

(2021) 06 CAT CK 0058

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00328 Of 2016

Soran Singh

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 19-06-2021

Acts Referred:

Indian Penal Code, 1860 — Section 409, 504
Code Of Criminal Procedure, 1973 — Section 161
Payment Of Gratuity Act, 1972 — Section 4(1), 4(6)
Central Civil Services (Pension) Rules, 1972 — Rule 9, 9(2)(b)

Citation : (2021) 06 CAT CK 0058

Hon'ble Judges : Vijay Lakshmi, Member (J)

Bench : Single Bench

Advocate : Vinod Kumar, Awdhesh Rai

Final Decision : Allowed

Judgement

Vijay Lakshmi, Member (J)

1. By means of the instant OA, the applicant has challenged the recovery/ deduction order dated 17.02.2016 (Annexure A-1 of OA) passed by the

respondent no. 2, namely Divisional Railway Manager, N.E. Railway, Izzat Nagar, Bareilly, whereby two amounts, one of Rs. 1,23,246/- and the 2nd

of Rs. 1,17,902/-, have been recovered / deducted from the amount of gratuity, payable to the applicant after his retirement.

2. The relevant facts, in brief, necessary to look at for a just decision of this OA, are that the applicant was working on the post of Commercial

Superintendent in North Eastern Railway at the time of his superannuation on 30.09.2013. However, after his retirement, when the applicant requested

the respondents' department to release his post retiral benefits, the department while releasing it, withheld an amount of Rs. 2,50,000/- from the

gratuity payable to him. When the applicant visited his Senior Officers and asked the reason for such deduction from his gratuity, he was informed by

the complaint section, that a debit report has been submitted by the then TIA, Farrukhabad against the applicant, on the basis of which the aforesaid

amount has been withheld. The applicant enquired about cause of debit report and came to know that the then TIA had made a remark against him

about misuse of five Emergent Duty Pass Books (in short ED Pass Books) between the period from November 2010 to March 2011 for which an

amount of Rs. 1,23,246/- has been deducted and the other amount of Rs. 1,17,902/- has been deducted due to the reason that the employees / booking

clerks working under applicant's supervision had wrongly issued ED Passes to members of G.R.P, deputed an escort duty whereas, EP passes should

have been issued to them in place of ED Passes as per rules. Therefore, the applicant was found indirectly liable, he being the Supervisor.

3. In the OA, it has been pleaded that neither the applicant was ever been informed about such debit report nor any explanation was ever called from

him. No proper inquiry was conducted by the respondents in this matter. It is contended that had any inquiry been conducted, the applicant would have

explained his conduct while replying specific article of charges. However, the impugned recovery order was passed against the applicant without

giving him any opportunity of hearing, that too after his retirement, against the principles of natural justice.

4. It is next contended that the duty of the applicant was to maintain and supervise the official record of commercial department. Being Supervisor, his

role was limited to issuing ED Passes, to the booking clerks as per their demand / requirement. Hence, the question of any misuse of those passes by

the applicant directly, does not arise. Infact, the Booking Clerks, on requisition, used to issue the same to the person entitled for it. The applicant's role

was only to supply the ED passes to the concerned Booking Clerks.

5. It has been further averred that in the year 2011, an inspection was made by the then TIA (Travelling Inspector Accounts), Shri Gyan Vardhan Jha

(respondent no. 6) on 12.07.2011 at Farrukhabad Railway station, for the period from November 2010 to March 2011. The applicant was throughout

present during the inspection upto 9.00 pm. However, after 9.00 pm, the respondent no. 6 asked him to leave the office, saying that his duty hours

have already been over at 5.00 pm and rest of the inspection could be done from record even in the applicant's absence. The applicant, therefore, left

the office at 9.00 pm as per the oral instructions of Shri Gyan Vardhan Jha. On the next day, when the applicant reached the office, he was informed

by the two night shift clerks namely Shri Ashok Kumar and Shri Sushil Kumar Pal that five ED Pass Books were kept by Shri Gyan Vardhan Jha in

his briefcase, who had carried those pass books with him with assurance that he would return them back on the next day. When Shri Gyan Vardhan

Jha did not return the ED Pass Books, the applicant informed to his higher authorities and again requested Shri Gyan Vardhan Jha to return those Pass

Books. A copy of application dated 20.07.2011, filed by the applicant before the higher authorities, has been annexed as Annexure A-4 to the OA.

However, no heed was paid on his application. Instead, a show cause notice dated 07.02.2014 was served on the applicant asking his explanation

within 15 days as to why a recovery of an amount of Rs. 1,23,246/-, be not made from his gratuity amount, for the loss those ED Pass Books and their

misuse, causing loss of revenue to the department.

6. In reply to the aforesaid notice, the applicant submitted his explanation on 26.02.2014 explaining the whole episode, as mentioned above, and prayed

that he should not be held responsible for alleged misuse of ED Pass Books, because he never issued any ED Pass to anybody.

7. For the loss of Rs. 1,17,902/- (the second amount deducted from the applicant's gratuity), he submitted that since last two decades, ED Passes are

issued to police escorts (GRP) in a routine manner, therefore, he did not raise any objection to it. A photocopy of the reply submitted by the applicant

dated 26.02.2014 has been annexed as Annexure A-7 to the OA. However, when nothing was done by the authorities, the applicant having no hope

from anywhere, lodged an FIR against Shri Gyan Vardhan Jha, the then TIA (Respondent no. 6), which was registered as Case Crime No. 26/2014

under section 409,504 of IPC. A photocopy of FIR dated 24.08.2014 has been annexed as Annexure A-8 to the OA.

8. In pursuance of the aforesaid FIR, an investigation was conducted by the Investigating Officer and the misplaced five ED Pass Books were

recovered from the office of Station Master, Farrukhabad, which were taken into custody by the Investigating Officer and were kept in sealed cover

at Police Station. A copy of the Recovery report dated 24.02.2016 of Investigating Officer has been annexed as Annexure A-9 to the OA. The

applicant, on receipt of Investigating Officer's report, again submitted an application on 26.02.2016 before the concerned authority of respondents'

department requesting to release the withheld amount of his gratuity because he cannot be held responsible for misuse of any ED Pass but all his

efforts got in vain to the deaf ears of the respondents. A copy of application dated 26.02.2016 has been annexed as Annexure A-10 to the OA.

9. It is contended by the learned counsel for the applicant that without any proper inquiry and without giving him any charge-sheet, the applicant has

been punished, by the respondents, which is totally against the principles of natural justice. It is next contended that the police after investigation has

submitted final report in the matter and a perusal of the police report clearly shows, that no investigation was ever made by the department to

ascertain the facts that by whose signature, those ED passes were issued to GRP or to any other person, who had misused these passes or whether

any pass was been issued or not out of these missing ED Pass Books.

10. It is lastly contended that the amount of gratuity of the applicant has been withheld in a most arbitrary and illegal manner by the respondents,

whereas under no circumstances, gratuity amount could have been deducted. In this regard, reliance has been placed on the law laid down by the

Hon'ble Apex Court in the case of State of UP and others Vs. D. Pal - All India Service Law Journal 2017 (2) 192, in which Hon'ble Apex Court

while relying on its earlier decision rendered in State of Kerala & Ors Vs. M. Padmnabhan Nair - 1985(1) SLJ 106 (SC) has held that pension and

gratuity are not any bounty to be disbursed by the Government to its employee on their retirement but are valuable rights in their hands and any delay

in disbursement thereon must be visited with penalty of payment with interest.

11. On the basis of the above contentions, the applicant in the instant OA, has prayed for following relief: -

i. To issue an order or direction in the suitable nature quashing and setting aside the impugned recovery order dated 17.02.2016 passed by Respondent

no. 2 (Annexure No. A-1).

ii. to issue an order or direction in the suitable nature directing the Respondents to release of the entire amount of gratuity of the applicant along with

market rate of interest, within stipulate period which may be specified by the Hon'ble Court.

iii. to issue any other suitable writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iv. Award the cost of this original application to the applicant.

12. The respondents have filed counter reply in which it has been emphatically denied that the applicant was not given any opportunity of hearing. It is

contended that the applicant was working as Commercial In- charge/Commercial Superintendent at Farrukhabad station at the relevant time and as he

failed to perform his duties properly, the Railway suffered financial loss. In so far as the opportunity of hearing is concerned, the applicant has

admitted that a show cause notice was issued to him and he had submitted his reply to the same. Thus, the admission of the applicant is itself an

evidence of the fact that he had been given an opportunity of hearing. More so, a joint inquiry was held on 26.11.2013 in which the applicant had

participated. The applicant could not produce the ED Pass Books and those Books were not found in Ticket Store Room, therefore, the applicant was

held responsible for the concerned debit. It is contended by the learned counsel for the respondents that being Supervisor, it was the applicant's duty to

ensure that the employees working under him should utilize the ED Pass Books in proper way and if they were doing something wrong, then it was the

applicant's duty to fix their responsibility. The responsibility of the applicant was also to ensure that the ED Pass Books should be utilized for the

purpose, those were meant for, and if any employee was wrongly utilizing those passes, it was the duty of the applicant to report to the administration.

However, the applicant failed to discharge his duties. It is further contended that it was the responsibility of the applicant to produce the documents for

inspection to the inspecting authority (Respondent no. 6) and after inspection, all the documents should have been kept by him in safe custody. The

applicant should not have left the office leaving the documents open to others. Therefore, the applicant is responsible for the loss of ED Pass Books

caused to the department and the amount has been recovered rightly from his gratuity. It is lastly contended that against the order of debit, the

applicant has not made any appeal before the Divisional Railway Manager. On the aforesaid grounds, it has been prayed that the OA be dismissed.

13. The applicant has filed rejoinder affidavit in which apart from reiterating the averments made in OA, it has been stated that the applicant had informed the authorities concerned about misplacing of E.D. Pass Books without any delay, with specific mention that the ED Pass Books were taken away with him by the then TIA Shri Gyan Vardhan Jha (respondent no. 6) at the time of inspection with assurance that he would return those but he did not return those Pass Books to the office. The applicant had without any delay informed his authorities but when nothing was done by the higher authorities, the applicant even lodged an FIR against the then TIA. During investigation, all the missing ED Pass Books were recovered by the police (I.O.) and the same were kept under sealed cover in judicial custody. The then TIA Shri Gyan Vardhan Jha had admitted this fact that he taken those ED Pass Books with him, during the police investigation in his statement recorded under section 161 Cr.P.C. It is contended that all these facts clearly show that there was no negligence on the part of the applicant. It is further submitted that the Investigating Officer recovered the missing ED Pass Books from the office of Station Superintendent, Farrukhabad (Respondent No. 6). Shri Gyan Vardhan Jha in his statement recorded under section 161 Cr.P.C, while admitting the fact that he had carried with him five ED Pass Books for inspection, has stated that he had returned those Pass Books through a Guard Shri Rakesh Kumar Bajpai, who was on duty in Train No. 15038. The Guard Rakesh Kumar Bajpai handed over the said ED Pass Books to the then Station Superintendent and not to the applicant. The statement of the Guard Rakesh Kumar Bajpai has been annexed as Annexure RA-3 to the Rejoinder Affidavit. It is further submitted that the joint enquiry report of the department also shows that the applicant was not found directly responsible for issuing the ED Passes, but responsibility was fixed on his shoulders only because he was Supervisor at that time, therefore, he was found indirectly responsible. It has been vehemently argued that and no action was taken against the officers/officials, who were directly responsible. All those ED Pass Books have been released in favour of the Railway administration. A photocopy of the release order passed by the Trial Court has been filed as Annexure RA-1 to the Rejoinder Affidavit.

14. With regard to 2nd amount of recovery, it has been submitted that as a normal rule of practice, and since decades the ED passes are issued to the

escort of G.R.P while deputing them for duty in the running train for the purpose of public safety. Those passes are issued by the booking clerks with prior permission from Station Superintendent. Hence, the applicant has no role in any loss suffered by the Railway, if any, because the applicant's role was only to issue ED Pass Books to the concerned booking clerks as per their demand.

15. Lastly, it is submitted that as per the judgment pronounced by the Hon'ble Apex Court in the case of State of Punjab Vs. Rafique Masih - (2015) 4

SCC 334, no recovery can be made from the post retiral benefits of a retired employee.

16. I have given my thoughtful consideration to the rival contentions advanced by learned counsel for both the parties and have carefully perused their pleadings alongwith all the annexures filed by them.

17. At the very outset, it may be mentioned that respondent no. 6 in this OA namely Shri Gyan Vardhan Jha, did not appear to contest the case despite service of notice and ample time and opportunity. Hence, the OA proceeded exparte against him.

18. It is undisputed that no detailed or regular inquiry in this matter has ever been conducted and only on the basis of a joint inquiry report, the applicant has been punished. The copy of joint inquiry report is available on record as Annexure CR-1, which shows that no chargesheet has been issued to the applicant and only a written explanation was called from him. Neither the statements of important witnesses were recorded nor any explanation was called from the respondent no. 6 Shri Gyan Vardhan Jha, against whom the applicant had even lodged the FIR. If this matter was so serious, then a proper and regular inquiry consisting articles of charges, list of oral and documentary evidences, etc., should have been conducted by the respondents in accordance with law before punishing the applicant.

19. It is also not disputed that the applicant was not found directly responsible and the responsibility for loss of ED Pass Books and issuance of ED Pass Books to GRP escort was fixed on the shoulders of the applicant only due to the reason that the applicant was functioning as Supervisor at that time and therefore, was under obligation to ensure that the ED Pass Books should be utilized in a proper way.

20. From the perusal of record, it is clearly evident that without recording the

statements of the important witnesses and without giving the applicant an opportunity to cross examine them, the respondents' department has imposed a penalty on the applicant of deduction / recovery of a handsome amount of Rs. 2,50,000/- from his gratuity after his retirement.

21. There is no doubt that the respondents have the power and authority to withhold and to forfeit the amount of gratuity even after retirement of an employee. Recently, Hon'ble Supreme Court has held in the case of Chairman - cum- MD, Mahanadi Coal Field Limited Vs. Rabindra Nath Choubey (CA No. 9693 of 2013 decided on 27.05.2020) that Section 4(6) of the Payment of Gratuity Act allows the employer to forfeit gratuity, if the act of an employee causes damage/loss to the employer's property because Section 4(1) of the Gratuity Act is subject to Section 4(6) which sets out the circumstances in which gratuity may be forfeited. Section 4(6) is a non-obstante clause and would prevail over the former. However, in no case, it can be assumed that such imposition of penalty of Recovery from gratuity is permissible without issuing a charge memo to the delinquent officer after institution of a regular enquiry.

22. From perusal of record, it is also evident that in absence of a regular enquiry, the statements of some important witnesses have not been recorded by the disciplinary authorities. However, in pursuance of the FIR lodged by the applicant, the investigation was done by the Investigating Officer, who has recorded the statement of the relevant witnesses including the statement of the respondent no. 6 Shri Gyan Vardhan Jha. The copies of these statements recorded under section 161 of Cr.P.C, have been filed by the applicant alongwith RA. It is note worthy that the respondents have not filed any rebuttal against these statements. No Supp. Counter Affidavit has been filed by the respondents to deny the veracity and truthfulness of these statements and respondent no. 6 Shri Gyan Vardhan Jha has not even appeared to contest the allegations made against him.

23. The statement of two clerks namely Ashok Kumar and Sushil Kumar Pal, who were on duty at the time of inspection made by the respondent no. 6, have been recorded during joint enquiry of department and also during police enquiry. Their statements fully supports the case of the applicant as both of them have categorically stated that Shri Gyan Vardhan Jha had kept five ED Pass Books in his briefcase and had taken away with him giving

assurance that he will return those Pass Books in the morning. The statement of Shri Gyan Vardhan Jha recorded by Investigating Officer shows that

he has admitted the fact that he had made inspection at the Railway Station, Farrukhabad and had inspected ED Pass Books. He has stated that ED

Pass Books were issued illegally by the applicant to the G.R.P in place of E.P. Pass Books, therefore, he issued a debit report against the applicant.

24. it is also note worthy that the police during the investigation has recovered all the missing ED Pass Books from the office of Station

Superintendent, Farrukhabad. The statement of Station Superintendent has been recorded by the Investigating Officer and he has admitted the fact

that all the five ED Pass Books were recovered from an almirah kept in his room. However, he has expressed his inability to tell as to who had kept

those Pass Books in his almirah. The statement of the Railway Guard Shri Rakesh Kumar Bajpai is most relevant in this matter, who is an

independent witness and who has stated that in September 2011, when he was on duty and coming from Kashganj to Anwarganj, the then TIA Shri

Gyan Vardhan Jha gave him five ED Pass Books with instructions to deliver those pass books at Farrukhabad Station to the person concerned. This

witness (the Guard) has further stated that as the train, in which he was coming from Kashganj, used to stop at Farrukhabad station only for five

minutes and ED Pass Books, being valuable security, no one was ready to receive those Pass Books, he being in a hurry, kept them in the office of

Station Superintendent and left the station due to shortage of time.

25. As the recovered Pass Books were kept by the police in safe custody, so, a release application was moved by the Railway department before the

C.J.M., Farrukhabad and all the five Pass Books were released by the C.J.M vide order 06.11.2016. A copy of order dated 06.11.2016 passed by the

C.J.M, Farrukhabad has been annexed as Annexure RA-1 by the applicant. A perusal of the order passed by the C.J.M. Farrukhabad clearly shows

that all the five ED Pass Books have been recovered having all the passes with their specific numbers, intact. The details of their numbers are

specifically mentioned in the order passed by the CJM, Farrukhabad. Nowhere in the order passed by the C.J.M. , Farrukhabad, it is mentioned that

any ED Pass was found missing. Therefore, it cannot be said that there was any misuse of ED Pass or that any pass was wrongly or illegally issued

to any one by the applicant or even by any other person. As all the five ED Pass Books were recovered and the police after investigation, did not find

fault on part of any one, it submitted a final report in the matter.

26. aa All the evidence collected by the Investigating Officer during the investigation find corroboration and is in conformity with the statement

recorded by the department during joint inquiry. The statement of the applicant in this regard is worth seeking, which is quoted below: -

.1- # % &) * 25/09.. 4 7 ED) & (840700-840749) (840750-840799) (840800-840849) (840850-840899) (840900- 840949) = 5 & > ? & 7 %? ?

D - E & F D? ...E * 12/07/2011 E?# (NOV- 2010 MAR.-2011)) 19.30 7 L M E (M) M E?# O & * A * Q ? e Jh ST 21 U 7 TIA U M ST & 7 ED

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&Y SI/GRP \ TIA) `Y &Y) ? & ? \? T ? 20/07/2011 , &

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Li'V djsaA mRrj& egksn;] mDr MsfcV jkf""k Rs.123246@& ls IECfU/kr dksbZ Hkh TIA MsfcV esaeks cpysfu }kjk izkIr ugh dj;k;k x;k Fkka iz""u

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gSA tks jsyos ds fgr esa ljdkh dk;Z gsrq tkjh fd;k x;k gSA blesa jsyos jktLo dh {kfr dk dksbZ ekeyk ugha gSA vRk^ Jheku~ th ls fuosnu gS fd

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27 . In the impugned order dated 17.02.2016 too, there is no mention about any misuse of ED Pass due to which loss of Rs. 1,23,246/- was caused to

the Railways regarding which debit memo was issued to the applicant.

28. The second debit memo is of Rs. 1,17,902/-, which has been issued against the applicant on the basis of special report GVJ/FBD/2009/01 dated

13.07.09/05.01.10, has been submitted against the applicant on the ground that he had wrongly issued ED passes to the members of G.R.P during their

escort duty whereas, he should have issued EP passes to the GRP instead of ED passes. Due to this, a loss of Rs. 1,17,902/- was caused to the

respondents department.

29. The applicant, during the joint inquiry, was asked a specific question as to why he issued ED passes to GRP in place of EP passes and the

applicant has given the following answer to the above question: -

D- pwWfd NE Rly) (MEMORANDA)

F T EP Pass 7) E ?

ED pass used as EP pass d

e ? &) #Y > Y ? & & GRP T > ? E ?

30. The conclusion drawn by the inquiry officers in joint inquiry report is also quoted below: - ""3. \ S) \ 123246/- j 7) ED) k S D ? E S LD) ?)) M E

ED k ? 7 &

4. E/ M m GBJ/FBD/ 2009/ 1? 13.07.2009/ 05.1.10 j S) \ d 117902)) &ED m 750000 750173) EDL

7 ED)) & & 7 > ELY ED ? & ED T) & MY # 14723/14724 \? 7 e *p? T \ ? & U T SO/ GRP k ? 19/03/09 12/07/09) L ? & ED) Z & S) \ d

117902/- % & & 7 L ? & ED \ # # ?

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31. Thus, it is clearly evident from a perusal of aforesaid joint inquiry report that the applicant has not been found directly responsible and he has been

made indirectly responsible. Nothing has been said in the counter affidavit as to whether any action was taken against the other employees, who were

directly responsible? The impugned order of recovery is a cryptic and non-speaking order. The respondents have not filed any detailed order with the

counter affidavit except the joint inquiry report. Hence, without a proper enquiry and only by passing a cryptic order on the basis of a joint enquiry

report, such a penalty of recovery of Rs. 2,50,000/- from the gratuity of the applicant, should not have been imposed, which is not only against the

service rules but is also against the principles of natural justice.

32. Apart from this procedural lacuna, i.e. absence of a proper / regular departmental enquiry against the applicant, the facts of the instant case,

clearly show that major penalty of deduction of Rs. 2,50,000/- has been imposed on the applicant by fixing responsibility on him indirectly. No action

has been taken against those employees, who were directly responsible for such loss, if any. Even if, this Tribunal directs the respondents to initiate

the entire disciplinary proceedings de novo, it will be a futile exercise, in view of the legal position. Rule 9 of CCS (Pension) Rules, 1972, provides that

the departmental proceedings should have been initiated against a Government servant while he was in service. Rule 9(2)(b) provides that the

departmental proceedings can be initiated against the retired Government servant under certain contingencies that too, with the sanction of the

President, and it should not be in respect of any event which took place more than four years before such institution. In the instant case, the incident

has taken place between November 2010 to March 2011. The applicant has retired far back on 30.09.2013. Therefore, a fresh enquiry cannot be

initiated against him now, as the matter is more than four years old.

33. Considering all the facts and circumstances of the case, the OA deserves to be allowed and is allowed. The impugned order of recovery dated

17.02.2016 (Annexure A-1) passed by the respondent no. 2 is set aside and the respondents are directed to release the entire amount of gratuity

withheld by them, to the applicant alongwith interest at the rate of 7% per annum within a period of four weeks from the date of receipt of certified

copy of this order.

34. There shall be no order as to costs.