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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1430 of 1992

Allahabad this the 28/5 day of Aug 1995

Hon'ble Dr. R.K. Saxena, Member(J)

Srimati Raj Rani Devi W/o Late Shiam Kishore Narain  
Ex. Clerk Grade II, Gaya In Eastern Railway of  
Mughalsarai Division,.

APPLICANT

BY Advocate Shri P.K. Kashyap

Versus

1. Union of India through General Manager, Eastern Railway, Fairlie Place, Calcutta.
2. Chief Personnel Officer, Eastern Railway, Calcutta
3. Divisional Personnel Officer, Eastern Railway, Mughal Sarai.

RESPONDENTS.

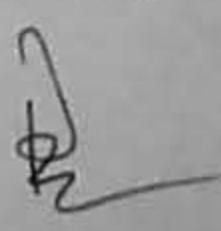
BY Advocate Shri A.K. Gaur

O R D E R

By Hon'ble Dr. R.K. Saxena, Member(J)

This O.A. has been filed by Smt. Raj Rani widow of Late Shri Shiam Kishore Narain who was employed with the respondents and retired from service on 31.1.1983. The case of the applicant is that her husband retired from service on 31.1.1983 and died on 10.3.1986 but, the retiral benefits were not fully paid. Only an amount of Rs.1770-00 was paid during his life time. For the

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payment of gratuity and leave encashment and pension, the representations were made by the applicant and by her daughter Km. Kiran Sinha. It was intimated that the respondents withheld an amount of Rs.25000/- of gratuity and Rs.12000/- of leave encashment on the plea that the husband of the applicant left some dues unpaid. It is averred by the applicant that no dues of her husband remained unpaid at the time of his retirement or death. The relief claimed, therefore, is that the respondents be directed to arrange the payment of an amount of Rs.37000/- towards gratuity and an amount of Rs. 12000/- towards leave encashment. The claim is also to the effect that an amount of Rs.1,11000/- towards the interest on the unpaid amount for the period of 10 years, may also be directed to be paid.

2. The respondents contested the case and came with the plea that the O.A. is time-barred and thus, liable to be dismissed. It is also averred that the husband of the applicant while working as Clerk Grade I, he was elected Secretary of the Railway Employee Consumer Co-operative Society, Gaya and in that capacity several irregularities and defalcation of cash were committed by him. He was, therefore, charge-sheeted and the departmental enquiry proceeded. He was held guilty and was removed from service by the competent authority on 18.5.1981. On the appeal <sup>being</sup> filed against the order of removal,

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the appellate authority modified the order of punishment and reduced the husband of the applicant to the post of Clerk Grade II. Thus, he retired from service as Clerk Grade II on 31.1.1983. It is also contended that the husband of the applicant did not hand over the charge of co-operative society and did not make payment of his dues. The house which was in-occupation of the husband of the applicant, was also not vacated. It is further contended that the husband of the applicant had taken loan from Eastern Railway Employees Co-operative Bank Ltd., Calcutta and, therefore, the respondents made following deductions from the gratuity and the leave encashment accounts:—

1. Rent of the Quarter upto 30.6.86, the date of vacation	Rs.3736.00
2. Electric Charges	Rs.0895.50
3. Loan taken from Eastern Railway Employee Consumer Co-operative Society Ltd. Gaya.	Rs.17853.98
4. Loan taken from Eastern Railway Employees Co-ope- rative Bank/Ltd., Calcutta	Rs.3671.10
	<hr/> Rs.26,156.66/-

It is also averred that an amount of Rs.9405/- was adjusted from gratuity, an amount of Rs.5244/- was adjusted from the leave encashment of 180 days and the balance of Rs.11,507.66 was adjusted from the amount of pension. Other dues namely Group Insurance, Provident Fund were paid to the

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legal heir of the husband of the applicant. It is, therefore, urged that the amount due from the respondents is incorrect.

3. The applicant filed the rejoinder in which the facts which were disclosed in the O.A. are reiterated. It is averred that the false charges were framed against the husband of the applicant and the punishment was set aside in appeal. The charge of the Co-operative society was also handed over and no outstanding dues against the husband of the applicant ~~was~~ <sup>2</sup> there. As regards the vacation of the Railway quarter, it is contended that the same was vacated after retirement but, no date has been shown. It is also pleaded that there was no dues outstanding against the husband of the applicant otherwise such dues would have been realised before the date of retirement or during life time of her husband. The dues of electric charge and loan from society have been denied. The applicant further pleaded that unlawful deduction of an amount of Rs.26,156.66 be made available to him alongwith the interest totalling Rs.1,48000/- .

4. I have heard the learned counsel for the applicant as well as the respondents and perused the record.

5. It is not disputed that the husband of the applicant was in the employment of the

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respondents and retired on 31.1.1983. It is also not disputed that he died on 10.3.1986. This fact is also admitted that only an amount of Rs.1770/- was paid to him. The controversy starts if, there were certain dues which remain<sup>g</sup> unpaid by the husband of the applicant. The dues which were outstanding according to the respondents, have been shown earlier. An amount of Rs.3,736/- has been shown as rent upto 03.6.1986 when the quarter was actually vacated. Besides, an amount of Rs.895.50 is shown of electric charges. No doubt, it has been contended on behalf of the applicant that the quarter was vacated soon after the retirement of husband of the applicant but, no date has been shown. The applicant had kept silence about this fact in the O.A. and for the first time, it was disclosed in the rejoinder but, without giving any date thereof. The learned counsel for the applicant could not advance any argument about the arrears of rent. In this way, I do not see any justification in the contention of the applicant. <sup>on the Count</sup> The respondents were entitled to deduct the said amount which was based on penal rent. When the husband of the applicant had retired on 31.1.1983, there was no justification for remaining in occupation of the quarter till 03.6.1986. The penal rent was, therefore, justified.

Consumer Co-operative Society, Gaya and Eastern Railway Employees Co-operative Bank, Calcutta are concerned, the respondents have not put up any paper in support of the same. When the loan was denied to have been taken by the husband of the applicant and emphatically denied by her, it was obligatory on the part of the respondents to have produced documentary evidence in support thereof. It is also not disclosed if, the loans given by Railway Employee Consumer Co-operative Society, Gaya and by Eastern Railway Employees Co-operative Bank, Calcutta ~~is~~ <sup>are</sup> realisable by the respondents. No rules or administrative orders have been put up in support of the same. Not only this, if there was any such dues against the husband of the applicant, it was expected of the respondents to have served with a notice before actual deduction was made. The principle of natural justice does demand such an action on the part of the respondents but, no notice in this case has been given. In my opinion, before any deduction was made with respect to the loans allegedly taken by the husband of the applicant, an opportunity <sup>of hearing</sup> ought to have been given to her by the respondents. This action, if needed, can be taken by the respondents even now after following the principle of natural justice. In view of the fact that no opportunity was given to the husband of the applicant or to the applicant herself about deduction as against the loans, the order of deduction except that of the rent

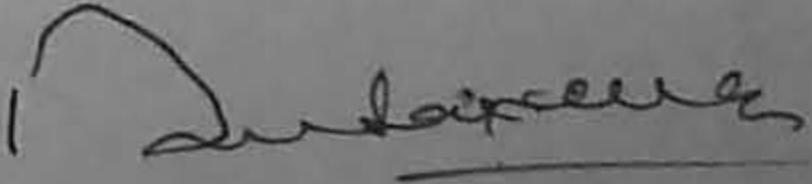
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of the quarter and of electric charges cannot be upheld.

7. The challenge of O.A. on the ground of limitation is not sustainable, because the applicant and his daughter had been given representations for final and prompt settlement of the retiral benefits which were to be given to the deceased husband of the applicant.

8. In view of these facts and on the discussion made above, the O.A. is partly allowed. To make the order more clear, it is directed that the respondents are entitled to deduct the rent of the quarter and the electric charges but, the amount of loan cannot be allowed to be deducted without giving an opportunity of hearing to the applicant. The respondents may, if they so desire, issue notice regarding the realisation of amount of loan and giving an opportunity of hearing. In case no notice is given or, if the notice is given and the proceedings are not concluded within a period of six months <sup>from</sup> of the date of the receipt of the Judgment, the balance of amount excluding the rent of the quarter and of the electric charges, shall be payable immediately to the applicant alongwith the interest at the rate of 11% per annum. The O.A. is disposed of accordingly. No order as to costs.



Member (J)

/M.M./