

WESTERN RAILWAY

P.S.No.142/2011

Headquarter Office,  
Churchgate,Mumbai-20

No. E/Court/649/2/CAT( Judgement)

Date: 20.10.2011


To,  
All DRMs / CWMs & Units Incharge,  
C/- Genl. Secy., WREU-GTR / WRMS-BCT.  
C/- ZS-All India SC/ST Rly Employees. Assn,'W' Zone, Mumbai  
C/- ZS-All India OBC Rly Empl. Assn, Mumbai.

Sub: Sharing of information – dealing with Court Cases  
Hon.CAT/ADI's Judgement Dt.13.07.2011 in  
O.A.205/2009 with MAST 134/2011 filed by Smt.  
Samjathaben w/o Late Shri K. V. Damodaran.

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Hon.CAT/ADI's Order Dt. 13.7.2011 in the above O.A. filed by Smt.  
Samjathaben is sent herewith for information and guidance. The above  
judgement may be used effectively if there is any similar court case pending on  
your division / unit.

Encl: As above.

  
(S. M. SALIM)  
APD (H&E)  
For General Manager(E)

PROJECT  
C.A.T. (P) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

OA/205/2009 with MAST/134/2011

Ahmedabad, this the 13<sup>th</sup> day of July, 2011

Coram :

Hon'ble Shri Mukesh Kumar Gupta, Judicial Member  
Hon'ble Shri Ashok Kumar, Administrative Member

Smt. Samjathaben  
W/o. Late Shri K.V. Damodaran  
3<sup>rd</sup> Floor, Block No. G/301  
Shrinandnagar, Part-II,  
Ahmedabad 380 051. .... Applicant  
Represented by Advocate : Mr. M.S. Trivedi

VERSUS

1. Union of India, through  
The General Manager  
Western Railway, Churchgate,  
Mumbai 400 020.
2. The Senior Divisional Engineer  
O/o. Sr.DEN, Divisional Office  
Western Railway, Bhavnagar Para  
Bhavnagar 365 001.
3. Shri G.C. Agarwal or his successor  
PCE, Headquarter Office  
Western Railway, Churchgate,  
Mumbai 400 020. .... Respondents  
Represented by Advocate : Mr. N.S. Shevde

ORDER

Per : Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

Important question of law having far reaching consequence



raised in present applicant is whether loss sustained by Railways can be recovered from DCRG as a measure of penalty?

2. Validity of orders dated 25-10-2005 & 05-1-2009 have been challenged in present OA. Applicant also seeking direction on the respondents to release DCRG amounting to Rs.3,10,706/- along with interest @ 9 % w.e.f. 01-2-2006.

3. Admitted facts are :

K.V.Damodaran, Ex.SSE (P.W.)BVP was proceeded departmentally vide charge Memorandum dated 17-2-2004 issued under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968 alleging the following :-

*"(a) Shri K.V.Damodaran, while working as SSE(P.W.) BVP has failed to maintain the proper accountal and safe custody of stores in his charge. From the stock sheet No.SA/SV/SBI/CPWI-BVP/T&P/SPL/03-04, dated 13-2-03 and CPWI-BVP/C.Off/03-04/1/82, dt. 29-12-2003 shortage has been found. Shri Damodaran was solely responsible for the accountal and safe custody of T&P stores. The shortage of stores and T&P was his personal responsibility in which he failed. A DO letter No.S.607 dt. 16-1-2004 was issued by ADEN/BVP for which there is no reply from Shri K.V.Damodaran.*

*b) Shri K.V.Damodaran while working as SSE (P.W.)BVP has been found to act with gross negligent and lack of devotion to duty by not making proper accountal and safe*



*custody of stores under him. Thus, is alleged to be responsible for violation of Service conduct Rule 3.1(ii) & (iii) of 1966."*

4. Three documents and witnesses each were listed to sustain said charges. Validity of said charge memorandum was challenged unsuccessfully vide DA No.196/2004. S.C.A. No.15789/2004 preferred against said decision was also dismissed vide Order dated 29-12-2004. He was earlier on medical leave, & found fit for his original post vide CMS-BVP order dated 15-12-2003, and resume duty w.e.f. 09-1-2004. His request for voluntary retirement was regretted vide order dated 25-3-2003 which had been challenged. OA/33/2005, seeking voluntary retirement on medical ground and also requiring the respondents to accept his request for aforementioned purpose submitted vide application dated 10-10-2003. Said OA was disposed of vide-order dated 09-3-2005 with direction to the Railway Administration to refer him for medical examination within fortnight and Medical Board was required to examine the employee and submit its recommendations within six weeks thereafter. As such, order dated 21-3-2005 was issued alleging his careless and negligent while working during the year 1993. Validity of said SF-II

as well as making reference to Medical Board was challenged vide OA No.215/2005. Said OA was also disposed of order dated 15-6-2005 requiring the respondents to refer him for medical examination within fortnight for examination by Medical Board and to regulate his other prayer thereafter.

5. In compliance thereto, he was examined by Medical Board. However, he preferred OA/486/2005 reiterating his prayer for voluntary retirement w.e.f. 31-3-2005. In meantime, he was declared medical unfit for Railway service and was allowed to retire on medical ground on 28-10-2005. Said OA was dismissed as withdrawn vide order dated 22-11-2005 with a liberty to make a representation & to approach concerned authority for regularisation of intervening period. Immediately, thereafter OA No.1/2006 was preferred for the grievance that retirement dues had not been released. Vide interim relief order dated 12-6-2006, the respondents were required to disburse terminal benefits and to file report compliance on or before 30-6-2006. In compliance report filed therein, it was pointed out that admissible settlement dues have been released and pursuant to charge sheet issued for major penalty dated 27-2-2004, Disciplinary

Authority imposed penalty of recovery of 100% DCRG vide order dated 25-10-2005. He was also required to pay Rs. 50,60, 416/- due to shortage in stock. Said OA No 1/2006 was disposed of vide order dated 08-6-2007 holding the following:-

*"13. Summing up we find that there is no specific challenge to the order of penalty. The applicant has been found guilty of causing monetary loss. The admitted dues can be recovered from DCRG.*

*The respondents have to pay interest on delayed payment of GPF and Group Insurance Amount as per directions in para-11 & 12 above.*

*The respondents should also pass a speaking order regarding treatment of the period of absence as qualifying service towards pension and revise the pension, if need be.*

*This entire exercise be completed within three months of the receipt of the order."*

*(emphasis supplied)*

6. In compliance thereto, the respondents passed a speaking order dated 25-9-2007 (Annexure A-4) holding that applicant's total qualifying service worked out as 33 years, 02 months and 23 days and as per Rule 36 of Railway Service (Pension) Rules, 1993, since medical certificate produced by him for absence period was of a private hospital and no extra ordinary leave was requested or granted, period of absence was treated as leave without pay, which cannot be included while determining qualifying service for



pensionary benefits and no revision of pension was admissible. Vide communication dated 26-6-2006 (Annexure A-B) he was also informed that Rs.53,71,122/- was outstanding for which break up prescribed as under :

(i) Outstanding amount of Stores & T&P Items	- 53,15,340/-
(ii) Over Payment pay and allowances	32,144/-
(iii) H.B.A. Advances interest	21,208/-
(iv) Electric Bill	<u>02,430/-</u>
Total :	53,71,122/-

7. As against above dues, an amount of Rs.3,10,706/- was payable by way of DCRG, which had been adjusted against dues. After adjusting aforementioned amount, there remained amount of Rs.50,60,416/-, which was required to be deposited by him within fifteen days. He was also required to remit Rs.15,563/- as one month salary towards contribution as member of RELH Scheme.

8. Challenging validity of order dated 26-6-2006, OA/307/2007 was preferred. Noticing that applicant had preferred an appeal dated 07-11-2005 against penalty order dated 25-10-2005, addressed to disciplinary authority itself and which according to the respondents



was returned to him vide communication dated 12-4-2008 & referring it to proper authority, vide order dated 18-8-2008, said OA was disposed of without examining the correctness and legality of the order, requiring the Revisional Authority to consider said OA as a revision petition and to pass order within prescribed time limit. Shri K.V.Damodar, expired on 17-8-2008. In compliance to direction issued by this Tribunal vide order dated 18-9-2008 in OA No.307/2008, the respondents passed order dated 05-1-2009 and the penalty imposed vide order dated 25-10-2005 was modified stating that ends of justice would be met, if 100% DCRG recoverable is reduced to 50%. Validity of order dated 25-10-2005 as well as 05-1-2009 is challenged in present OA.

9. Basic contention raised by Shri M.S.Trivedi, learned counsel for the applicant is that as modified penalty order dated 05-1-2009 has been passed after death of Shri K.V.Damodaran, Railway servant, recovery cannot be affected from DCRG for the precise reason that Rule 6 of Railway Servant (Discipline & Appeal) Rules, 1988 which enumerates various penalties to be imposed on a Railway servant for good and sufficient reasons, cannot be invoked after the retirement.





death of a Railway servant. Shri K.V.Damodaran was retired on medical ground on 28-10-2005 and modified penalty order was passed on 05-1-2009.

10. By filing reply, the respondents have stated that he was found guilty of causing monetary loss, which can be recovered from DCRG. A shortage worked out for non supplied of items in store, recovery tune of Rs. 50,60,416/- was passed and on direction of this Tribunal vide order dated 19-9-2008, Revisional Authority considered OA No.307/2007 as revision petition and by passing reasoned speaking order dated 05-1-2009 modified the penalty, by reducing it to 50% recovery of DCRG. There is no illegality in order dated 05-1-2009.

11. Placing reliance on judgments are as follows :-

(i) Kuldeep Singh Vs. Commissioner of Police & Ors., (1999) 2

SCC 10;

(ii) Damoh Panna Sagar Ruralo Regional Bank Vs. Munna

Lal, 2005 (1) SCC (L&S) 587;

(iii) Dr. Anil Kapoor Vs. Union of India & Ors., (1998) 9 SCC 47;

(iv) B.C.Chaturvedi Vs. Union of India (1995) 3 SCC 749;



- (v) Govt. of Tamil Nadu & Ors. V/s. S.Vel Raj, 1997 (2) AIR 32;
- (vi) Govt. of Tamil Nadu V/s. N. Ramamurthy, AIR 1997 SC 3571;
- (vii) Govt. of Tamil Nadu & Anr. V/s. A. Rajapandian, AIR 1995 SC 581;
- (viii) R.S. Saini V/s. State of Punjab, 1989 SCC (L&S) 1424;
- (ix) Bank of India & Anr. V/s. Devala Suryanarayanan 1999 (5) SCC 762 &

(x) Parma Nanda V/s. State of Haryana & Ors., 1989 SCC (L&S) 303, it was contended that jurisdiction of Tribunal to interfere with disciplinary matters cannot be equated with an appellate jurisdiction; the Tribunal cannot interfere with the findings of Enquiry officer or competent authority, where the same are not arbitrary or perverse. If there has been an enquiry consistent with rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proof of misconduct, the Tribunal has no power to substitute its own discretion. The adequacy of the penalty unless it is mala fide is not a matter for the Tribunal to be concerned with. The Tribunal cannot interfere with the penalty if the conclusions of the Enquiry Officer or competent authority are based on evidence, some



of which may be irrelevant or extraneous. Department has to be recovered Rs. 55,762/- due to over payment, HBA advance interest and Electric Bill, which amount had been deducted from DCRG. After deducting this amount, a sum of Rs. 2,54,924/- remains, out of which, 50% of DCRG was required to be recovered as a measure of penalty. Shri N.S. Shevde, learned counsel appearing for the respondents vehemently urged that as per findings recorded by this Tribunal in OA No.1/2006, the amount can be recovered from DCRG and therefore there is no illegality committed by them. Making reference to Railway Board circular RBE No. 96/1996 dated 03-10-1996, it was contended that in the given circumstances reduced penalty takes effect from the date of imposition of original penalty and therefore contention raised by applicant that impugned modified order dated 05-10-2009 which has been passed after death of Railway servant, cannot be operated & no recovery can be effected is totally misplaced & misconceived.

12. We have learned counsel for the parties at length, and perused the pleadings, beside the rules position.

15. Before we proceed further, it would be expedient to note that provisions of Railway Servant (Discipline & Appeal) Rules, 1968 are applicable only during period relationship of master and servant subsists. In another words, only when a delinquent officer remains in service, said rules can be applied. After retirement etc. the provisions of Railway Services (Pension) Rules 1993 gets attracted. Rule 6 of Rule 1968 Rules enumerates penalty (minor or major) which can be imposed on Railway servant. Said rules reads as follows :-

Minor Penalties

- (i) Censure;
- (ii) With holding of his promotion for a specific period;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;
- \* (iii) (a) With holding of the privilege of Passes or Privilege Ticket Orders or both ;
- (iii) (b) Reduction to a lower stage in the time scale of pay for a period not exceeding three years, without cumulative effect and not adversely affecting his pension.
- (iv) With holding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay.

Major Penalties

- (v) Reduction to the lower stage in the time scale of pay for a specific period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his

pay;

(vi) Reduction to a lower time scale of pay, grade, post or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway Administration.

Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of Railway trains, one of the penalties specified in Clauses (viii) and (ix) shall ordinarily, be imposed and in cases of passing Railway signals at danger, one of the penalties specified in Clauses (v) to (ix) shall, ordinarily, be imposed and where such penalty is not imposed, the reasons therefore shall be recorded in writing.

Provided further that in cases of persons found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, one of the penalties specified in Clauses (viii) or (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons thereof shall be recorded in writing."

14. Rule 9 of the Railway Services (Pension) Rules 1933 confers a power on the President to withhold or withdraw pension as well as gratuity or both, either in full or in part, whether permanently or for a



specified period, which can be imposed after considering benefit recovery as a measure of penalty from pension or gratuity, due to pecuniary loss caused to the Railway. Said Rule 9 (i) reads as under :-

"The President reserves to himself the right of withholding or withdrawing a pension or gratuity or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the way, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement.

Provided that the Union Public Service Commission shall be consulted before any final orders as passed.

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees three hundred and seventy-five per mensem".

15. Bare perusal of Rule 9 extracted hereinabove would reveal that pecuniary loss caused to Railway can be recovered either in whole or in part from a pension or gratuity. On examination of issue raised in present case on the touch stone of Rule 9 of Rules, 1993, there is no scope left, but to conclude that pecuniary loss caused to Railway, either as whole or in part, can be recovered as a measure of penalty. If pensioner is found guilty of grave misconduct or



negligence during the period of his service, including service rendered after upon reemployment after retirement.

Further important aspect which needs consideration is whether a penalty imposed during lifetime of a Railway servant, but modified after his death, would take effect from the date of such modified penalty or from the date of imposition of original penalty.

16. At this stage, it would be expedient to note clarification issued by Railway Board RBE No.98/1996, dated 03-10-1996, wherein points raised and clarification to that effect has been clarified as under :-

Sl.	Points raised	Clarification
(ii)	Whether the reduced penalty should take effect from the date of the original penalty of dismissal/ removal/ compulsory retirement	In cases where the penalty of dismissal/ removal/ compulsory retirement is <u>set aside in appeal or review and the employee is reinstated in service</u> with a reduced penalty, the reduced penalty takes effect from the date of reinstatement. In all other cases, the <u>reduced penalty takes effect from the date of imposition of the original penalty</u> . This is because regularization of the intervening period from the date of dismissal/ removal/ compulsory retirement to the date of reinstatement including the period of suspension, if any, is governed by provisions contained in Rule 1343-RII which may be contravened if the reduced penalty takes effect from the date of the original penalty.

(emphasis supplied)



17. Bare perusal of aforementioned clarification would makes it apparently clear that except in case of dismissal, removal or compulsory retirement, where on account of modified penalty, employee is reinstated in service with reduced penalty, modified penalty takes effect from the date of reinstatement whereas in other cases, it takes effect from the date of imposition of the original penalty. Beside such aspect, it was further clarified therein that because of regularisation of the intervening period as well as provisions contained in Rule 1343 of IREC such modified penalty cannot be operated retrospectively. In present case, we are concerned with penalty of recovery only and not dismissal, removal or compulsory retirement. Based on above clarification, there is no ambiguity left that penalty of 25-10-2005 namely recovery of 100% of amount of DCRG for pecuniary loss caused to the Government, as modified by order dated 05-1-2009 would be enforceable under the rules w.e.f. the date of imposition of the original penalty i.e. 25-10-2005. Mere retirement either on medical ground or otherwise as well as death of Railway servant, would not have any bearing or effect on such modified order.





16. There is yet another further aspect which needs to be noticed namely findings recorded by this Tribunal vide order dated 08-6-2007 in OA/1/2006, accordingly to which, applicant was found guilty of causing the monetary loss and it was held in unambiguous term that "The admitted dues can be recovered from DCRG." It is not case of either parties that said findings were challenged. In other words, said findings have attained finality and applicant, who has filed present, being widow of K.V.Damodaran, is bound by said findings.

18. Rule 15 of the Railway Services (Pension) Rules, 1993 deals with subject : "Recovery & adjustment of Government or railway dues from pensionary benefits". As per sub-rule 2 of said rules, the Railway or Government dues as "ascertained and assessed", which remain outstanding till the date of retirement or death of a Railway servant, can be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity. Recovery of the dues against the retiring Railway servant has to be regulated in accordance with the provisions of sub-rule 4 of said Rules. It is thus absolutely clear that as per mandate of said rules recovery can be



effected subject to fulfillment of the condition that such Government dues are "ascertained and assessed". In present case, we have noticed that vide communication dated 26-6-2016 (Annexure A-8), applicant's was communicated in specific that as against DCRG amounting to Rs. 3,10,706/-, a sum of Rs.50,60,416/-, dues outstanding against him on account of shortage of stores, has been adjusted. We may observe that validity of such order has not been challenged by the Railway servant either in present OA or in earlier proceedings. At this belated stage, it is neither open for him or his legal heirs to raise a contention which is in contradiction to their earlier stand. Thus, conclusion of above discussion is as under :-

- (i) Railway or Government dues can be recovered under Rule 9 of Railway Services (Pension) Rules, 1993 either in full or in part, if pensioner is found guilty of grave misconduct or negligence.
- (ii) Railway or Government dues, as ascertained and assessed, can also be recovered under Rule 15 of Railway Services (Pension) Rules, 1993.
- (iii) Findings recorded in earlier proceedings namely order dated 08-6-2007 in OA No.01/2006 in specific term concluded that "The admitted dues can be recovered from DCRG", which has attained



finality and there is no scope left to take any divergent view.

20. In view of discussion made hereinabove, we do not find any justification in contentions raised by the applicant and finding no merits, OA is dismissed. In view of the disposal of the OA, MAST/134/2011 requires no further orders. No costs.



*[Signature]*  
**(Ashok Kumar)**  
Administrative Member

*[Signature]*  
**(Mukesh Kumar Gupta)**  
Judicial Member

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For Secretary  
President  
15/7/11  
Central Administrative Tribunal  
Ahmedabad Bench