

Central Administrative Tribunal  
Principal Bench

O.A. 2014/93  
and  
O.A. 2016/93

(3)

New Delhi this the 6th day of January, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member (J).  
Hon'ble Shri K. Muthukumar, Member (A).

O.A. 2014/93

Shri Chetan Prakash,  
S/o Shri Raghu Nath Ray,  
Retired Coaching Superintendent,  
North Eastern Railway,  
Izatnagar.

... Applicant.

By Advocate Shri B.S. Maine.

Versus

Union of India through

1. The General Manager,  
North Eastern Railway,  
Gorakhpur.
2. The Divisional Railway Manager,  
North-Eastern Railway,  
Izatnagar. ... Respondents.

None for the respondents.

O.A. 2016/93

Smt. Laxmi Rani Kapoor,  
widow of late Shri Bhagwan Kapoor,  
Ex. Coaching Superintendent,  
Northern Railway,  
Budaun.

... Applicant.

By Advocate Shri B.S. Maine.

Versus

Union of India: through

1. The General Manager,  
North Eastern Railway,  
Gorakhpur.
2. The Divisional Railway Manager,  
North-Eastern Railway,  
Izatnagar. ... Respondents.

None for the respondents.

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O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

(VX)

The learned counsel for the applicants has submitted that since the facts and issues involved in these two applications, namely, O.A. 2014/93 and O.A. 2016/93, are similar, they may be dealt with together and accordingly they are being disposed of by a common order.

2. The applicants in both the applications have impugned the orders passed by the Divisional Commercial Superintendent (DCM) dated 14.7.1992 by which certain recoveries have been ordered by the respondents which are to be recovered from their gratuity and pension. The applicant in O.A. 2014/93 has also impugned the orders passed by the respondents dated 20.10.1992 and 2.12.1992 passed by the DRM(C) by which recoveries of amounts from gratuity as well as pension have been ordered and also informing the bank to make recovery from the balance amounts of the pension which they claim are due to the respondents. For the sake of convenience, the facts in O.A. 2014/93 have been referred to.

3. The applicant and others had filed Writ Petition before the Allahabad High Court which was then transferred to the Central Administrative Tribunal, Allahabad Bench (TA No. 1770/87 - W.P. No. 1029/85) which was disposed of by the judgement dated 25.11.1991 (Annexure A-4). By this judgement, the Tribunal had set aside the order of recovery with a direction to the respondents to proceed further in the matter in accordance with law giving due opportunity to the applicant and taking into account the observations made in the judgement. The applicant and others had also filed a

Contempt Petition (CCA No. 780 of 92 in TA No. 1770/87) for noncompliance of the directions of the Tribunal, but the same was dismissed. Shri B.S. Mainee, learned counsel for the applicants, has very vehemently alleged that the respondents have not held the departmental inquiry, as required under the Rules for effecting, if at all, any recovery of pecuniary loss caused to the Government but have held only a fact finding inquiry which was done without giving a proper opportunity to the applicant to represent his case. He has submitted that on the basis of the fact finding inquiry report, the respondents have issued the impugned order of recovery from his gratuity and pension which is, therefore, contrary to the relevant rules. He has referred to Rule 2308 (CSR 351-A) of the Indian Railway Establishment Code (IREC) and submits that any order for recovery from the pension of a retired Government servant can be passed for pecuniary loss caused to the Government only after holding a departmental or judicial proceedings, and that too only by the President. He has, therefore, urged that the impugned orders are bad in law as they have not been passed by the President or after holding a departmental inquiry which, therefore, should be quashed and set aside. In other words, the learned counsel has contended that the DCM has no authority to order recovery of any amount from the pension of the applicants. The applicant, Shri Chetan Prakash, in O.A. 2014/93 has retired from service on 29.2.1988 and Shri Bhagwan Kapur in O.A. 2016/93 has retired from service on 30.4.1985, and the latter has since expired on 25.1.1992. The learned counsel for the applicants relies on the judgement in **B. Banerjee Vs. Union of India** (1989 ATC Vol.I 765), **S.K. Khanna Vs. Secretary, Railway Board and Others** (O.A. 1223/92), decided on 23.5.1994 (copy placed on record).

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4. We have seen the reply filed by the respondents and perused the records. The respondents in their reply have stated that in compliance of the Tribunal's order dated 25.11.1991, they had given full opportunity to the applicants including opportunity for personal hearing to represent his case. We note from the Contempt Petition filed by the applicant and others that the Tribunal after considering the facts and circumstances in detail, came to the conclusion that the contention of the respondents that the petitioner had avoided the receipt of notices seems to be true. Further, it was held that the petitioner himself had avoided to participate in the inquiry proceedings and the inquiry proceedings were concluded on the basis of available records. In the Contempt Petition, the Tribunal had held that the respondents have held an inquiry, as directed by the Tribunal and the delay, if any, in holding the inquiry has been caused by the petitioner himself. In the facts and circumstances of the case, the Contempt Petition was dismissed against the alleged contemners and notices to the respondents were discharged by order dated 21.5.1993.

5. From the above facts, proceedings and conclusions of the Tribunal, it is seen that it has been held that the respondents have held an inquiry as ordered by the Tribunal and, therefore, there is no basis for the contentions of the learned counsel for the applicants that the impugned orders have been passed without holding a departmental inquiry but are based only on a fact finding inquiry. Therefore, in the facts and circumstances of the case, the contention of Shri B.S. Maine, learned counsel, that no departmental inquiry had been held cannot be accepted as in the facts of the case

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it is seen that the respondents have in compliance of the Tribunal's order afforded full opportunity to the applicant to defend his case before the impugned orders have been passed. **Besides, in view of the Tribunal's order dated 21.5.1993 (CCA No 780/92) (Allahabad Bench), the applicants' contention that an enquiry has not been held has to be rejected.**

6. The next contention of the learned counsel is that the respondents have failed to comply with the provisions of Paragraph 2308-CSR 351-A of the IREC inasmuch as the orders have been passed by an authority other than the President. The respondents in their reply on the other hand have submitted that Paragraph 2308 of the IREC is not applicable but the relevant instructions are in Paragraph 323 of the Manual of Railway Pension Rules. The relevant portion of para 2308 of the IREC provides as follows:

"2308 (CSR 351-A). The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.-

Provided that -

(a) such departmental proceeding, if instituted, while the Railway servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Railway servant, be deemed to be proceeding under this Article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(b) to (d) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

7. In the facts and circumstances of the case and taking into consideration the Tribunal's orders dated **25.11.1991, and 21.5.1993**, we are of the view that the final order passed in

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the departmental proceeding held against the applicant has not been done in terms of Paragraph 2308 of IREC which is the relevant provision. The rule makes it clear that it is the President alone who has the right of withholding or withdrawing a pension or any part of it, if, in a departmental proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service. The impugned orders have not been passed by the President for withdrawing pension or any part of it for the pecuniary loss caused to the Government, and to this extent, the contentions of the applicants are entitled to succeed.

8. In the result, the impugned orders dated 14.7.1992 in O.A. 2014/93 and O.A. 2016/93 are quashed and set aside as also the orders dated 20.10.1992 and 2.12.1992 in O.A. 2014/93. The respondents are directed to pass the appropriate ~~the~~ orders by the President in accordance with Paragraph 2308 of IREC. Necessary action shall be taken within one month from the date of receipt of a copy of this order. The O.As are partly allowed subject to the above directions. No order as to costs.

9. Let a copy of this order be kept in O.A. 2016/93.

(K. Muthukumar)  
Member (A)

(Smt. Lakshmi Swaminathan)  
Member (J)

SRD