

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1399 of 2001

Allahabad this the 05th day of February, 2003

Hon'ble Mrs. Meera Chhibber, Member (J)

R.K. Roy, S/o Late Samir Kumar Roy R/o 877, Subhas Nagar, Mughalsarai, District Chandauli.

Applicant

By Advocate Shri S.K. Dey,
Shri S.K. Mishra

Versus

1. Union of India through the General Manager, E. Rly., Calcutta-1.
2. The Divisional Rly. Manager, E.Rly., Mughalsarai, District Chandauli.

Respondents

By Advocate Shri K.P. Singh

ORDER (Oral)

By this O.A., the applicant has challenged ~~the~~ order dated 23.08.2001 and has sought a direction to the respondents to refund the amount of Rs.35,278/- alongwith due interest.

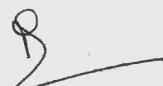
2. The grievance of the applicant in this case is that his father had died on 20.06.1995 and vide letter dated 14.02.1996 the respondents have themselves asked the applicant to get the succession certificate in case he wants the payment of Rs.1,13,202/- to be paid to him on account of family pension amount of Rs.660/- plus D.A., D.C.R.G. to the tune of Rs.59,809.00, Life Insurance amounting to Rs.36,068/- and an amount of

Rs.17,325/- on account of leave encashment (page 6), therefore, he applied for succession certificate in the competent Court of law and got the same after paying the court fee on the same amount of Rs.1,13,202/- which was deposited by him before the authorities (page 7) but, yet the respondents arbitrarily released only an amount of Rs.71,921/-. Thus, being aggrieved he approached the Tribunal by filing the O.A.No.1152/99, which was decided on 22.01.2001 (page-12) wherein the Tribunal had observed that the order passed is quite arbitrary without giving the details thereto. There is no mention as to how there was excess payment of the salary which ought to have been clarified. The other advances, loans also do not indicate as to when and in what circumstances the **same** were obtained by the deceased employee during his service time and finally the O.A. was disposed off by directing the respondents to pass a detailed, reasoned and speaking order with the specific mention regarding the deduction made from the D.C.R.G. and recovered otherwise within three months from the date of communication of this order by the applicant and the amount found due to be paid to the applicant, be paid immediately thereafter within one month and if not paid within the prescribed period, the respondents shall be liable to pay the interest thereon at the rate of 18% per annum. It was pursuant to this order of the Tribunal, that respondents have now issued the order on 23.08.2001 explaining as to how they have deducted the amount from applicant's father's D.C.R.G.

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3. It is submitted by the applicant that perusal of the order would show that even now the respondents have not clarified as to for which period the applicant's father was stated to have been given excess payment and how, because even now no break up of details have been given by the respondents and ~~all~~ ^{is} that they have stated ~~are~~ that his pay was fixed as Clerk in comparison to the pay of M.C. Similarly it is stated in the said order that an amount of Rs.5213/- was deducted due to loan taken from E.6.6.6. Bank by Late Shri Roy during his service vide Bank claim advise no. CL/79/1239/N/93 dated 29.09.95. Now which Bank is it, where it is located and how the respondents have deducted the amount from the applicant's father's D.C.R.G. is not understandable because if he had taken any loan from the Bank there are remedies for them to recover the same from the person who obtains the loan. They have also not clarified as to by which cheque the amount of Rs.1000/- was paid to the applicant. Therefore, the applicant's counsel has submitted that not only the respondents have flouted the orders passed by the Tribunal in earlier O.A. but, are dragging the applicant to the Court unnecessarily. Thus, depriving him of his dues which he is entitled to get.

4. It is also submitted by the applicant's counsel that before making the recoveries from the DCRG of applicant's father, no show cause notice was given.



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Therefore, the order of recovery is bad in law as it is violative of principles of natural justice. The applicant has thus sought quashing of order dated 28.3.2001.

5. The respondents have opposed the O.A. and have stated that since the employee had already expired on 20.6.1995 and the dues were calculated only thereafter when it came to notice that excess amount had been paid to the father of the applicant, naturally, no show cause notice could have been given to the deceased employee. Otherwise, they have explained that since the applicant's father was paid amount in excess of what was due to him, therefore, it was rightly recovered from the DCRG. They have stated that excess payment of salary to the tune of Rs.35,278/- was wrongly shown apart from some other amounts which were due against the applicant's father in favour of the department. They have complied with the direction of the Tribunal as they have already passed the order on 23.8.2001. They have thus submitted that his DCRG amounting to Rs.17,898/- has already been paid after deducting an amount of Rs.41,911/- from DCRG of Rs.55,809/- They have thus submitted that there is no merit in the O.A. and the same may be dismissed with costs.

6. I have heard both the counsel and perused the pleadings as well.

7. Counsel for the applicant had relied on 1995 SCC (L&S) 248 in the case of SAHIB RAM Vs. STATE OF HARYANA & ORS. They have also relied on the judgment passed by a Division Bench of this Tribunal of 20.10.2000 in O.A. No.115/1996.

8. In Sahib Ram Vs. State of Haryana & Ors. case reported in 1995 (1)(Supp.) SCC 18, the Hon'ble Supreme Court had held that even if excess payment due to upgraded paynscale was given to the employee due to wrong construction of relevant order by the authority concerned, without any mis-representation by the employee, it would not be proper to recover the payments already made to them. Similarly, in the case of Shyam Babu Verma Vs. Union of India & Ors., reported in 1994 (4) SCC 521, the Hon'ble Supreme Court held that if higher pay scale was erroneously given to the petitioner since 1973 due to no fault of his, it would be just and proper not to recover any excess amount already paid to him. It is also settled law that any order which has civil consequence cannot be passed without ~~putting~~ the other person to notice as that would be violative ~~of~~ ^{of} the principles of natural justice. It is also settled by now that if a person has already worked on the post, then he cannot be made to return the amount on the ground that he was wrongly posted in the higher grade. Even though it would be open to the respondents to fix his Pensionary benefits on the basis of corrected pay scale which the employee would be entitled to in law accordingly. If the facts of the present case are seen in the background of these judgments, we would find that since the employee had already died, the respondents could not have issued a show cause notice to a dead person. Therefore, the contention that no recovery could have been made without giving an opportunity to the employee would not be sustainable in the given facts of the case. However, there is one aspect of the matter which requires to be mentioned here, viz., after the death of the employee, the respondents had themselves directed the applicant vide their letter dated 14.2.1996 to get the succession certificate from the competent Court of law, in case,

he wanted disbursement of the amount of Rs.1,13,202/- which were lying due after the death of the deceased employee (page 6). On the basis of this letter, the applicant filed a succession certificate case before the competent Court of law and could get a decree only after paying the requisite Court fee on the amount of Rs.1,13,202/- which is evident from page 7 of the O.A. Therefore, having asked the applicant to act upon their assurance given to him and the applicant having altered the position by spending the amount from his pocket for getting the said amount of Rs.1,13,202/-, ^{like} could not have been given the reduced amount of Rs.71,291/- only, as that would be neither fair nor justified to the applicant. If there was any amount which was required to be deducted from the DCRG of the deceased employee, they ought to have informed the applicant about it before calling upon him to secure the succession certificate and in any case, it is seen that even in the first O.A., which was filed by the applicant, the Tribunal had directed the respondents to pass a detailed and reasoned order stating therein the deductions made from the DCRG. But, yet in even in this order which is passed by the respondents now, it is not known as to how the amount of Rs.35,278/- is said to be paid in excess to the deceased employee. Para 1 neither clarifies for which period the deceased employee is alleged to have been given the excess amount nor it is clear whether this amount was being deducted for the same post on which he had already performed his duty and was subsequently re-designated or whether it was after re-designation that he was paid the higher amount. I had tried in vain to ask the respondents' counsel to explain this position. But, neither the position is explained in the counter affidavit nor the counsel could explain as to for what period this amount



is said to have been paid in excess. Therefore, in my considered view, the respondents have once again passed an order without giving the actual reasons or break-up as to how the amount of Rs.35,278/- can be said to be paid in excess to the deceased employee.

9. Similarly, the respondents have merely stated that an amount of Rs.5,213/- has been deducted due to loan taken from E.C.C.S. Bank by late Shri S.K. Roy during his service period. But, it is not explained as to what this E.C.C.S. Bank is exactly and whether it comes under the control of the Railways or is a separate Bank, because, if it is a Bank, they have remedies to recover the loan taken by their customers. It has not ~~been~~ explained at all as to how the Railways come into the picture to deduct the amount taken by the deceased employee as loan from the said Bank. It is also not clear from the said order whether the amount of Rs.1000/- has been paid to the applicant or not as it simply says that an amount of Rs.1000/- was with-held as kept back money which has subsequently been passed in the year 1997. Once, the respondents were directed to pass a reasoned order, they were expected to pass a better order so that there was no need for the applicant to come to the Court again. Afterall, litigation is not an easy thing and it involves expenses. Therefore, simply because the respondents have not been passing proper orders, the poor applicant is being dragged to the Court on one pretext or the order which is not appreciated.

10. In totality of the matter, it is seen that only para 2 throws some light with regard to the amount of Rs.420/- which was deducted due to Festival Advance taken by late Shri S.K. Roy. Otherwise, there is no clarity with regard to the other amounts which are stated to have been deducted from the deceased employee's Gratuity. It is rather unfortunate that inspite of directions of the Tribunal, the respondents have not been able to either clarify the position or to pass the reasoned orders.

11. Since, this is the third round of litigation filed by the applicant, I do not think, it would be proper for me to simply remit back again to the same authorities. Therefore, I would like to make some observations, viz., if the amount of Rs.35,278/- is being said to be excess payment for the same period for which the applicant's father had already performed his duties in the higher post and he was subsequently re-designated in the lower post, then it would not be open to the respondents to recover the said amount from the deceased's Gratuity as ~~from~~ ^{for} that period, he was paid for the higher post as he had performed the duties in the said higher post. However, if this amount is for some other period, then, it would be open to the respondents to give the details to the applicant concerned stating therein clearly as to for what period and how the respondents are claiming that the employee was paid in excess. At the cost of repetition, it is reiterated that the break-up given by the respondents should be crystal-clear without any ambiguity so that the applicant may respond to it. Similarly, with regard to the amount of Rs.5,213/-

also, they should explain as to how the respondents can deduct the said amount from the DCRG of the deceased employee, under which Rule and how they come in the picture. When the deceased employee is said to have taken loan from E.C.C.S. Bank. They should also explain as to whether the deceased employee had deposited some security for taking the loan or the loan was given to the deceased employee without any such security and how they have control over the said Bank. They should also give the details with regard to the payment of Rs.1000/- as mentioned by them in para 4 of the order dated 23.08.2001.

12. With the above observations, the case is remitted back to the authorities so that this time, they intimate the applicant in advance about all these details as mentioned above and give him an opportunity to represent against such deductions before the authorities pass any final orders. This exercise should be completed by the respondents within four months from the date of receipt of a copy of this order. It is seen that the Tribunal in its earlier order had directed that in case any amount is due to the applicant, it should be paid immediately within one month, failing which, the respondents shall be liable to pay interest thereon at the rate of 18% per annum. This direction shall still stand. Since, the applicant has been dragged to the Court by the respondents due to their wrong actions, they are directed to pay a cost of Rs.500/- to the applicant.

13. The O.A. is accordingly disposed of. *with above B*
order directions
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MEMBER (J)