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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.1392/93

New Delhi, This the 26th day of January 1994

Shri J.P. Sharma, Member(J)

Smt. Angesri Devi,
Widow of Late Shri Babu Lal,
Assistant Depot Store Keeper,
Railway Electrification,
Mathura.

presently r/o 174/75, I-Block
Jahangirpuri, Delhi.

By Advocate Shri BS Mainee

...Applicant

Versus

Union of India: Through:

1. The General Manager,
Railway Electrification,
Allahabad.

2. The Dy.Chief Project Manager
Railway Electrification,
Kota.

3. The Civil.Rly. Manager,
Northern Railway,
Allahabad.

..Respondents

By Advocate Shri O.P. Kshatriya

O R D E R

Hon'ble Shri J.P. Sharma, Member(J)

The applicant is a widow of Shri Babu Lal who was employed as Asst Depot Store Keeper and died in harness.

On the death of the employee the applicant as heir of the deceased was not paid the retirement benefits and by virtue of the impugned order dated 31 Mar 93 passed by the Deputy Chief Project Manager, Railway Electrification, Kota (Annexure A-1) ordered a recovery of Rs.28,322.50 from the DCRG on account of certain items not present in the stores which was in charge of the applicant at the time of his death.

2. The applicant has prayed for the grant of reliefs

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for payment of the whole amount of gratuity with interest at 18 per cent per annum and no recovery be ordered from the amount of DCRG.

3. A notice was issued to the respondents ^{who} filed ^{the} reply taking the point of limitation and territorial jurisdiction of the Tribunal. The deceased husband of applicant was appointed as Gangman on 27 May 1976. He was promoted on 21 Apr 1980 as Material Clerk and subsequently promoted as Senior Clerk and Asst Depat Store Keeper in RE Project Mathura where he died while on duty on 04 Apr 1988. There was certain shortage on railway stores of which the applicant was holding charge and because of the departmental investigation the DCRG was not paid to the heir of the deceased employee. Since certain railway materials were found missing, fact finding enquiry was ordered by the CEE, RE, Keta and Sri R Sexana Executive Engineer was nominated as Enquiry Officer who submitted his report on 1 Dec 92 holding the deceased employee responsible for pecuniary loss of railway materials under his custody amounting to Rs.27,948/- The recovery to be effected besides the above amount includes the recovery of house rent amounting to Rs.199.50 and electric charges of Rs.175/- thus the total recovery against the deceased is Rs.28,322.50/. The total amount of the DCRG of the deceased is Rs.33,400/- out of which the above recovery was to be adjusted and a balance amount of Rs.517.50 is outstanding to be paid to the applicant.

4. I heard the learned counsels of parties at length and have gone through the records of the case. Firstly, it is apparent from the record that the deceased employee was never informed about the shortages in his life time. Even when the fact finding was undertaken by the Executive Engineer no notice however was given to the heir of the deceased employee and any order which involves civil consequences cannot be passed without pursuing the principles of natural justice. The Hon'ble Supreme Court has

considered the matter in the case of Bina Pani's and others reported in AIR 1967 SC 1267 . It is the fact that the employee has since died and no departmental enquiry can be held for the shortages found in the store of which he was in charge. At the same time there should be some basis to judge the fairness as to whether the items which are stated to be missing from the stores were actually because of mis-conduct of the deceased employee. The counsel for the respondent has referred to certain chart where the deceased himself before his death has prepared on 23 Dec 87, the materials which was in stock in the store. This appears to have been submitted to the authorities in Dec 87 itself. The employee has died in Apr 88. In these circumstances there was ample opportunity for the respondent to take the issue of shortages of certain materials in the store at the time when the employee was alive. The fact finding enquiry, of course, was conducted and the report thereof has already been filed. But in the report the explanation furnished in the remarks column by the deceased employee had not been taken note at all. Moreover there are certain such items which were insignificant in nature and for that too the enquiry officer has fixed the value and added to the amount to be recovered. In the copy of the report Annexure RI regarding issue No.1, does not state at all the explanation given in the remarks column by the deceased employee. Only in one paragraph the enquiry officer has observed that he has taken the departmental stock as authentic proof and as a evidence for discrepancies in stores to be accounted by the deceased employee. On issue No.2 the enquiry officer has objected to the controlling authority not to take timely action and also did not pass on the responsibility on such authorities. The contention of the counsel for the respondent is that the shortages for the less caused to the railway can be recovered from the amount of DCRG. Further,

firstly it has to be fixed whether the shortage was on account of deceased employee. This fact could have been done only within the life time of the deceased employee, the matter would have been taken up by the controlling authority. If the controlling authority has not taken action at the relevant time then after the death of the employee his heirs cannot be made liable for this. The Enquiry would have been proceeded in their presence and they would have been explained the truth. This has not been done in the present case. The enquiry officer has also not taken note of the noting made by the deceased on the remarks column which is statement now admissible without proof after the death of the employee. Again various items where shortages was shown there is entry in the remarks column explaining the shortage and the item issued to persons to other staff members. The enquiry officer has not called any of the officer or staff members to clinch the issue regarding the less and fix the responsibility on the concerned authorities. The controlling authority is equally liable as to why the action was not taken and also to find out from which time or period the shortage was in the stores.

5. The learned counsel for the applicant has referred to the case of RS Verma reported in 1993 Volume I ATJ Page 17, 1992 Volume II SLJ Page 64, RB Sinha vs Union of India and the same journal at page 97. He has also referred to another authority of CAT Calcutta reported in 1992 Vol I SLJ page 109. The above authorities clearly lay down that recoveries on less is/penalty prescribed under the disciplinary appeal rules cannot be recovered without holding the enquiry against the delinquent. Such deduction cannot be made from the DCRG. The learned counsel for the respondent further referred to a decision of the CAT Calcutta Bench in OA 661 of 1992 Santi Rajan Versus Union of India and others where it has been held that a less caused to the railway is the railway dues and therefore according to Rule of pension such dues are

recoverable from the DCRG. Further the fact remains that in the present case it has not been established convincingly that the outstanding missing items in the stores has been mis-appropriated by the deceased. It is also not held beyond doubt that the deceased had not explained these items in the sheets he has submitted to the controlling authority before his death in Dec 87. Thus no recovery can be made from the heir of the deceased Smt Angoori Devi. As regards the rent amount due and the electrical charges it can be deducted from the amount of DCRG.

6. The application is partly allowed and the respondents are directed to pay DCRG with interest at 10 per cent per annum till the date of payment from July 88. less the amount on rent dues and electrical charges against the deceased but the amount of Rs.27,948 net to be recovered from the DCRG. The respondent should comply with this direction within a period of 3 months from the date of receipt of this order. No costs.

JP Sharma

(JP Sharma)
Member (J)

LCP