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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 765 of 2002
M.A. No. 640 of 2002

New Delhi, this the 5th day of August 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Shri B.D. Sharma,
S/o Shri G.L. Sharma,
Ex. Guard,
Under Station Master,
Eastern Railway,
Dhanbad.

Presently resident of:
477/30/22, Gali No.4,
Gandhi Nagar,
Gurgaon (Haryana).

....Applicant
(By Advocates : Smt. Meenu Mainee, learned proxy
counsel with Shri B.S. Mainee)

Versus

Union of India through :

1. The General Manager,
Eastern Railway,
Kolkatta.
2. The Divisional Railway Manager,
Eastern Railway,
Dhanbad.
3. The Sr. Divisional Accounts Officer,
Eastern Railway,
Dhanbad.

....Respondents
(By Advocate : Shri V.S.R. Krishna)

ORDER (ORAL)

HON'BLE SMT. LAKSHMI SWAMINATHAN, VC (J):

In this application, the applicant has impugned certain actions and orders issued by the respondents dated 9.2.2000 (Annexure A/1), another order dated nil (Annexure A/2) and order dated 19.6.2000 (Annexure A/3).

2. Smt. Meenu Mainee, learned proxy counsel has submitted that the applicant was aggrieved that the

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respondents have refused to pay him Rs.17,000/- against transportation of his household goods admittedly by road transport. She has submitted that this is an arbitrary action on the part of the respondents. She has also assailed the order issued by the respondents reducing the pension of the applicant by Rs.14/- per month which ^{has} resulted in recovery of Rs.9176/- from the applicant. According to the respondents, this amount was rightly recovered due to clerical error committed by them in fixation of applicant's pay and subsequent order issued by the Railway Board in terms of the recommendations of the 5th Central Pay Commission (CPC). In the impugned letter dated 19.6.2000, what has been impugned in the present OA is with regard to the rejection of the claim of the applicant for reimbursement of Rs.17,000/- as road transport fare by the respondents.

3. We have heard Smt. Meenu Mainee, learned proxy counsel for applicant and Shri V.S.R. Krishna, learned counsel for respondents and perused the relevant documents on record.

4. According to the learned proxy counsel for applicant, even though the respondents/ Eastern Railway ~~have~~ issued three Passes for carrying the household goods to the applicant on 3.3.1998, which was valid for two months, the applicant had made representation dated 6.3.1998 for change of wagon/couch. Learned proxy counsel for applicant has submitted that no

reply was given to this representation or two subsequent reminders sent by the applicant. She has also submitted that the applicant had retired on superannuation from service w.e.f. 31.3.1997 and had to shift from Dhanbad to Gurgaon by 31.3.1998. He had no other alternative except to transfer his household goods by road transport. She has also prayed that since the representation of the applicant dated 6.3.1998 has not been considered by the competent authority, a direction may be given to the respondents to consider the same so that the amount of Rs.17,000/- spent by the applicant for transportation of his household goods may be reimbursed. She has further submitted that the respondents have not provided any wagons for transportation of his household goods by train in terms of ^{the P} _h three Passes dated 3.3.1998. These averments have been controverted by the respondents' learned counsel. He has submitted that the applicant has ^{not} _h not availed of the facilities extended to him as per the relevant rules and instructions and has shifted his household items by road transport at his own discretion incurring a cost of Rs.17,000/-. That amount is not reimburseable by the respondents. They have, however, submitted that in accordance with the rules, packing allowance as admissible has been paid to the applicant.

5. The applicant has also filed MA 640/2002 praying for condonation of delay to which respondents have also filed reply. Respondents have submitted

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that a clerical mistake in pay fixation of the applicant has been rectified on 9.2.2000 with due intimation to the applicant and the present application has been filed after a period of two years. It is relevant to note that the notice/intimation, if any, issued to the applicant, referred to by the respondents, is also not enclosed in the reply. Annexure A/1, i.e., letter dated 9.2.2000 on the subject of recovery of Government dues of Rs.9176/- from the applicant merely refers to recovery of this amount in suitable instalments from the reliefs granted to the applicant. As such, the same cannot be considered as a show-cause notice to the applicant as to why this amount should not be recovered in accordance with law.

6. As mentioned above, the relevant documents referred to in the counter reply, have not been given by the respondents. Although there is considerable delay on the part of the applicant in filing the present application, however, considering the fact that the above claim refers to recovery from his pensionary benefits which is a recurring cause of action as held by the Hon'ble Supreme Court in the case of M.R. Gupta Vs. Union of India, (1995 (5) SCALE 29), we consider it appropriate to condone the delay. Accordingly MA 640/2002 is allowed.

7. We have carefully considered the aforesaid claim of the applicant and more specifically the

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representation made by him on 6.3.1998. Taking into account the sanction of the wagon for transport of his household goods vide the free Passes issued to the applicant by the respondents dated 3.3.1998, we are enable to agree with the contention of the learned proxy counsel for applicant that his representation is in term of the Passes. Applicant has on the other hand requested the respondents to provide him some other facilities of VPU Van and has not produced any relevant rules that he was entitled to that type of transport facility. During the hearing, it was also mentioned that the applicant has shifted his household goods by road transport on 7.4.1998, that is well within the period of the Passes dated 3.3.1998. From the relevant documents and the submissions of the applicant, it cannot be stated that the respondents had not provided the facilities that are available to a retired Railway employee in accordance with the rules, keeping in view also the fact that the applicant had retired w.e.f. 31.3.1997. Learned counsel has also submitted that the applicant had a 'privilege' Pass for himself and his family for transfer from Dhanbad to Gurgaon by train which was valid upto 31.5.1998, although admittedly, he shifted his household goods by road on 7.4.1998. In other words, it appears that although the free Passes were valid for two months, i.e., upto 31.5.1998, the applicant at his own discretion has taken a decision to shift his household goods by road on 7.4.1998. In the circumstances of the case, the claim of the

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applicant that the respondents should be directed to reimburse this amount spent by him for transport of his household goods by road instead of availing of Railway facilities is neither reasonable nor warranted under the Rules. That claim is accordingly rejected.

8. The other amount claimed by the applicant is with regard to refund of an amount of Rs.9176/- which has been recovered by the respondents after his retirement from his retiral benefits. In this regard, learned proxy counsel for the applicant relied on the judgement of the Hon'ble Supreme Court in Bhaawan Shukla Vs. Union of India & Ors., (JT.1994(5) SC 253). She has submitted that the recovery has been done without issuing any show-cause notice to the applicant. Her contention is that if such a notice had been issued, the applicant could have got an opportunity to explain his case in terms of Railway Board's letter dated 17.7.1998, relied upon by the respondents, which has been issued after giving effect to the revised pay scale in pursuance of the recommendations of the 5th CPC. The respondents have not issued any show-cause notice to the applicant before effecting recovery from his retiral benefits and the only explanation they have given is that they have made a mistake which they have rectified after Railway Board's letter dated 17.7.1998 was issued. It is relevant to note that neither the copy of Annexure R/1 nor Annexure R/2 referred to by the respondents in their reply affidavit have been annexed by them. In

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the circumstances, we find force in the submissions of the learned proxy counsel for the applicant that without issuing a show cause notice or supplying copies of the relevant letters issued by the Railway Board on the basis of which the respondents have made the recovery, the action taken by them cannot be upheld. Apparently Rs.9176/- has already been recovered by the respondents even before the applicant filed the OA on 13.3.2002.

9. In view of what has been stated above, the OA partly succeeds and is disposed of as follows:-

- (i) The claim for recovery of transport charges of the household items by road is rejected;
- (ii) The respondents shall issue a show-cause notice to the applicant, in accordance with law explaining the circumstances in which the amount of Rs.9176/- has been recovered from him, including reduction of his pension, within four weeks from the date of receipt of a copy of this order;
- (iii) The applicant may submit a reply to the competent authority to the above notice within two weeks from the date of receipt of the notice;
- (iv) Respondent No.3 shall pass a reasoned and speaking order within two months from the date

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of receipt of the aforesaid reply in accordance with law; and

(v) In the peculiar facts and circumstances of the case, in case the aforesaid order is not passed by the competent authority within the time mentioned above, the respondents shall refund the amount of Rs.9176/- to the applicant, subject to further appropriate orders to be passed by them as directed above.

No order as to costs.

R.K. Upadhyaya

(R.K. UPADHYAYA)
MEMBER (A)

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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