

(1986) 11 BOM CK 0032

Bombay High Court

Case No: Writ Petition No. 2352 of 1984

Vishram Sitaram Raut

APPELLANT

Vs

M.A. Deshpande and Others

RESPONDENT

Date of Decision: Nov. 24, 1986

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33C(2)

Citation: (1987) 54 FLR 68 : (1994) 3 LLJ 277

Hon'ble Judges: Pendse, J

Bench: Single Bench

Advocate: D.V. Gangal, for the Appellant; S.M. Shah, for the Respondent

Final Decision: Allowed

Judgement

Pendse, J.

By this petition filed under Article 226 of the Constitution of India, the petitioner-former employee of the Railway, is challenging the legality of the order, dated April 16, 1983 passed by the Presiding Officer, Central Government Labour Court No. 2, Bombay, rejecting the application filed u/s 33C(2) of the Industrial Disputes Act (hereinafter referred to as the "Act"). Only few facts are required to be stated to appreciate the grievance of the petitioner.

The petitioner joined Railway service on June 29, 1941 as a Points man .The petitioner was promoted from time to time and on January 4, 1977 was working as Brakes man. The petitioner retired with effect from January 4, 1977 due to medical unfitness. The petitioner, thereafter, sought settlement of his dues which included Provident Fund, Gratuity, wages unpaid and other retirement benefits. The petitioner received letter, dated May 2, 1977 from the Divisional Superintendent, Central Railway, Bhusawal, that an amount of Rs. 5166.50 is deducted from the settlement dues. The petitioner was informed that he was responsible for damages to the consignment of bale which was found by 25 kgs. less in weight on May 19,

1975. The petitioner protested against the deduction made by the Railways, but failed to receive any positive response and thereafter on December 8, 1977 filed application u/s 33C(2) of the Act.

The Railways filed the written statement on March 2, 1978 and in paragraph 5, it was claimed that the petitioner while working as Brakes man on I down train on May 19, 1975 took charge of three gunny bales booked under Luggage Ticket at V.T. to Akola in good condition. It was alleged that while handing over charge of the consignment at Bhusawal, one bale, out of the consignment was found loose and on reweigh meant it was found that 25 Kgs were short and for which remark was passed on the summary. The Railways claimed that an amount of Rs. 5166.50 was deducted for this partial shortage. The Railways admitted that no enquiry whatsoever was held in respect of this shortage and the petitioner was not given any opportunity to show cause why the amount be not deducted,

2. On these pleadings, the Labour Court framed issues and dismissed the application holding that though no enquiry was held by the Railways in respect of alleged loss due to negligence of the petitioner, still from the record produced by the Railways it can be concluded that deduction was legally made. On the strength of this finding, the application came to be dismissed. Shri Gangal, learned counsel appearing on behalf of the petitioner, submitted that the decision of the Labour Court is wholly unsustainable and I find considerable merit in the submission. The Labour Court has recorded a clear cut finding that no departmental enquiry was held against the petitioner for the alleged shortage on May 19, 1975, i.e. almost more than one and half year before the retirement of the petitioner. As no departmental enquiry was held and no opportunity was given at any stage to the petitioner to explain the alleged loss due to the negligence of the petitioner, it is difficult to appreciate how a unilateral decision taken by the Railways can be sustained. It was clearly wrong on the part of the Labour Court to read the record of the Railways which was prepared behind the back of the defendant and conclude that the deduction was legal. It was always open for the Railways, if so advised, to hold proper enquiry and fix the liability of the petitioner and then take the decision but as long as that exercise is not gone through, it is impossible to accede to the submission of Shri Shah, learned counsel appearing on behalf of the Railways, that the action of the Railways need not be faulted with. In my judgment, the Labour Court was clearly in error and the petitioner was entitled to the relief.

3. Accordingly, rule is made absolute and the order, dated April 6, 1983 passed by the Labour Court is set aside and respondents Nos. 2 and 3 are directed to pay an amount of Rs. 5166.50 to the petitioner within 8 weeks from today. In case, the amount is not paid to the petitioner within this time, then the Railways shall pay the said amount along with interest at the rate of 15% per annum from the date of the application till the date of payment. The respondents Nos.2 and 3 shall pay the costs of the petitioner.