

(2018) 04 CAT CK 0077

In the Central Administrative Tribunal

Case No : Original Application No. 3589 Of 2014, Miscellaneous Application No. 3103 Of 2014

Surender Mohan

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Railway Property (Unlawful Possession) Act, 1966 — Section 3
Railway Services (Pension) Rules 1993 — Rule 9(1)(3), 10(c)

Citation : (2018) 04 CAT CK 0077

Hon'ble Judges : Jasmine Ahmed, J

Bench : Single Bench

Advocate : Meenu Mainee, Shailendra Tiwari

Final Decision : Allowed

Judgement

Jasmine Ahmed, J

1. This OA has been filed under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:

"8.1 That this Hon'ble Tribunal may graciously be pleased to allow this application and direct the respondents to release the gratuity of the applicant as also commutation amount without any further delay and pay interest at the rate of 12% per annum on the aforesaid amount from the date when the amount was due till the date of actual payment.

8.2 Pass any other or further order which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

8.3 That the cost of the proceedings may kindly be granted in favour of the applicant and against the respondents."

2. The brief factual matrix of the case is that the applicant while working as

Depot Material Superintendent (DMS), was served with a charge sheet dated 4.03.2011 alleging that during stock verification in his ward, some articles were found short. The applicant was held responsible for failure to maintain the stores properly for which the railway had suffered a loss of Rs.2,20,962.55. He was served with another charge sheet dated 6.06.2011 wherein also the same allegation was leveled on the applicant. The applicant submitted his representation to the charge sheet dated 6.06.2011 but no reply/ decision was given by the respondents thereon. In the meantime, the applicant retired on superannuation on 31.01.2014.

3. It was contended by the learned counsel for the applicant that the applicant was very punctual, vigilant, obedient and devoted to his duties. He informed verbally as well as in writing to the Controller of Stores as well as the General Manager on 8.11.2010, 9.11.2010, 20.11.2010, 13.12.2010 and 11.01.2011 for non-preventive/ remedial action to safeguard the railway property by Complex Incharge, Deputy CCM or RPF officials. It was stated by the learned counsel for the applicant that instead of taking prompt action against the concerned officials, the applicant was transferred to BLC Depot, Tughlakabad on 19.11.2010 from General Stores Depot, Shakurbasti. It was vehemently argued that the applicant had been continuously informing the higher authorities including Headquarters Office about the regular instances of theft, which were taking place in Ward No.13 of Section 'H' on holidays. It was submitted that on the secret directions of the higher authorities, one Shri Subhash Bishnoyee, Sub- Inspector RPF had arrested the thieves on the spot on 26.12.2010 i.e. on a holiday under Section 3 of Railway Property (Unauthorized Possession) Act and a case was filed in the Court at Tis Hazari. Even the said Shri Bishnoyee had filed an affidavit on 27.01.2011 in regard to thefts, stating that the said incidents of theft from Railway Stores were being committed by three culprits who were arrested. Shri Bishnoyee also deposed that he recovered material from the culprits costing about Rs.2,60,421/-. It was further submitted that when the theft material was recovered from the culprits, the charges leveled against the applicant could not be tenable and accordingly, he requested the disciplinary authority to withdraw the charge sheets dated 4.03.2011 and 6.06.2011 but the respondents took no decision on his request and eventually, he retired on superannuation on 31.01.2014. After retirement of the applicant on superannuation, the respondents issued a PPO in terms of which the pensionary benefits of the applicant had been worked out and the respondents had paid him provident fund, leave encashment, insurance money and had started pension but did not pay the applicant DCRG amounting to Rs.5 lakhs as well as commutation of pension. As the gratuity was illegally denied to the applicant, he made a representation dated 14.03.2014 to the General Manager and Controller of Stores requesting them to release his gratuity and also the amount of commutation of pension which had been illegally withheld, but no response was received from their end.

4. Learned counsel for the applicant pointed out that when one of the colleagues

of the applicant Shri Kamalakar was also charge sheeted on similar charges, he filed OA 2840/2011 before this Tribunal and the said OA was allowed directing the respondents to refund the amount which had been wrongfully recovered from him as the Tribunal felt that he was not at all on fault, particularly when the matter was brought to the notice of the higher authorities. It is stated that the case in hand is squarely covered by the case of Kamalakar (supra) wherein also the applicant informed the authorities for taking preventive action to protect railway material from theft, not only verbally but also in writing. However, it was the respondents who turned a deaf ear to the request of the applicant and never taken any decision on his representations. The present case being squarely covered by the case of Kamalakar (supra), it is prayed that this should also be allowed.

5. The respondents have filed their counter wherein they have stated about the negligence of the applicant because of which some theft has taken place. They have further stated that they could not take any decision on the defence statement submitted by the applicant on 16.06.2011 for want of conclusion of criminal case No.29/2010 lodged by RPF under 3 RP (UP) Act V/s Praful Kumar. It is contended in the counter affidavit that as a criminal case is pending and the applicant was the custodian of Section 'H' of the Depot at the relevant point of time, hence gratuity could not be released for want of outcome of the said criminal case. As per Rule 9(1)(3) and 10 (c) of Chapter-II of Railway Services (Pension) Rules 1993 when any departmental or judicial proceedings are instituted provisional pension is to be sanctioned and accordingly, the applicant has only been sanctioned provisional pension, which cannot be termed as illegal or arbitrary. The respondents have also stated that the case of Kamalakar (supra) has no relevancy to the case in hand and hence the same treatment cannot be given to the applicant herein.

6. Heard the rival contentions of the parties and perused the documents on record.

7. It is an undisputed fact that two charge sheets were issued to the applicant leveling the same set of allegations and the applicant gave reply to the charge sheet immediately. After almost three years of issuance of charge sheet, the applicant superannuated from service but the respondents could not take any decision on the reply/ written statement filed by the applicant in view of pendency of a criminal case cited above. It is also not disputed that the stolen materials were recovered from thieves. At page 67 of the counter filed by the respondents, there is report of the Departmental Enquiry Committee wherein the case of involvement of the applicant has been dealt with. At page 72, it is seen in the said report that the seals of the almirahs were intact. Accordingly there was no scope to remove the material from Almirah without tampering with the seals which were found intact and in the conclusion, it is found that Shri Kamalakar was also one of the delinquents against whom the said departmental inquiry was conducted. The OA filed by said Shri Kamalakar was allowed by this Tribunal on

the ground that "the Disciplinary Authority was not even bothered to appreciate the actual reason for the loss of the articles from Ward No.16 when he was fully aware of it." While dealing with the case of Kamalakar (supra), this Tribunal considered the fact that in spite of applicant making repeated complaints about theft in the ward, the respondents failed to report the matter to railway police and get an FIR registered. Here in this case in hand, the applicant had orally as well as in writing informed the respondents about the thefts which were taking place on holidays but instead of taking any preventive action to prevent thefts, the respondents issued charge sheets to the applicant and even after lapse of about 2-1/2 years time from the date of getting reply from the applicant, the respondents did not take any decision on the charge sheets and the applicant retired in between.

8. It is also seen that reference to the criminal case given by the respondents in their counter is related to somebody else in which the applicant is not even a party. On the plea that the applicant was the custodian of the ward where thefts took place on holidays and the material has been recovered from the thieves, withholding the DCRG amount and commutation of pension on the basis of criminal case being pending, cannot be held to be justified.

9. In view of above, the charge on the applicant that he failed to maintain stores properly due to which the railways suffered a huge loss, cannot be justified as the railway authorities were informed by the applicant for taking preventive measures. The railway materials from stores were stolen by somebody else, who was apprehended and a case is pending against him, the applicant cannot be made to suffer by withholding his legal entitlements. No criminal case is pending against the applicant and the respondents could not take any decision on the reply filed by the applicant, hence withholding his gratuity is completely violative of principle of natural justice.

10. Accordingly, the applicant has made out a case in his favour. The OA is thus allowed. The respondents are directed to release his gratuity and commutation amount. As the applicant has retired in the year 2014 and his gratuity has been withheld, the respondents are also directed to pay interest at the rate of 7% from the due date till actual payment is made. This exercise should be completed within three months from the date of receipt of a certified copy of this order. No costs.