

**OA No. 291/362/2011**

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 291/362/2011**

Order reserved on 19.03.2021

**DATE OF ORDER:** 08.04.2021

**CORAM**

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER  
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Smt. Lalita Devi Thanwal W/o Late Shri Rajender Kumar Thanwal, Aged 46 years, resident of B-4, Residency Higher Secondary School, 'C' Scheme, Jaipur. Legal representative of Late Rajender Kumar Thanwal employee of Employees' Provident Fund Organisation, Regional Office, Jyoti Nagar, Jaipur (Rajasthan).

....Applicant

Shri R.D. Sharma, counsel for applicant.

**VERSUS**

1. Union of India through Labour Secretary, Ministry of Labour & Employment, Government of India, Shram Shakti Bhawan, New Delhi.
2. The Central Provident Fund Commissioner, Employees' Provident Fund Organisation, Head Office, Bhavishyanidhi Bhawan, Bikaji Cama Place, New Delhi-110066.
3. The Regional Provident Fund Commissioner, Nidhi Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur-302005.

....Respondents

Shri Amit Mathur, proxy counsel for  
Shri R.B. Mathur, counsel for respondents

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**ORDER**

**Per: Hina P. Shah, Judicial Member**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "a) That this O.A. may kindly be allowed.
- b) That the impugned order dated 05/07/2011 being illegal, unconstitutional, unjustifiable and against the "doctrine of double jeopardy" may kindly be quashed and set aside.
- c) The respondent may kindly be directed to pay Rs. 2,73,256/- together with interest @ 12% payable from 25.02.2011 onwards.
- d) That any other order or directions or relief which may be deemed just and proper in the case, may kindly be granted in favour of the applicant.
- e) That the cost of the O.A. may kindly be awarded in favour of the applicant."

2. The brief facts of the case, as stated by the applicant, are that the applicant is the wife of late Shri Rajender Thanwal, who was a Social Security Assistant in the office of respondent No. 3 and who has expired on 24.02.2011. On 29.08.2005, he was served with a charge sheet under Rule 10 of E.P.F. Staff (Classification, Control and Appeal) Rules, 1971 by respondent No. 3. The Disciplinary Authority vide order dated 15.02.2008 imposed penalty of Censure

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upon applicant's husband. Subsequently, the husband of the applicant was served with a Memorandum dated 14.07.2009 calling upon him to submit his representation whereby respondent No. 2 proposed to enhance the said penalty to major penalty. Towards the same, applicant's husband submitted his reply dated 13.08.2009 (Annexure A/6). But the respondents vide order dated 03.12.2009 enhanced the penalty of Censure to that of reduction of pay by one stage for a period of one year. The applicant's husband challenged the said order passed by respondent No. 2 in OA No. 285/2010, which is pending before the Tribunal. Vide order dated 08.06.2011 in OA No. 234/2011, the respondents were directed not to recover the amount of Rs.2,73,256/- which is 60% of the total amount involved in the alleged fraud case till a decision is taken on the representation dated 25.03.2010. It was argued that EPF Organization is an independent autonomous body and that they have their own service rules and, therefore, the provisions of CCS (CCA) Rules, 1965 are not applicable to the employees of EPFO. Therefore, the orders passed by the respondent No. 3 is illegal, unconstitutional and

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unreasoned. It was further stated that the husband of the applicant was already imposed with the penalty of Censure by respondent No. 3 vide order dated 15.02.2008 and the respondent No. 2 enhanced the minor penalty to major penalty vide order dated 03.12.2009 and, therefore, the action of recovery by order dated 05.07.2011 (Annexure A/1) is illegal and unconstitutional as the husband of the applicant was already prosecuted and punished for the alleged charge. The applicant further stated that the same amounts to double jeopardy and, therefore, recovery order should be prohibited. Therefore, being aggrieved by the order dated 05.07.2011, the applicant has filed the present O.A. for quashing and setting aside the said order as the husband of the applicant has already expired.

3. The respondents vide their reply have stated that the present case is not barred by the doctrine of double jeopardy as alleged. In the order passed by Respondent No. 3, there was no orders pertaining to the charge with regard to the loss of money to the Government amounting to Rs. 4,55,427/- nor any punishment was imposed upon the husband of the

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applicant with regard to recovery of loss caused to the Department. A show cause notice was served upon the husband of the applicant wherein it was held that loss caused to the Department was due to the negligence in performing duty by the husband of the applicant and, therefore, recovery of 60% loss amounting to Rs. 2,73,256/- was justified as he was the Dealing Assistant and, thus, the said amount was withheld out of the payment of Rs. 6,04,121/- made against Death Gratuity vide order dated 03.05.2011 and the same is treated as 'recovered' against the losses to the EPFO. Thus, the action of the respondents is in accordance with law and, therefore, the applicant is not entitled to any relief.

4. The applicant has filed a rejoinder denying the submissions of the respondents and further stated that EPFO has no right under the provisions of law to recover any amount caused on account of alleged negligence to the EPFO from the payment payable against Death Gratuity. Recovery of amount by impugned order dated 05.07.2011 from Death Gratuity payable to applicant is illegal and it infringes fundamental rights granted under Article 20(2) of the

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Constitution of India. Also respondent No. 3 while passing the impugned order referred to the provisions of P & T Manual Volume- III, though these provisions do not permit the Disciplinary Authority to recover any amount which caused loss to the respondents from the payable amount against Death Gratuity without following the procedure laid down in C.S.Rs. Thus, the impugned order in challenge deserves to be quashed and set aside as no recovery can be done from death gratuity/pension.

5. The respondents have filed reply to the rejoinder to rebut the claim of the applicant and have stated that in the same misconduct case of loss caused to the Organization, where the Section Supervisor i.e. Shri Prabhu Dayal Bunkar was held responsible for 30% loss and wherein the husband of the applicant was responsible for 60% of loss to the Organization. This Bench of the Tribunal has dismissed the OA No. 385/2011 filed by Prabhu Dayal Bunkar. In the said OA No. 385/2011 decided on 30.04.2014, this Tribunal has held Shri Prabhu Dayal Bunkar responsible for the loss occurred to the Department giving right to the Department to recover the loss

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caused to the Organisation and no illegality or infirmity was found by this Tribunal in the action of the respondents.

6. We have heard learned counsels for the parties at length and examined the pleadings and have taken into considerations the judgments on the said issue.

7. The applicant as well as the respondents have reiterated their stand taken earlier.

8. The question which requires our consideration is whether respondents are justified in recovering the amount of loss caused to the organization from Death cum Gratuity of the deceased employee on account of husband's negligence or the same abates after the death of the deceased.

9. It is an admitted position that the present O.A. has been filed by the wife of the deceased employee i.e. Late Shri Rajender Kumar Thanwal, who expired on 24.02.2011. The said deceased employee was served with a Memorandum under Rule 10 of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971 by

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respondent No. 3 on 29.08.2005 and the deceased employee filed his reply to the said charge sheet. By an order dated 15.02.2008, respondent No. 3 imposed the penalty of Censure. On 28.07.2009, the applicant's husband received Memorandum dated 14.07.2009 calling upon the deceased employee to submit written representation under Rule 25 (1)(i) of the E.P.F. Staff (Classification, Control and Appeal) Rules, 1971 whereby respondent No. 2 proposed to enhance the said penalty of 'Censure' to major penalty. Vide order dated 03.12.2009, the respondent No. 2 enhanced penalty of Censure to major penalty of reduction of pay by one stage for a period of one year. Applicant's husband had challenged the said order in another O.A. No. 234/2011 wherein this Tribunal vide order dated 08.06.2011, directed the respondents not to recover the amount of Rs. 2,73,256 which is 60% of the total amount involved in the alleged fraud case till a decision is taken on the representation dated 25.03.2010. By the present impugned order dated 05.07.2011, (Annexure A/1), the respondents have recovered Rs. 2,73,256/- which amount was withheld out of the Death Gratuity payable to the applicant on death of her husband. It is

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seen that against the same case of loss caused to the organization, Section Supervisor, Shri Prabhu Dayal Bunkar, who was held responsible for 30% loss and wherein recovery of Rs. 1,36,628/- was ordered and the same was challenged by Shri Prabhu Dayal Bunkar before this Tribunal and this Tribunal vide its order dated 30.04.2014 has dismissed OA No. 385/2011 and has observed that there was no illegality or infirmity in issuance of the show cause notice and subsequent order of recovery. The Tribunal further observed that the applicant had failed to make out any case for interference and the said O.A. was dismissed and recovery was allowed to be carried out.

10. As seen, the respondents-Organization issued show cause notice dated 14.07.2009 upon the ex-employee i.e Shri Rajender Thanwal and against the said show cause notice, the deceased employee had filed his representation dated 13.08.2009 denying the charges levelled against him. Prior to the passing of the final order of recovery dated 05.07.2011, the deceased employee expired on 24.02.2011. It is clear that on the death of the Government Servant, the disciplinary proceedings if pending, stand abated and

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no punishments are imposed on the deceased employee. The present impugned order dated 05.07.2011 was passed after the death of the employee and recovery of loss amounting to the share of deceased i.e. 60% was ordered from the total loss to the Organisation and an amount of Rs. 2,73,256/- was withheld from the amount of Death Gratuity of the deceased employee. As per various judgments on this issue, consequent upon the death of an employee, the disciplinary proceedings stand abated and consequently the punishment also stands closed. Once the proceedings get abated, every aspect connected therewith will cease to exist in law. In the absence of any determination of the employee's liability in the disciplinary proceedings, it is not permissible for the employer to mullet the liability on the family of the deceased based on an enquiry report which has not taken its logical end. Thus, when the disciplinary proceedings itself had abated, the legal heirs will be entitled for the retirement benefits, since the disciplinary proceedings itself is deemed to have come to an end. In the case of **D. Sarojini vs. The Chairman, Pandyan Grama Bank & Ors.** [W.P. (MD) No. 18120 of 2017] decided by the Hon'ble

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Madurai Bench of Madras High Court vide order dated 21.01.2020, the Hon'ble High Court has held that when the petitioner's husband has died during the pendency of the criminal proceedings as well as the disciplinary proceedings, the entire proceedings get abated and this position of law cannot be disputed. Thus, in the present case on death of the employee i.e. Shri Rajender Kumar Thanwal, the disciplinary proceedings automatically stand abated and, therefore, no recovery can be ordered from the death cum retiral benefits of the deceased employee.

11. In our considered opinion, we find that in such circumstances, the impugned order dated 05.07.2011 (Annexure A/1) is required to be quashed and set aside and the same is hereby quashed and set aside. Also the recovered amount is required to be returned to the wife of the deceased employee i.e. the present applicant. Accordingly, the respondents are directed to release the recovered amount of Rs. 2,73,256/- to the applicant which was payable to the applicant after the death of the deceased employee. The said amount be released to the applicant at the earliest and the applicant will also be entitled to the interest at the

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GPF rate prevalent from time to time commencing from the death of the applicant's husband till the actual payment. The applicant shall also be entitled to the costs of Rs. 10,000/- (Rupees Ten thousand only).

12. In view of the observations made above, the present Original Application is allowed with the above directions.

**(HINA P. SHAH)  
JUDICIAL MEMBER**

**(DINESH SHARMA)  
ADMINISTRATIVE MEMBER**

Kumawat