

yes  
withholding of  
Retirement Benefits

(8)

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

O.A. No. 116 OF 1991  
~~O.A. No.~~

DATE OF DECISION 2.9.1992

Jayaben Dayabhai 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. N.V.Krishnan : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : Judicial Member

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 ? ✗

Jayaben Dayabhi  
Ramkrishna Society  
5th Line,  
3rd House,  
In the House of  
Premjibhai Chavda,  
MORBI.

...Applicant .

( Advocate : Mr.B.B.Gogia )

Versus

1. Union of India,  
Owing and Representing  
Western Railway,  
Through : General Manager,  
Western Railway,  
Churchgate,  
BOMBAY - 400 020.

2. Divisional Railway Manager,  
Western Railway,  
Kothi Compound,  
Rajkot.

...Respondents.

( Advocate : Mr.B.R.Kyada )

J U D G M E N T

O.A. NO. 116 OF 1991.

Date : 2.9.1992

Per : Hon'ble Shri R.C. Bhatt : Judicial Member

Heard learned advocate for the applicant  
Shri B.B.Gogia and learned advocate for respondents  
Shri B.R.Kyada.

2. This application under Section 19 of the

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Administrative Tribunals Act, 1985 is filed by the applicant, who was working as water server under the Station Superintendent Vakanar, under Divisional Railway Manager, Rajkot, Respondent No.2 . She retired on 31st July 1989, on attaining super-annuation age of 58 years. She did not receive her terminal benefits after retirement and hence she made an application dated 11th December, 1989, to get the same, vide, Annexure A-1. It is her case that she received the order of final settlement, dated 26th April, 1990, vide, Annexure A-2 issued by the respondent no.2 informing her that there existed the amount of Rs. 21,645/- as over-payment in her pay and the said amount was required to be recovered from her settlement dues, as detailed therein Rs. 21,005/- related to the alleged over-payment in pay and <sup>an</sup> advance. This order Annexure A-2 also shows that the amount of Rs. 9,706/- was adjusted from her DCRG and other allowances and the applicant was called upon to remit Rs. 11,940/- in the Station Cash, on compliance of which, only the commutation of pension amount was to be released by the office. The amount of Rs. 9706/- consisted of DCRG, transfer and packing allowances and the PLB for the year 1988-89. The applicant submitted the representation Annexure A-3 on 12, May, 1990 against this settlement order Annexure A-2, but there was no reply from the respondents. The grievance of the applicant is that the order Annexure A-2 dated 26th April, 1990 is illegal and against the principle of natural

justice in as much as the demand of alleged over-payment was wrong and the recovery was very vague. The applicant has relied on Rule 1235 of Chapter 12 of the Indian Railway Establishment Manual. The applicant has alleged that the amount sought to be recovered is not recoverable from her gratuity and other amounts. The applicant has also referred to Rule 1239 of the Indian Railway Establishment Manual

3. The respondents have filed reply contending that the amount of Rs. 15690/- towards the commutation of Pension was not paid to the applicant because the amount of Rs. 11,940/- is yet to be recovered from her and though she was called upon to deposit it, she has not deposited that amount. It is contended that the amount of commutation of pension could only be given to her after she deposited the amount of Rs. 11,940/- It is contended that over payment amount can be recovered at the time of retirement from DCRG in terms of para 323 of Manual of Railways Pension Rules, 1950, and hence the over payment has been correctly recovered by the department from the DCRG of the applicant.

4. Learned Advocate for the applicant submitted that the respondents were not entitled to recover any amount due to over-payment by the applicant during her service and he drew our attention to Rule 1235 and Rule 1239 of Indian Railways Establishment Manual, which say that as far as possible, all government dues outstanding against Railways servant should be recovered through

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the last settlement Salary Bill or Pay sheet, as no amount except what is due under a liability incurred by the subscriber to the government could be recovered either out of the Provident Fund Assets or from the Special Contributions/Gratuity etc. . The applicant has produced at Annex. A-4 the copy of the decision in the case of General Manager North East Frontier Railways and others Vs. Dinabandhu Chakarborty 1970 SLR 382, in which the Hon'ble Supreme Court, after referring Rule 1341 of Railway Provident Fund Rules held that under that rule, before any deduction could be made, it must be established that under any liability , incurred by the subscriber, the amount in question was due to the government. The respondent in that case had disputed his liability and as no authority was constituted for deciding any dispute under the Provident Fund Rules, it was held that the only forum in which dispute can be decided is the Civil Court and the action taken by the Government was an arbitrary one.

5. Learned Advocate for the respondents submitted that the decision of the Hon'ble Supreme Court relied on by the applicant is not applicable in this case because there is no question of applicability of Railway Provident Fund Rules, 1950, in this case, nor Rules 1235 and 1239 of Indian Railways Establishment Manual would apply. He submitted that the applicant in reply to the respondents order Annex. A-2 dated 26th April 1990, in clear terms has submitted, vide reply Annex. A-3 dated 12th May, 1990, that her commutation value of pension amounts to Rs. 15,000/-

and she had no objection if Rs. 11,940/- were recovered from the said amount and she demanded the remaining amount after deducting Rs. 11,940/- He submitted that at the most therefore the applicant would be entitled to the balance amount of Rs. 3060/- from her commutated value of pension of Rs. 15,000/- after deducting Rs. 11,940/- as per her own admission. He submitted that the Railway Establishment Manual Rules referred to by the applicant in her application will not apply in this case, in view of Rule 323 of Manual of Railway Pension Rules 1950, which deals with recovery of Government dues from Pensionary benefits.

6. The respondents have produced at Annex. R-1, the true copy of Rule 323 from the Manual of Railway Pension Rules, 1950 which is as under.

"323. (1) A claim against the Railway servant may be on account of one or the other of the following.

(a) losses (including short collection in freight charges, shortages in stores) caused to the Government as a result of negligence or fraud on the part of the Railway servant while he was in service.

(b) other Government dues such as over payments on account of pay and allowances or admitted and obvious dues such as house rent, Post Office, Life Insurance premia, Outstanding advance etc. :

(c) non-Government dues.

(ii) Recovery from recurring pensions as also commuted value thereof, which are governed by the Pensions Act, 1871, can be made only in terms of Parar 315 : accordingly, a recovery of only item (a) may be made from these provided the conditions laid down in Para 315 are fulfilled. A recovery on account of item (a) which cannot be made in terms of Parar 315, and any recovery on account of items (b) and (c), cannot be made from these even with the consent of the Railway servant. The amount due on account of item (a) which cannot be recovered from these and/or on account of item (b) can, however be recovered from ordinary/terminal/death/death-cum-retirement gratuity which are not subject to the Pensions Act 1871. It is permissible to make recovery of Government dues from the ordinary/terminal/death/death-cum-retirement gratuity due even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased Railway servant.

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7. Reading Rule 323 (ii), it is clear that the recovery on account of over payment referred to in rule 323 (i) (b) cannot be made from pension as also commutated value thereof even with the consent of the Railway servants. Rule 323 (ii) however permits the recovery of that amount from ordinary/terminal/death/death-cum-retirement gratuity. Therefore, reading this rule, it is clear that the respondents cannot recover any amount mentioned in the order Annex. A-2 from the commuted value of pension of the applicant even though she has given consent to recover that amount from her commuted value of pension vide Annex. A-3 dated 12th May 1990, Rule 323 clearly prohibits the respondents from recovering the over payments to the applicant on account of pay and allowances etc., from her commuted value of pension. However, as per that Rule, the said amount of over-payment etc could be recovered from her DCRG. Learned Advocate for the applicant submitted that respondents cannot even recover the amount from the DCRG etc., of the applicant. It is important to note that the applicant had not taken any objection nor did she dispute against the deduction of Rs. 9,706/- when she received the order Annex. A-2, dated 26th April, 1990 from respondent no.2 but on the contrary in her reply to it vide Annexure A-3 dated 12th May, 1990, she even had no objection to recover the balance of Rs.11940/-



her commuted value of pension. Therefore, she could not now raise the dispute so far as the deduction of Rs. 9,706/- from her DCRG is concerned, though she is entitled to raise dispute now regarding recovery from her commuted value of pension inspite of her consent for the said recovery in view of Rule 323 of Manual of Railway Pension, 1950,. It is because of this rule that statutory protection under this rule she is entitled to challenge the recovery from her commuted value of pension inspite of her consent vide, Annex. A-3. Therefore, we do not agree with the submission of the learned Counsel for the applicant that the respondents have illegally recovered Rs. 9,706/- from the DCRG etc. of the applicant. At the same time, we also do not agree with the submission of the learned Advocate for the respondents, that the applicant would at the most be entitled to Rs. 3060/- from her commuted value of pension because of her consent letter Annexure A-3. As observed above, Rule 323 does not allow the respondents to recover the dues of over payments from the commuted value of pension, because such action on the part of respondents is illegal in view of the above rule.


3. In this view of the matter, the respondents are bound to pay the amount of Rs. 15,600/- as commuted value of pension of the applicant which figure is mentioned by respondents in para 2 of


their reply. The learned Advocate for the applicant submitted that the respondents ought not to have withheld this amount of the applicant and ought to have released it at least within two months from the date of retirement of applicant on 31st July 1989, and therefore the respondents should be directed to pay interest for the delayed payment. We agree with the Learned Advocate for the applicant that the respondents should not have withheld the said amount <sup>in beyond</sup> ~~from~~ 1st October, 1989, that is after period of two months from the date of retirement of the applicant. Hence we pass the following order.

ORDER

9. The application is partly allowed. The respondent no. 2 is directed to release the payment of the amount of Rs. 15,690/- which is the commuted value of the pension of the applicant or the exact figure on calculation of the commuted value of her pension, within three months from the receipt of this order with 10 percent interest on -
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that amount from 1st October, 1989, till the date of payment. This order will not stand in the way of the respondents from recovery<sup>ing</sup> the remaining alleged overpayments in such other~~s~~ manners as they may be advised. No order as to cost. The application is disposed of accordingly.

  
(R.C. Bhatt)  
Member (J)

  
(N.V. Krishnan)  
Vice Chairman