

07.01.2022

WPCT 102 of 2021

Court : 04
Item : 31
Matter : WPCT
Status : DISMISSED
Transcriber: nandy

Union of India & Ors.
Vs.
Subhas Chandra Bhattacharya

Mr. Deepak Kumar Singh, Advocate

.....for the Petitioner

Ms. Santi Das, Advocate

.....for the Respondent

The instant writ-petition has been filed by the Railway challenging the order dated February 27, 2022 passed in OA 350/344/2018 by the Central Administrative Tribunal, Kolkata Branch, whereby and whereunder direction was passed upon the petitioner authority to refund the recovered amount with interest at the rate of 8% to the private respondent, from the date of filing of the application.

A plea is taken that the Railway Service (Pension) Rules bestowed power upon the Railway to deduct any amount on the ground of loss caused to the Railway from the retiral/pensionary benefit. Apropos the same, the petitioner who was a store in-charge, was held liable for a sum of Rs.10 lakhs and odd, which was supposed to be in the account of the Railway but because of his negligence, the Railway suffered loss to such an extent. Letter was issued to the respondent seeking explanation but subsequently no proceeding was initiated though it would reveal from the documents that contemplation to set up an Enquiry Committee was made patent. The fact remains that no disciplinary proceeding was ever initiated against the petitioner and the entire matter was at nebulous stage. The private respondent was allowed to attain superannuation and it is only when the retiral benefits were supposed to be disbursed to the private

respondent, the aforesaid amount was deducted unilaterally.

Rule 9 (1) of the Railway Service (Pension) Rules postulates that 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 Railway, 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 re-employment after retirement. Sub-rule (5) thereof makes it clear that the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date. Even Sub-rule 2(b) confers power upon the authority subordinate to the President to institute a departmental proceeding after the Railway servant attained superannuation with the sanction of the President. The limitation within which such course can be adopted is also provided therein.

It is manifestly clear from the aforesaid Rule that the recovery of any loss caused to the Railway can be recovered from the Railway servant if he is guilty of the misconduct or negligent in the departmental proceeding.

We have perused the order of the authority dated February 14, 2018 disposing of the petition filed by the private respondent wherefrom it appears that the departmental proceeding was not initiated though the

departmental Enquiry Committee was formed with a view to set the dispute amicably. In view of the stand of the authority that the departmental proceeding could not be initiated against the private respondent, recovery of the alleged loss cannot be made from the retiral/pensionary benefit. The authority cannot act in derogation with the substantive Rules governing their action.

We thus do not find any infirmity and/or illegality in the order of the Tribunal.

The writ-petition being **WPCT 102 of 2021** thus **dismissed**. There shall be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)