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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A. No.** 300 OF 1990.  
~~Exhibit No.~~

**DATE OF DECISION** 19th October, 1993.

Smt. Prabhaben Shantilal Gandhi Petitioner

Shri B.B.Gogia Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri B.R.Kyada Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Smt. Prabhaben Shantilal Gandhi,  
Hindu, Adult, Aged about-yrs.  
C/o. Shantilal Shivilal Gandhi,  
C-3, Gandhinagar,  
JAMNAGAR.

(9) ...Applicant.

(Advocate : Mr. B. B. Gogia)

Versus

1. Union of India,  
Owning & Representing  
Western Railway,  
Through : General Manager,  
Western Railway,  
Churchgate,  
Bombay.
2. Divisional Railway Manager,  
Western Railway,  
Rajkot Division,  
Kothi Compound,  
RAJKOT.

...Respondents.

(Advocate : Mr. B. R. Kyada)

ORAL JUDGMENT

O.A. NO. 300 OF 1990.

Dated: 19/10/1993.

Per : Hon'ble Mr. M. R. Kolhatkar : Member (A)

This is an ~~Original~~ Application under Section 19  
of the Administrative Tribunals Act, 1985. The relief  
claimed by the applicant is payment of the withheld DCRG  
amounting to Rs. 3964/- in respect of her late husband's  
retirement benefits. It is the case of the applicant that her  
husband was working as a Cook in the Western Railway, under  
FIC, Okha. He retired on 30.09.1993. He expired on 01.01.85.  
She was advised on 12.07.1989, vide Annexure-A/1, that is

to say full  $4\frac{1}{2}$  years after the death of her husband about the withholding of the DCRG amounting to Rs.3964/- on account of the adjustment of retained amount of DCRG towards recovery of the over payment made to him due to Administration mistake viz. continuation in service till 30.09.1983 beyond the age of superannuation, which was 30.09.1981. It is the say of the applicant that the amount of DCRG is not calculated properly in as much as it has been calculated on the basis of pay and allowances of the deceased as on 30.09.1981, whereas it ought to have been calculated on the basis of pay and allowances as on 01.09.1983, when he actually retired.

2. In their reply the respondents have stated that the Date of Birth of the late husband of the applicant was 14.05.1923, and hence he was due for retirement under superannuation on 31.05.1981 but he ~~was~~ actually retired on 30.09.1983. So far as the calculation of the amount of Rs.3964/- is concerned the clarification is highly technical and is best given in the original.

"So far the amount of Rs.3964/- from the gratuity of the applicant detained by this office is concerned, it is as per Railway Board's letter dated 3.12.1977, as per Annexure-R-C. This amount is to be adjusted against the difference of the payment arranged to him with the benefits of increment in the scale in which he was working and the minimum pay in the scale he is entitled on

re-appointment. Besides this under ~~xx~~ extent orders pensionary benefits are to be paid with effect from the date superannuation 1.6.1981. In such cases pensionary equivalents are also to be deducted to adjust the over payment involved in pay as well as retirement benefits, an amount of Rs.3964.00 is detained. Further the Rly.Bd. vide their letter No.E(G)80 RT 2-2 dated 31.1.1992, communicated vide GM(E)CCG's letter No. EM.393/8 dated 14.2.1992, ~~ex-post-facto~~ sanction of President of India for regularisation of service rendered beyond the age of superannuation of the applicant treated as re-employment on usual terms and conditions in the meantime a provisional due and drawn statement has been prepared and worked out in which Rs.7868.80 have been excess paid and this amount has to be recovered by adjusting it against the retained amount of DCRG."

3. In her rejoinder the applicant has not conceded that the amount of DCRG can be retained as per Railway Board's letter dated 03.09.1977, as contended. According to the applicant it was the duty of the respondents to advise the applicant's husband well in advance that he would be retiring on a particular date and therefore, the action of the applicant in treating her late husband as on deemed "re-employment" was not proper. She has also requested to make payment of the retained DCRG along with interest in terms of Railway Board's letter dated 03.09.1981, and 14.09.1984.

4. We note that this Tribunal in its earlier order dated 23.10.1990, suggested to the Railway Administration—respondents to look into the grievance and to the extent found admissible make necessary orders for payment. However, this order does not appear to have been acted upon by the respondent. We are therefore, required to consider the matter on the basis of pleadings and arguments of advocates of respective parties which we have heard today.

5. There is no doubt that the Railway Administration has a right to rectify mistake if <sup>it</sup> comes to their notice and that the calculation of the DCRG and other pensionary benefits has to be in accordance with the Rules. At the same time, it is to be borne in mind that it is now well settled that pensionary benefits are not a matter of bounty granted by the Government but is a property of the retiring Government servant covered by the Article ~~of~~ <sup>14</sup> 300 of the Constitution. Death cum retirement gratuity benefits take in the character of the pension in this context. This being the situation, the Railway Administration ought to have calculated the DCRG amount of the applicant at the time or shortly within the actual date of retirement of the late husband of the applicant. If a mistake was required to be corrected which entailed recovery, it would be open to the Railway Administration to correct the

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mistakes after bringing the facts and method of calculation of recovery to the notice of the pensioner and after giving him an opportunity of representing against the same and after taking into account <sup>his</sup> ~~her~~ say. This has been held by the Principal Bench of Central Administrative Tribunal, in the well known case of C.S.Bedi Versus Union of India and ors. A.T.R. 1988 (2) C.A.T. 510. In this particular case, since the recovery has been projected 4½ years after the death of the late husband of the applicant it is now impossible for the Railway Administration to <sup>the</sup> ~~re~~ port to <sup>the</sup> ~~the~~ procedure. We are, therefore, required to consider whether it is just and fair that the widow of a deceased pensioner who faithfully served the Railway Administration without any blemish should be told, that no DCRG is payable to her late husband and consequently to her as her husband's nominee~~es~~ on account of the technical reasons set out by the Railway Administration in the para quoted above. We hold that since the mistake ~~prima facie~~ was committed by Administration, ~~adverse~~ ~~the widow~~ should not be visited with ~~advance~~ <sup>adverse</sup> consequences especially when she is illiterate and belongs to weaker sections. We hold that the action of the Railway Administration in withholding the DCRG amount of Rs.3964/- as unjust. The applicant has prayed for the payment of

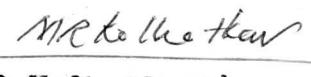
interest. We do not accept this claim firstly because as pointed out by Railway Administration, an amount of Rs.3904.80, (difference between Rs.7968.80/- and Rs.3964) is recoverable from her which in any case is required to be written off and secondly because we are directing payment of retained DCRG as a matter of equity. We therefore, pass following order :

ORDER

The application is partly allowed.

The Railway Administration is directed to make the payment of withheld amount of the DCRG amounting to Rs.3964/- to the applicant Smt. Prabhaben Gandhi widow of the late Railway employee. The claim of the applicant for payment of the interest thereon is <sup>not</sup> sustainable in the circumstances and is not accepted. The case stands disposed of. No order as to costs.

  
( R.C.Bhatt )  
Member (J)  
19.10.1993.

  
( M.R.Kolhatkar )  
Member (A)  
19.10.1993.

Date	Office Report	ORDER
17.8.1994.	<p>Notice issued to the respondents both the respondents are served with the notice.</p> <p>18/10</p>	<p>Issue notice to the respondents returnable on 19.10.1994.</p> <p><i>DRK</i></p> <p>(Dr. R.K. Saxena) Member (J)</p>
19-10-1994	<p>Reply not filed</p>	<p>R</p> <p>(K. Ramamoorthy) Member (A)</p> <p>ait.</p> <p>At the request of Mr. Kyada, the case is adjourned to 26-10-1994. As a special case they were to file necessary affidavit in reply failing which proper orders will be passed.</p> <p><i>DRK</i></p> <p>(Dr. R.K. Saxena) Member (J)</p>
26-10-1994		<p>*AS.</p> <p>The case was adjourned last time on the special request of Mr. Kyada that necessary affidavit will be filed before the next date of hearing. But no such affidavit has been filed so far. In the circumstances the respondent no. 2 is directed to remain <del>except</del> personally present before the Tribunal on 23-11-1994 to explain the reasons for non-compliance of Tribunal's order.</p> <p><i>DRK</i></p> <p>(Dr. R.K. Saxena) Member (J)</p> <p><i>VR</i></p> <p>(V. Radhakrishnan) Member (A)</p>

\*AS.

## CONCLUSION AND SUMMARY

Date	Office Report	ORDER
23.11.94	(1) (2) (3) (4)	<p>Mr. Kyada states that reply to the Contempt Application was filed by him by the Department on 25.10.94, which was unfortunately not brought to the notice of the Bench. But according to the record of the Registry, the reply has been filed on 26.10.1994. Mr. Kyada states that in view of the compliance of the Court's directions, the respondent no. 2 presence may not be necessary. Our order dated 19-10-94 is held in abeyance till the next date of hearing i.e. 14-12-94.</p> <p><i>TM</i> <i>BL</i></p> <p>(Dr. R. K. Saxena ) Member (J)</p> <p>(V. Radhakrishnan ) Member (A)</p> <p>ssh*</p>
14.12.94.		<p>None present for the applicant.</p> <p>Adjourned to 21.12.1994.</p> <p><i>TM</i> <i>BL</i></p> <p>(Dr. R. K. Saxena) Member (J)</p> <p>(V. Radhakrishnan) Member (A)</p> <p>ait.</p>
21-12-1994		

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**IN THE CENTRAL ADMINISTRATIVE TRIAUNAL**  
**AHMEDABAD BENCH**

C.A.NO. 41 of 1994 in  
O.A. No. 300 of 1990.  
TAX No. XX

DATE OF DECISION 21/12/1994.

Smt. Prabhaben S. Gandhi Petitioner

Shri B.B. Gogia Advocate for the Petitioner(s)

Versus

1. Shri Rabindhran and Respondent

2. Shri N.C. Bindlish

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble Mr. Dr. R.K. Saxena : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Smt. Prabhaben S. Gandhi  
 Behind Railway School  
 in Koli Monghiben Savshi's  
 Iamintia Para, House,  
 Okha, Dist. Jamnagar. ... Applicant  
 (Advocate Mr. B.B. Gogia)

Versus

1. Shri Rabindhran  
 General Manager  
 Western Railway, Churchgate,  
 Bombay.
2. N.C. Bindlish  
 Divisional Railway Manager  
 Kothi Compound,  
 Rajkot. ... Respondents.

ORAL JUDGMENT

C.A.NO. 41 of 1994 in  
O.A.NO. 300 of 1990.

Date : 21/12/1994.

Per : Hon'ble Mr.V. Radhakrishnan

: Member (A)

Mr.B.B.Gogia learned counsel for the applicant  
 seeks permission to withdraw the Contempt Application as he  
 is satisfied. Permission granted. C.A./41/94 stands disposed  
 of as withdrawn. No order as to costs.

1 R.K.Saxena  
 (Dr. R.K.Saxena)  
 Member (J)

VR  
 (V. Radhakrishnan)  
 Member (A)

ait.