

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**ALLAHABAD BENCH ALLAHABAD**

**Dated: This 18<sup>th</sup> day of March 2020**

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)**

**Original Application No. 330/01073/2018**

Smt. Kamala Devi aged about 59 years, W/o Late Bechoo Lal, 630, Banaras Road, Baria Tola, Nausad, District Gorakhpur, U.P.

.....Applicant

By Advocate: Shri Anil Kumar/Sri Ashish Kumar

**Versus**

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Lucknow.
3. Divisional Finance Manager, North Eastern Railway, Lucknow.
4. Senior Divisional Personnel Officer, North Eastern Railway, Lucknow Division, Lucknow.

.....Respondents

By Advocate: Shri P.K. Rai

**ORDER**

1. The present O.A. has been filed by applicant Kamla Devi seeking the following reliefs:-

“(i) That the Hon'ble Tribunal may graciously be pleased to set aside/quash the Note of the PPO dated 09.03.2018 (Annexure A-1 of the OA) passed by respondent no. 3 regarding per month recovery from pension relief of the applicant and recovery made in pursuance of settlement letter dated 24.04.2018 (Annexure A2 of the O.A) as in the head of stock sheet etc.

(ii) That the Hon'ble Tribunal may graciously be pleased to issue a direction in the nature of mandamus commanding

the respondent no. 1 to 4 for payment of all the recoveries made by them to the applicant along with 12% interest from the date of death of the applicant's husband Becho Lal i.e. 22.12.2017 till its payments.

(iii) That the Hon'ble Tribunal may graciously be pleased to issue any other order or direction in view of the facts and circumstances of the case, or as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case".

2. Case of applicant is that her husband Becho Lal while working as Junior Clerk in respondents department died in harness on 22.12.2017. It is the case of applicant that her husband was working as a Junior Clerk and was never posted as Store Keeper under Senior Sectional Engineer, Barhani, North Eastern Railway which can be ascertained from the last salary bill of her husband pertaining to November 2017 attached as Annexure No. A-3.
3. It has been further averred in the O.A. that in 2015 on the retirement of one I.D. Pandey (Incharge Stores) on 31.03.2015, her husband was given charge of measurement book as well as Misc. files of certain employees but was never handed over the charge of store and nor did her husband take charge of any material of the store from said I.D. Pandey. That one Shri Manohar Lal joined as Senior Sectional Engineer/Works Barhani on 30.04.2015 and requested D.R.M. N.E. Railway Lucknow vide letter dated 09.05.2015 for the charge of store and its stock verification. Meanwhile her husband was transferred as Junior Clerk from Barhani to Jarwal Road. Accordingly, the department directed stock verification which was done on 11.12.2015 wherein certain shortage was found in the stores.
4. It is the further case of applicant that during the tenure of service period of her husband/till his death, no chargesheet/departmental enquiry was initiated against her husband for shortage of store. On the death of her husband P.P.O dated 09.03.2018 was issued in her favour containing a note that against the pensioner, deduction of Rs. 237652/- has to be done and deduction be made from the pension per month. That the note in the PPO regarding the deduction has

been made without any opportunity/show cause against the proposed deduction and the same has been done without following the Railway Servants (Discipline and Appeal) Rules 1968 or Railway Services (Pension) Rules 1993. That respondent No. 4 issued letter dated 24.04.2018 regarding settlement of applicant's husband, vide said letter also Rs.830655/- of D.C.R.G., Rs.54778/- of Group Insurance Scheme, Rs.2,96,370/- of Leave encashment and Rs.29300/- as retirement transfer allowance, has been deducted against stock sheet appending note before the each column, where as in last para further details as final recovery/deduction against stock sheet has been again mentioned, which are totally illegal and principle of natural justice etc.

5. Applicant has challenged the note in PPO dated 09.03.2018 (Annexure No.A-1) regarding monthly deduction from the pension relief of the applicant and the recovery made in pursuance of settlement letter dated 24.04.2018 (Annexure No. A-2) and further relief directing the respondents to pay the recoveries made from the pension of the applicant along with interest on the ground that:-
  - (i) Violation of the pension rules vis-à-vis Rules 9, 10, 15 of the Railway Services (Pension) Rules, 1993.
  - (ii) Recovery cannot be affected in view of the judgment of Hon'ble Apex Court in State of Punjab Vs. Rafiq Masih, AIR 2015 SC 696.
  
6. In the counter affidavit, it has been averred that Becho Lal working as Junior Clerk died on 22.12.2017 and have not denied that said Becho Lal was working as Junior Clerk at the time of his death. However, applicant was given charge of Store Keeper by the respondents after due verification of the material of the store, which is evident from the charge memo dated 30.03.2015 (Annexure CR-1). That in the verification of the stock on 11.12.2015 in which deceased Becho Lal also participated, certain shortage were found by the department and, therefore, the deduction is being made from the pension fund of the applicant in accordance with relevant rules and that therefore, the impugned orders have been issued after following due process, rules and procedure. That it is incorrect to allege that no notice or opportunity of hearing was provided to the applicant. The recovery is being made on the basis of report of Account Section whereby Becho

Lal caused a loss to the department to the tune of Rs.13,28,982/- in respect of stores. In this regard, it has been averred that "Therefore, there is no illegality passing the impugned order by the respondents, in as much as the provisions referred par under reply are not applicable in the present controversy. For ready reference a copy of the communication dated 28.02.2018 forwarded by the engineering department to the respondent No. 4 is being filed herewith and marked as Annexure No. CR-3 to this affidavit".

7. I have heard and considered the arguments of learned counsel for the parties and gone through the material on record.
8. The dispute in brief between the parties is regarding the deduction from the pension of the applicant which she got on the death of her husband dying in harness. Applicant averring that the deduction is illegal and in violation of Railway Rules whereas the Railway department taking the stand that during the tenure of deceased husband Becho Lal as Store Keeper, on verification, it was found that there was shortage of store item and thereby a loss was caused to the department which is being recovered from the pension of the deceased Becho Lal.
9. Respondents' case is that Becho Lal was given the charge of store keeper and he had taken the charge of the store which is evident from charge memo dated 30.03.2015 (Annexure No. CR-1). However, applicant's case is that her deceased husband was never given the charge of the store and the document CR-1 is totally vague and unclear as to who had signed the said document and in any case, the said document does not bear the seal and signature of Superior Officer verifying the taking/handing over of the charge of the store. Perusal of the document CR-1 does not reveal as to who had actually signed the said document. Respondents have placed the said document on record without authenticating its veracity by producing the relevant record to show that handing over and taking over was actually done by Becho Lal and I.D. Pandey. Respondents have also taken the stand that the charge of the store was given to deceased Becho Lal but no documentary evidence has been produced in

support of the contention that Becho Lal was in fact given charge of the store as alleged by the respondents. Respondents could have very well placed on record the document showing the factum of the charge of stores being ordered to be taken over by Becho Lal on retirement of I.D. Pandey.

10. On a specific query regarding the rules under which the recovery has been initiated from the pension of deceased Becho Lal, learned counsel for respondents has been unable to show from the counter affidavit as to under which rule the deduction has been made from the pension. The only answer given by the respondents is in paragraph No. 15 of the counter affidavit wherein they have taken the defence that the deduction is being made in accordance with relevant rules. They also controvert that no notice or opportunity of hearing was provided to the applicant. However, respondents have not placed any record to support their contention that notice or opportunity of hearing was provided to the applicant specially when the applicant claims that there was violation of principle of natural justice.
11. Applicant challenges the recovery of the amount calculated for the short fall in the stores on the following grounds:
  - 1) Dues outstanding on account of shortfall are to be assessed within 3 months of retirement as per Rule 15 of the Railway Servant (Pension) Rules, 1993 (hereinafter referred to as 'Rules') and after two years, respondents are stopped from recovery from the retiral dues of the applicant;
  - 2) Applicant or deceased Becho Lal were never made aware of the enquiry into the question of physical verification and nor were and departmental proceeding initiated against him for shortfall in the Stores and therefore he was not given the right of being heard before passing the order of outstanding amount against him;
  - 3) Respondents are relying as per para 20 of the counter affidavit to say that the deduction from the pension has been done on the basis of report of Accounts Section. However, no enquiry or department proceeding was initiated to have a detailed report regarding the alleged loss of store items and this is evident from the fact that no documents have been placed on record by

the respondents to substantiate their claim that loss of store item took place during the alleged holding of charge of store by Becho Lal.

12. The stand of respondents in their counter affidavit is that the outstanding dues were worked out on the basis of report of Account Section and therefore, the amounts are being recovered and deducted from the pensionary benefits of the deceased Becho Lal on account of recovery of loss occasioned to the Government by the applicant. Respondents further state that the recovery against the applicant became due after giving full opportunity as per Rules.
13. It has been argued by learned counsel for applicant that alleged shortfall pertains to the period when his client was in service but there is nothing on record to show that Becho Lal was given the charge of the store and it was during his alleged holding of charge of the stores that a loss occurred to the department in the store items. It is further argued by learned counsel for applicant that applicant was never associated with the physical verification of the Stores and nor any show cause notice was issued to him for his explanation about the alleged shortfall and nor any disciplinary enquiry initiated against him either pre or post retirement and it is only after the death of Becho Lal, the department in a ex-parte manner without any show cause notice or opportunity of being heard or initiating any disciplinary enquiry regarding the allegation of loss of the stores sought to recover the amount of alleged loss from the pension of the deceased husband of the applicant.
14. Learned counsel for applicant also submitted that the respondents filed Counter Affidavit. However, in the counter affidavit except for a bald statement regarding the recovery of the shortfall attributable to the applicant, respondents have not stated anything in their counter against the specific pleadings of the OA. There is no specific details of particulars of the shortfall, its discovery and resultant action under Rules. The least, respondents could have done in their counter affidavit was to give the particulars as well as documentary evidence to show that Becho Lal was custodian of the stores and the loss to the department occurred during his holding of the charge of the stores.

15. It was vehemently argued by learned counsel for applicant the impugned orders and the impugned action relating to recovery from applicant is governed by Rule 15 of Rules. Learned counsel for applicant further argued that no inquiry or procedure was held against him and nor the responsibility fixed. The orders of the recovery were passed without any intimation to him and without giving him any opportunity to defend himself. This is against the principles of natural justice.
16. Learned counsel for the applicant further argued that Rule 15 of Railway Services (Pension) Rules, 1993 relied upon by the learned counsel for the respondents does not provide for any recovery from "Pension" and further that in terms of sub clause (ii) of clause 4 of Rule 15 any recovery of losses is subject to condition laid down in Rule 8 of Pension Rules which in terms stipulates certain conditions such as the Pensioner having been convicted of serious crime or having been found guilty of a grave misconduct etc. There are certain other conditions laid down in this Rule which have to be fulfilled before Rule 8 can be applied. None of these conditions are applicable in the case of the applicant. Learned counsel for the applicant relied upon Government of India instructions Department of Personnel and AR 13 dated 28.2.1998 which reads as under:-

"(9) Minor penalty proceedings no effect on pension sub-rule (1) of Rule 9 of the C.C.S (Pension) Rules, 1972, confers on the President the right to withhold or withdraw the pension or a part thereof, either permanently or for specified period, and to order recovery from the pension, of the whole or a part of any pecuniary loss caused to the Government 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 on retirement. Sub- rule (2) of this Rule provides that the departmental proceedings referred to in sub-rule (1), if instituted before the retirement of a Government servant or during his re-employment shall after his final retirement, be deemed to be

proceedings under this Rule and shall be continued and concluded. Accordingly, the minor penalty proceedings and the major penalty proceedings, which are instituted against a Government servant while in service and which do not get concluded before the date of retirement, automatically become proceedings under rule 9 ibid. However, since grave misconduct or negligence cannot be established as a result of minor penalty proceedings, action under Rule 9 ibid for withholding or withdrawing pension, etc. cannot be taken against a pensioner in respect of whom minor penalty proceedings had been instituted and have been continued after retirement. Such minor penalty proceedings continued before retirement, therefore, do not literally have any effect on the pension in the matter of reducing or withholding of his pension. The disciplinary authorities are requested to take note of this position and take steps to see that minor penalty proceedings instituted against Government servants, who are due to retire, are finalized quickly and in time before the date of retirement, so that the need for continuing such minor penalty proceedings beyond the date of retirement does not arise."

17. Provision regarding mode of recovery of Railway dues from pensionary benefits are provided in Rule 15 of Railway Services (Pension) Rules, 1993, which reads as under:-

***"15. Recovery and adjustment of Government or railway dues from pensionary benefits- (1) It shall be the duty of the Head of Office to ascertain and assess Government or Railway dues payable by a railway servant due to retirement.***

***(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).***

**(3) For the purposes of this rule, the expression railway or Government dues includes-**

**(a) dues pertaining to railway or Government accommodation including arrears of license fee, if any;**

**(b) dues other than those pertaining to railway or Government accommodation, namely balance of house-building or conveyance or any other advance, overpayment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, losses (including short collection in freight charges shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service.**

**(4) (i) A claim against the railway servant may be on account of all or any of the following: -**

**(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;**

**(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,**

**(c) non-Government dues.**

**(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or**

*service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant.*

*(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain unassessed or unrealised the following courses should be adopted: -*

*(a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.*

*(b) In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule-*

*(1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be with held and the surety shall sign a bond in Form 2.*

*(2) If the retiring railway servant is unable or nor willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub- clause (iii).*

*(3) The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.*

*(c) In respect of the dues as mentioned in sub-clause (c) of clause (i) The Quasi- Government and non-Government dues, such as amounts payable by a railway servant to Consumer Cooperative Societies, Consumer Credit Societies or the dues payable to an autonomous organisation by a railway servant while on deputation may*

be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he gives his consent for doing so in writing to the administration.

*(iv) In all cases referred to in sub-clauses (a) and (b) of clause (I) of this sub- rule, the amounts which the retiring railway servants are required to deposit or those which are with held from the gratuity payable to them shall not be disproportionately large and that such amount are not with held or the sureties furnished are not bound over for unduly long periods. To achieve this the following principles should be observed by all the concerned authorities:-*

*(a) The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.*

*(b) Dues mentioned in clause (I) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.*

*(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.*

*(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer".*

18. From above, it is clear that under the rule 15 in respect of a retired/dead railway servant, the loss to the Railways on account of

store or otherwise, such dues have to be assessed and adjusted in terms of sub clause 4 of the rule 15. It is thus clear that the alleged dues of loss sustained by Government due to action of Becho Lal was not assessed and adjusted within the period as given in Rule 15.

19. Hence, the impugned order violates the provisions under the rule 15 of the Pension Rules. It is not understood why the amount to be recovered towards loss could not be assessed within the time stipulated under the rule 15 of the Pension Rules and for not taking suitable action against the applicant.
20. Further, before determining the dues to be recovered from the husband of applicant, the details of the dues are required to be assessed after giving opportunity of hearing to the applicant/deceased Becho Lal. In this case, if after considering the reply of the applicant/Becho Lal on account of shortage, the competent authority would have found him responsible for loss to the Railways, then a reasoned and speaking order was required to be passed informing the applicant of the dues outstanding against Becho Lal and a copy of the order should have been informed to the applicant before the time limit under the rule 15.
21. I may refer to judgment dated 16.06.2009 of the Principal Bench of this Tribunal in O.A No. 2521/2008 wherein recovery of recovery of Rs. 2 lakh from the salary of applicant (OA No. 2521/2008) was challenged and the Principal Bench of this Tribunal has held as under:-

***“14. From the aforesaid it is seen that the penalty of recovery can be imposed only when misconduct alleged to have been committed by Government servant, has caused pecuniary loss sought to be recovered from him. Pecuniary loss to the Government as a result of misconduct committed by the Government servant is a condition precedent for imposing this penalty of recovery. If there is no direct link between this misconduct on the part of the government servant on one hand and the pecuniary loss sought to be recovered from him, the result would be that***

*this penalty recovery cannot be imposed on him. There must be cause-and -effect relationship between the misconduct of the government servant and the pecuniary loss caused to the government. From this, it follows that the pecuniary loss is such which directly flows from the misconduct on the part of the government servant and not to be arrived at in some circuitous manner by establishing any remote and distant connection between the two.*

15. *Further more, if the penalty of recovery is proposed to be imposed, it would be necessary that the Charged Officer is duly informed of it and nature of lapses as well as link of the relevant loss should clearly be brought out in the charge sheet so as to enable the Charged Officer to put up his defence lest the penalty may be vitiated on account of denial of reasonable opportunity of being heard in the matter. Besides, the Disciplinary Authority is required to give a clear finding in the punishment order not only on the lapses committed by the Government servant but also the manner in which the lapses on the part of the Government servant had a link with the loss sustained by the department”.*

22. I may also refer to the Railway Boards Letter No. 55 Ac. II/25/5 dated 23.4.1962 (reproduced from the Book The Railway Servants (Discipline & Appeal) Rules by M.L. Jand (12th Edition, 2011), page 183, has specified the guidelines on how the losses on account of negligence of Railway servants will be assessed. The said letter of the Railway Board states as under:-

*“Infestation of losses, thefts, irregularities, negligence, fraud, etc by Departmental Inquiry Committee*

*1. The Board have repeatedly emphasised the necessity of avoiding setting up Inquiry Committees to investigate into cases of shortage or loss due to theft, negligence, financial irregularity, etc.*

2. A case has, however, come to the Boards notice in which shortage of stores occurred in as Loco Shed during the period between October 1949 and May 1951. An Inquiry Committee to investigate the reasons for the loss, composed of a representative each of the Mechanical, Accounts and Watch and Ward Departments was appointed only in July 1953. The Committee could not come to any agreed conclusion, as the representative of the Mechanical Department held the Watch and Ward Departmental responsible while the Watch and Ward Departmental representative considered that the staff of the Mechanical Departmental did not take enough precaution to prevent the losses. The Inquiry thus served no purpose, no staff responsibility could be fixed and the loss was eventually written off. Thus, not only there was delay in setting up the Committee, but the Committee itself failed in its objectives.

3. The principal objectives of an inquiry are to be find out:

(i) who is responsible for the loss or shortage of stores or cash, irregularity, negligence or fraud etc.;

(ii) how the loss, shortage, etc. occurred;

(iii) what rule or standing instructions to prevent or guard against such loss, shortage, etc. were violated;

(iv) whether there is any defect or lacuna in the extant rules or instructions or the procedure for proper accountable and periodical check and supervision and if so, how such defect or lacuna should be removed.

The Committee should confine itself to the above objectives without wasting time in pursuit of matters that are not relevant to the subject under inquiry. The Committee should arrive at a clear and unequivocal findings on the staff directly or indirectly responsible through negligence or lack of supervision for the loss or shortage. The Committee should also clearly recommend what steps should be taken

**to remove the defects or lacunae which have come to light or to improve the existing procedure so as to avoid future losses of the type.**

**4. The Inquiry Committee should apply themselves to the prompt and expeditious finalization of the inquiry and present a clear report without any undue delay. The authority constituting the Committee should specify target dates by which the report should be drawn up and recommendations contained in the report implemented. Care should also be taken to ensure that the Inquiry Committee is composed of officers of adequate level appropriate to the nature of the irregularity or the shortage of loss which they are called upon to investigate.**

**5. The Board desire that adequate steps should be taken to ensure that the broad principles outlined in this as well as Boards earlier directives are correctly observed."**

23. The recovery which is contemplated under Rule 15 may be permissible only when the fact of misappropriation by railway servant is not disputed or proved against him or in cases like overpayment or in cases of admitted dues. It is well settled that unless defalcation etc. is proved and the quantum of loss is attributed or ascribed directly to the delinquent Government official, no recovery order can be passed. Again no punishment or recovery of any amount can be imposed upon a Railway employee without giving him opportunity to put forward his defence in a disciplinary enquiry inasmuch as one of the penalties in the Railway Servants (Discipline & Appeal) rules is recovery as enumerated in Rule 6 of the said rules. The Hon'ble Supreme Court held in the case of Shamsheer Bahadur Sinha Vs. State of Bihar and others reported in 2004 (1) ATJ 93 as under:-

**"7. I also fail to understand that if the departmental enquiry was not concluded, no findings into the guilt or otherwise of the petitioner were recorded then how an order for recovery of the amount could be passed against the petitioner. From Annexure-2, it appears that the Director has observed a sum of Rs.14,495.92, the alleged**

***misappropriated amount would be adjusted towards the memo relating to payment of Rs.5438.22. The balance amount has been directed to be adjusted from the leave encashment. This order apparently is bad. Unless a finding was recorded by the Director or the Disciplinary Authority that the petitioner committed misconduct and had defalcated said amount or misappropriated the same, no order for recovery could be passed against him. From Annexure-1, it is clear that the departmental enquiry did not come to its logical end. If that be so, the directions contained in Annexure-2 cannot be allowed to stand. This deserves to and is accordingly quashed."***

24. From the impugned annexures/orders, it appears that the concerned officials have observed an amount, the alleged shortfall amount would be adjusted towards the retiral dues. No documents have been placed on record by the respondents or given any details regarding the action taken by them in the alleged shortfall. This order apparently is bad. Unless a finding was recorded by the competent authority or a Disciplinary Authority that the applicant committed misconduct and caused a loss to the Government, no order for recovery could be passed against him.
25. In view of the settled principle of law, action of the authorities to recover a substantial amount from pensionary benefits of a retired/dead employee without holding a detailed disciplinary enquiry and imposing a punishment of recovery would be arbitrary. No amount could be recovered from the delinquent employee without exact proof of the exact role of the employee in having facilitated the loss to the Government. These facts have to be established by way of a departmental enquiry. Railway Servants (Discipline & Appeal) Rules have laid down the penalties both major and minor penalties. Recovery is one of the minor penalties as envisaged in Rule 6. Minor penalties are as delineated in the relevant rule is as under:- Minor Penalties
- (i) censure;
  - (ii) withholding of his promotion

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders

(iii)(a) reduction to a lower stage in the time-scale in the time-scale of pay for a period of not exceeding three years, without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay;

Rule 15 of the Railway Services (Pension) Rules include loss for short collection in freight charges, shortages in stores but the same should be caused to the railways as a result of negligence or fraud on the part of the railway servant when such negligence/fraud has been established by a full-fledged enquiry and giving all the real and reasonable opportunities to the person concerned to prove his innocence before taking decision to recover from him. In the present case, respondents have filed a counter affidavit, which is lacking in the material details.

26. I see from the pleadings of the respondents that there is no averment to show that the procedure as laid down in the above letter dated 23.4.62 of the Railway Board has been followed by the authorities. There is no mention of any Inquiry Committee constituted for inquiring into the liability against the applicant in the counter affidavit.
27. Perusal of the Rule 15 makes it amply clear that the departmental authorities must finalize any loss, which should be assessed and adjusted within a period specified by the Rules. Unfortunately, I find that it has not been done in this case within the specified and prescribed time and on this count alone this original application deserves to be allowed.
28. In the present case, the applicant/Becho Lal has not even been asked to submit any explanation in the matter and he has also not been confronted with any inquiry in as much as no show cause notice or charge sheet has been issued to him. There is no mention of the issuance of show case notice or charge sheet or association of applicant with the inquiry into the shortage or seeking his reply to the

loss to Government or initiating departmental inquiry against the applicant. Thus, no recovery as has been done in the instant case could be said to be justified.

29. In the circumstances and for the reasons mentioned above, the impugned orders are not sustainable under law as these orders were passed in violation of the Pension Rules and also passed after substantial delay from the date of initiation of the proceedings. Therefore, Original Application is allowed and the impugned orders dated 09.03.2018 (Annexure A-1) and 24.04.2018 (Annexure A-2) are set aside and quashed to the extent of directing deduction from the retiral benefits of deceased Becho Lal. Respondents are also directed to refund the amount of recoveries effected from the retiral benefits of Becho Lal along with the interest at the rate of GPF rate per annum from 01.04.2018 till the date of actual payment. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. There shall be no order as to the costs.

**(RAKESH SAGAR JAIN)**

Member (J)

Manish/-