therefore, has erred in law in failing petitioner by upholding order of punishment.

20. We are also surprised to see that respondents when admitted that request for voluntary retirement was already withdrawn on 12.01.1990 still Divisional Railway Manager (P) proceeded to treat that petitioner has retired voluntarily with effect from 31.01.1990 knowing it well that it is always open to an employee to withdraw request for voluntarily retirement or resignation before it became effective and for that purpose also respondents were entirely responsible but here also higher authorities in Railway have showed favour to such erring Officers and made petitioner an easily available person to bear entire wrong on his own shoulder. This is really unfortunate and deserves to be deprecated in strongest words.

21. Looking to the entire facts and circumstances, as discussed above, we have no hesitation in holding that Tribunal has erred in law in dismissing Original Application and confirming punishment order and both deserve to be set aside.

22. In the result, writ petition is allowed. Impugned judgment and order dated 23.03.2004 passed by Tribunal and order dated 18.04.2000 imposing punishment of 20 per cent deduction in pension of petitioner, are hereby set aside.

23. Petitioner shall also be entitled to costs which we quantify to Rs. 50,000/-.