
(1998) 09 DEL CK 0052
In the Delhi High Court
Case No : C.W. No. 413 of 1996

T.V.N. Rao

APPELLANT

Vs

Indian Railway Construction Company Ltd. (IRCON)

RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

Citation : (1998) 6 AD 428 : (1998) 76 DLT 784

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. P. Nagesh, for the Appellant; Mr. A.K. Singla, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner was in service in the Indian Railways and later on he worked with Indian Railway Construction Company Ltd. (for short IRCON), the first respondent. He retired from service of the IRCON on 29.02.1992. The petitioner received a communication dated 27.07.1994 from the first respondent stating that his retiral benefits had been determined and a sum of Rs. 1,04, 266/- was due to him. From this amount the sum of Rs. 52,938.53 was withheld on account of some deficiencies of the quantity of cement supplied to the project when the petitioner was in charge of it. Ultimately the first respondent had said that a sum of Rs. 1,04,266/- plus a sum of Rs.18,923/- as gratuity was to be released to the petitioner. It was further stated by the first respondent that it had been decided to recover a sum of Rs. 52,938.53. The first respondent had stated that a sum of Rs.70,250.50 was ultimately payable to the petitioner.

2. The petitioner has prayed for the following reliefs:

a) Issue writ order or directions in the nature of mandamus directing Respondent (IRCON) to pay interest to the Petitioner or the sum of Rs. 70,250.47 at the rate of 18% per annum and also pay an amount of Rs. 22,069.80 to the petitioner as the sum withheld in Malaysia.

a) Issue appropriate writ, Order or Direction in the nature of Mandamus declaring

the proceeding No. IRCON/PF/657/338/11349 dated 9/13.3.1995 issued by the second Respondent and consequential orders confirming the same as arbitrary, illegal and violative of Article 14 and 16 of the Constitution of India and contrary to Discipline and Appeal Rules.

b) Issue an appropriate writ, order or direction in the nature of Mandamus directing the Respondents to pay the amount of Rs. 52,938.53 withheld pursuant to the above mentioned order with interest at 18% p.a.

3. The learned counsel for the petitioner submitted that the action of the first respondent in seeking to recover a sum of Rs.52,938.53 is not at all justified in law especially when the petitioner retired in 1992 and there was no inquiry held against the petitioner. The learned counsel submitted that when he was in service he was on foreign assignment in Malaysia. On 24.11.1988 the first respondent itself had given a certificate that there was nothing outstanding against the petitioner Project Manager of the stores items issued from this office on his personal account, and Therefore, the first respondent cannot seek to recover any money from the petitioner.

4. Mr. A.K. Singla, the learned counsel for the respondents submitted that the petitioner having retired from the service, the only obligation in law on the part of the first respondent was, to adhere to the principles of natural justice to give an opportunity to the petitioner to explain the position with reference to the deficiencies in stocks and on the basis of the Explanation given by the petitioner, the matter could be decided.

5. The learned counsel for the petitioner submitted that there has been no Explanation from the first respondent as to why charges were not framed against the petitioner when he was in service for the so-called indiscretion on the part of the petitioner with reference to what happened in 1985. The learned counsel for the petitioner also brought to my notice what is stated by him in the Explanation dated 02.01.1995 at page 35 of the type set it is stated:

If an inquiry was held anytime between 1986-88 I would have presented my case in a much authoritative way by examining the witnesses like, Mr. A. Sattanathan then CE/IRCON, Mr. P.M. Venkaesan CMT/IRCON, Mr. N.V.K Rao then RM/IRCON, Mr. A.N. Mukherjee then Manager/Civil, Mr. A.K. bids was then Manager/NTPC, besides getting access to all the records in office at Farakka.

6. The learned counsel for the respondents Mr. A.K. Singla submitted that the sum of Rs. 52,938.53 was arrived at in the following terms:

a) Over payment on account of Rs. 2,101.48 leave without pay as result of review of leave account. b) Cost of 22MT Cement shown as Rs. 16,500.00 unadjusted against Sh. Rao. c) Cost of 50MT Cement issued by Rs. 34,337.05 Sh. Rao to M/s Satya Constn. which has not been accounted for.
_____ Total = Rs. 52,938.53 ===== 7. With reference to sum of Rs. 2,101.48 in his Explanation dated 04.08.1994 to the

notice dated 27.07.1997 the petitioner had admitted at page 60 of the typed set that was correct and Therefore relating to this amount the petitioner is bound to reimburse to first respondent.

8. It is not necessary to deal in detail with the notice dated 27.07.1994, Explanation given by the petitioner on 04.08.1994 and the Explanation given on 08.08.1994, notice dated 16.02.1984, Explanation dated 02.01.1995 and the second show cause notice dated 19.03.1995 and order passed on 28.03.1995. The alleged shortage was for the year 1995 and in the show cause notice dated 16.12.1994 it is stated "it has come to the notice of the Management". How did the Management come to know about it is not mentioned? No Explanation is given in the counter about about No Dues Certificate given in 1988 when the petitioner was sent to abroad (Malaysia). The show cause notice in 1994 was very much belated and the first respondent cannot seek to recover the amount with reference to the alleged shortage of cement which occurred in 1985 without holding any inquiry and proving the same.

9. The learned counsel for the first respondent Mr. Singla sought to justify the stand of the first respondent referring to the Explanation given by the petitioner and submitted that the petitioner almost admitted the shortage. I am not able to accept this submission. The petitioner had disputed the same and there is no admission except with reference to what I had already noticed.

10. The learned counsel for the first respondent Mr. Singla submitted that in the relief portion the petitioner has not prayed for quashing the order dated 28.03.1995 and he had sought to quash only the show cause notice dated 09.03.1995. This a very technical objection. Having regard to the facts and circumstances of the case the court can mould the relief in the interests of justice. In the order passed on 28.03.1995, the first respondent had fixed the amount at Rs. 70,250.50 to be released. About this Mr. Singla, the learned counsel for the first respondent submitted that the petitioner was asked to contact the office and take the amount and such a statement has been made in the counter affidavit and nothing is mentioned in the rejoinder. In the impugned order the petitioner was found due, as I had noticed above, Rs. 1,04,266/- + gratuity of Rs. 18,923/-. That is how Rs. 52,938.53 has arrived at. I am clearly of the view that the procedure adopted by the respondents is vocative of principles of natural justice and the first respondent had not at all proved any deficiency in cement which could be attributed to the petitioner. Therefore, the deduction made by the first respondent was wholly unjustified and cannot be sustained. With reference to Rs. 2,101.48, the petitioner cannot have any objection. The first respondent is bound to pay to the petitioner a sum of Rs. $52,938.53 - 2101.48 = \text{Rs.} 50,837.05$.

11. The order dated 28.03.1995 is quashed to the above extent. The writ petition stands allowed. The first respondent is directed to pay a sum of Rs. 50,837.05 to the petitioner on or before 30.11.1998. And if the amount is not paid it shall carry interest 18% from 01.12.1998 till the date of payment.

12. Accordingly, the writ petition stands allowed in the above terms. There shall be no order as to costs.