* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 02.09.2025
Pronounced on: 19.09.2025

\+ **W.P.(C) 11226/2025 & CM APPL.46173/2025**

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Satya Ranjan Swain, SPC, Mr. Kautilya Birat, Mr. Prem Prakash Sharma & Ms. Shashi Bala, Advs.

versus

BRIJESH SINGH THROUGH LRS SH VISHAL SAXENA .....Respondent

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

MADHU JAIN, J.

1. This petition has been filed challenging the Order dated 28.08.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No. 3690/2018, titled ***Brijesh Singh through LRs. v. Union of India & Ors.,*** whereby the learned Tribunal allowed the O.A. filed by the respondent herein and quashed the Orders dated 09.07.2013, 16.07.2013, and 07.07.2018 by which the petitioners had sought to recover an amount of Rs. 14,71,995/- from the respondent on account

of alleged shortage of ballast, the amount was recovered from his death-cum-Retirement Gratuity benefit, and his representation there against was rejected. The learned Tribunal also directed the petitioners to refund the entire amount deducted from the Death-cum-Retirement Gratuity (DCRG) or any other retirement benefits with interest at applicable GPF rates.

BRIEF FACTS OF THE PRESENT CASE: -

2. The respondent was appointed as a Permanent Way Inspector (PWI), Grade-III, in the year 1980, and was subsequently promoted to the post of Senior Section Engineer in the year 1997. In 2003, he was again promoted to the post of Senior Section Engineer and posted at Palwal Railway Station under the Jhansi Division of the Central Railways.

3. Following the re-organization of the Indian Railways, Palwal Station came under the Delhi Division of the Northern Railways with effect from 01.04.2003.

4. The petitioners contended that the work relating to the change of railway track and the consequent laying and spreading of ballast at Palwal and Ashawati (AST) Railway Station/Yard was carried out under the Non-Interlocking and Panel Interlocking (NI/PI) special works, through a contract awarded by the Divisional Office of the Jhansi Division, Central Railways.

5. It is further contended that in 2006, after completion of the ballast spreading work in the Faridabad–Palwal section, a joint

inventory survey was conducted, and Stock Sheet No. 36 was prepared in the presence of the respondent. In the stock sheet, the book balance of 65 mm ballast was shown as 2270.773 cubic meters, and 50 mm ballast as 694.936 cubic meters, whereas the ground balance for both was *Nil*, reflecting a total shortage of 2965.709 cubic meters. Despite the stock ledger showing the said balances, a surprise check revealed no physical stock of the ballast in the store, thereby indicating the respondent's *mala fide* conduct.

6. On account of the alleged shortage of ballast, a chargesheet dated 09.04.2007 was issued to the respondent. Subsequently, a regular Departmental Inquiry was conducted, and on the basis of the report of the Inquiry Officer, the Disciplinary Authority, *vide* Order dated 26.08.2010, imposed the penalty of permanent withholding of increment for a period of two years.

7. Aggrieved thereby, the respondent preferred an appeal under the relevant rules, whereupon the Appellate Authority, *vide* the penalty Order dated 11.01.2011, modified the penalty to reduction by one lower stage in the same time scale for a period of one year.

8. The respondent thereafter retired from service upon attaining the age of superannuation on 31.07.2013. At the time of his retirement, the petitioners issued a Recovery Order dated 09.07.2013 for an amount of Rs.14,71,995/- on account of shortage of ballast stone stock.

9. By the subsequent order dated 16.07.2013, this amount was directed to be recovered from the DCRG amount due to the

respondent or from any other retiral dues owed to the respondent. By the order dated 07.07.2018, the representation of the respondent against the above action was also dismissed.

10. Being aggrieved by the above orders, the respondent filed the above-mentioned O.A., seeking quashing of the recovery order and a direction for refund of the sum of Rs.14,71,995/-.

11. The learned Tribunal allowed the O.A., holding as under:

> *"6.4 As the records are not available, the verbal discussions with the then ADEN/TKD cannot constitute evidence of exact loss to the Railways. If there is no record as to how much material issued, how much consumed and how much was left as balance at the time of relinquishing charge by the applicant, the basis of imposing a recovery of Rs. 14,71,995/- is only heuristic, not based on evidence. Hence the recovery notice dated 09.07.2024 is not backed by adequate evidence of pecuniary loss to the Railways and exact responsibility of the applicant for the said loss. There is no preliminary enquiry or final disciplinary enquiry to ascertain the loss and fixing responsibility on various Railway officials. The applicant did not execute the works in isolation; there must have been seniors and juniors supervising and assisting him in execution of such works. In absence of such enquiry, the recovery notice suffers from lack of adequate supporting evidence to justify the recovery amount. Even if we accept the contention of the learned counsel for the respondents that in addition of other penalties, recovery of loss, could be ordered as per the Apex Court judgment in* ***Depot Manager*** *(supra), such recoveries cannot be imposed without enquiry and without supporting evidence regarding culpability of the employee for the said loss. Merely because the applicant did not maintain proper records, would not suffice to conclude that he is responsible for any pecuniary loss, without proper estimation. Even the respondents have not produced any documentary evidence as regards to the quantity of material use/taken charge by the applicant. The*

ratio of order dated 23.08.1990 in Vankateshwar Rao (supra) by the Coordinate Bench of this Tribunal is fairly applicable here."

6.5. The Hon'ble Apex Court in State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc. in CA No. 11527 of 2014 (Arising out of SLP (C) NO. 11684 of 2012), has held that it is impermissible to recover from a retired employee for any excess amount paid to the employee for periods more than 5 years prior to the date of notice of recovery. Though, in the instant case, it is not recovery of excess amount paid, the analogy of the ratio of the judgment is fairly applicable to the case at hand as the alleged loss occurred in 2007 and the recovery notice is after retirement i.e. 31.07.2013.

7. In view of the above, the present OA is allowed. The impugned orders dated 09.07.2013, 16.07.2013 and 07.07.2018 are quashed. The respondents are directed to refund the entire amount deducted from the DCRG or any other retirement benefits with interest calculated at applicable GPF rates. They are also directed to release any other pending retirement benefits to the applicant along with interest at applicable GPF rates, unless there is any statutory bar or Court order not to do so. The aforesaid exercise shall be completed by the respondents within a period of eight weeks from the date of receipt of a certified copy of this order. There shall be no order as to costs."

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS: -

12. The learned counsel for the petitioners argued that the Impugned Order dated 28.08.2024 passed by the learned Tribunal is manifestly arbitrary, unjust, and unfair, and is therefore liable to be quashed and set aside.

13. He submitted that the learned Tribunal failed to take into consideration the statutory framework and binding Departmental

Rules/Regulations, which mandate recovery of wrongful or excess payments irrespective of the retirement or death of an employee. He also submitted that the learned Tribunal overlooked settled judicial precedents distinguishing between 'Entitlement' and 'Excess Payment', wherein even retired employees are not immune from corrective recoveries, provided due process of law is followed.

14. The learned counsel submitted that the learned Tribunal erred in not appreciating the doctrine of public accountability, under which erroneous disbursements of public funds are mandatorily recoverable, as no estoppel can be claimed against the State. He further submitted that the learned Tribunal failed to recognize that the recovery in question pertained to public money, that is, taxpayers' funds, which must be safeguarded in public interest and cannot be permitted to be unjustly retained.

15. He submitted that the learned Tribunal failed to appreciate that the petitioners had acted under a *bona fide* belief, based on internal audit and financial irregularities, which triggered mandatory action under the service rules.

16. He submitted that the learned Tribunal failed to appreciate that a notice dated 13.08.2013 was issued by the petitioners to the respondent, calling upon him to submit his reply regarding the proposed recovery of Rs. 14,71,995/- from his DCRG. By the said notice, an opportunity was granted to the respondent to file a reply within seven days in respect of the contents mentioned therein. He further submitted that this fact was duly pleaded before the learned

Tribunal, however, the learned Tribunal failed to appreciate that, despite such notice and the opportunity granted within the stipulated time, the respondent did not file any reply.

17. He submitted that therefore, no fault can be found in the decision of the petitioners to seek recovery of the amount from the respondent. He submitted that the present petition deserves to be allowed.

ANALYSIS AND FINDINGS: -

18. We have considered the submissions made by the learned counsel for the petitioners and have perused the record.

19. The issue that arises for consideration is whether the petitioners were justified in effecting recovery of Rs. 14,71,995/- from the retiral dues of the respondent on account of the alleged shortage of ballast, despite the lapse of several years and the conclusion of the disciplinary proceedings, or whether such recovery stood barred in law, as held by the learned Tribunal.

20. From the record, it is evident that the alleged loss pertains to the year 2007, whereas the recovery notice was issued on 09.07.2013, only a few days prior to the retirement of the respondent on 31.07.2013. There is, therefore, a gap of more than six years between the alleged loss and the issuance of the recovery notice. The learned Tribunal has rightly taken note of the fact that the petitioners failed to conduct a detailed enquiry at the relevant point of time on the issue of alleged losses. The inquiry that was conducted was only for not properly maintaining the records and not for the alleged losses. The

learned Tribunal further held that the Order dated 09.07.2013 has not substantiated how the amount of Rs. 14,71,995/- was arrived at. We quote from the Impugned Order, as under:

> *"6.2……Plain reading of this recovery notice shows that it is a non-speaking one. The recovery notice nor the subsequent speaking order dated 09.07.2013 has not substantiated how the amount of Rs. 14,71,995/- is arrived at and how the respondents arrived at that this pecuniary loss to the Railways and how the present applicant is responsible for such loss. On that count, the recovery order is liable for being quashed.*
> *6.3 The respondents conducted a detailed disciplinary proceedings against the present applicant. Article-I of the charge memo states that "Sh. Brijesh Singh, S.S.E/P-Way/PWL did not maintain P-Way measurement book above special works. Therefore, location wise Issue V/s Release could not be checked and identified, where the material was issued." Article-II of the charge memo states that "it was found that no released material has been accounted for in ledger till date, which should have been done account for at the time of execution. Still he did not recount for the released material. Afterwards and even then, he prepared every bil without accounting the release material."*
> *In brief, the applicant was chargesheeted for not maintaining the appropriate ledger/records. For this he was punished. The respondents ultimately imposed the penalty of "reduction to one lower stage in the same time scale of pay for a period of one year which will affect increment after a period of punishment is over." This punishment was awarded vide order dated 11.01.2011. The respondents could have conducted a detailed enquiry immediately after the non-maintenance of records in 2007 and also during the applicant was in service with the respondents to ascertain exact loss and could have fixed responsibility on the erring officials. The respondents chose not to initiate any such action. For non-maintenance of proper records, the applicant was punished. There was no charge in the previous chargesheet that the*

applicant was responsible for any pecuniary loss to the Railways."

21. Further, pursuant to the directions of the learned Tribunal *vide* Order dated 18.01.2024, the petitioners were called upon to clarify whether the consumption verified by ADEN/TKD on 27.05.2013 had any relevance to the physical stock verification carried out on 27.11.2007. In response, *vide* communication dated 13.07.2024, the petitioners stated that the relevant records, being more than ten years old, were not available. This aspect has been duly recorded by the learned Tribunal. We have already quoted herein above, paragraph 6.4 of the Impugned Order, wherein the learned Tribunal has held that there was no supporting evidence justifying the recovery of the above amount.

22. In addition to the above, in the instant case, the respondent superannuated on 31.07.2013. On the allegations that pertained to the year 2007 and had culminated into a penalty order 11.01.2011, the Impugned Recovery Order was issued only on 09.07.2013, that is, a few days prior to his superannuation. During the pendency of these proceedings, the respondent expired on 21.08.2022, and the matter is now being pursued by his legal representatives. The attempt to impose recovery in such circumstances, particularly after the respondent had already undergone punishment in the Disciplinary Proceedings and that too on vague assertions and without any inquiry, has rightly not been permitted by the learned Tribunal.

CONCLUSION

23. Therefore, in view of the above facts and circumstances, we find no infirmity or illegality in the Impugned Order passed by the learned Tribunal. The petition, along with the pending application, is accordingly, dismissed.

24. There shall be no order as to costs.

MADHU JAIN, J

NAVIN CHAWLA, J.

SEPTEMBER 19, 2025/*ys/RM*