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O.A. NO.406 of 2001.  
ORDER DATED 04-04-2002.

Heard Learned Counsel for the Applicant and Mrs. R. Sikdar, learned Additional Standing Counsel appearing for the Respondents - Railways.

2. The husband of the Applicant was in Railway Service and died prematurely while still in service on 06.09.1999. For the reason of non-payment of pensionary benefits to her, she has filed this Original Application wherein she has mainly prayed for grant of D.C.R.G. and family pension of her late husband. In para-6 of the counter filed by the Railways, it has been disclosed as under:

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"after the death of the deceased (i.e. the applicant's husband) the applicant submitted the Death Certificate (Annexure-A/1 to the OA) in May, 2000. The Asst. Engineer, Bhubaneswar issued the Office order on 15.05.2000. The service sheet of the deceased was sent thereafter to the Finance Branch for final review and for certification of the Leave Account on receipt of the necessary prescribed settlement paper from the applicant, family pension case was immediately sent to the Finance Branch on 30.07.2001 for passing and certification of the DCRG. As stated above the family pension was passed on 25.09.2001 a copy of which is annexed as Annexure-R/1. In the meanwhile, other Settlement dues such as last wages drawn, leave salary, PF dues and CGEGIS have also been paid to the applicant".

3. In paragraph 2 of the counter it has been disclosed as under:

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"The DCRG has certified for Rs.1,53,577/- . Therefore, the DCRG pay order was sent to the Finance Branch on 01.11.2001 for passing and arranging payment to the applicant. But the payment could not be disbursed to the applicant due to want of identification/guardianship/Heirship certificates of the members of the deceased. In this respect, the applicant was also advised to furnish the certificates as stated above vide the letter dated 24.01.2001. Having received the said certificates from the applicant the DCRG has passed for payment".

4. It appears from Annexure-2 to the O.A. that a legal heir certificate has already been obtained from the local Tahasildar and furnished to the Respondents. Mrs. Sikdar appearing for the Railways, states that furnishing of legal heir certificate from the competent authority will be sufficient for releasing the DCRG. She also draws my attention to paragraph-10 of the counter, wherein it has been stated as under:

"It is submitted that all the dues of the deceased employee has already been released in favour of the applicant and there is no arrear dues pending for payment to the applicant".

5. On the face of the aforesaid statements made in the counter, this Original Application is dropped, ~~or~~ since all payments stated to have been released in favour of the Applicant. However, if these dues i.e. family pension and D.C.R.G. have not yet been paid to the applicant as yet, the Respondents are hereby directed to pay the same to the Applicant within one month from the date of receipt of a copy

of this order with interest @12/- per annum on the D.C.R.G amount.

6. Before parting with this case, my attention has been drawn to paragraph 7 of the counter, wherein it has been submitted by the Respondents that Applicant's husband was drawing Rs.3,800/- as pay in the scale of Rs.2,650 - 4,000/- and that due to his physical absence from duty w.e.f. 29.12.1997 to 06.09.1999, he was not granted the annual increment on 01.08.1998 and 01.08.1999. Powers to withhold annual increment, no doubt, are available with the employer of the Applicant's husband, under the rules. Such powers are subservient to the universal principles of natural justice. There was no materials available on record to show that at any point of time, the applicant's husband was put to notice for unauthorised absence or to face the punishment of 'withholding of annual increment' due to be paid to him on 01.08.1998 and 01.08.1999. The Advocate for the Applicant states that Applicant's husband was sick for which he was hospitalised during the relevant period and was not in a position to resume his duty. Whatever may be the case, since no natural justice was given to the Applicant's husband before withholding the annual increment on 01.08.1998 and 01.09.1999, the Respondents are hereby directed to release the annual increment in favour of the husband of the Applicant (as due to him, as on 01.08.1998 and 01.08.1999) and grant necessary consequential benefits arising out of the same, within the period indicated above i.e. one month from the date of receipt of a copy of this order.

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7. My attention has also been drawn to paragraph 8 of the counter; wherein it has been submitted by the Respondents that Applicant's husband was due to get Rs.702/- towards excess drawal of leave salary which was deducted at the time of reviewing of the service-sheet by the Finance Branch and the same has already been realised from the D.C.R.G. As it appears, the Finance Branch reviewed the service-sheet of the husband of the applicant after his death and unilaterally recovered the amount; which apparently they could not have done in gross violation of the principles of natural justice. Without giving notice to the husband of the Applicant, or without affording opportunity, the amount could not have been recovered unilaterally from the D.C.R.G.; especially when the DCRG is a part of the pension and pension is no longer bounty. One earns pension and gratuity for the service rendered by him and therefore, the recovered amount of Rs.702/- should be refunded to the applicant, within the time period stipulated above.

8. Respondents could have been given an opportunity to comply with the principles of natural justice but for the reason of the fact that the applicant's husband is no more living, the Respondents are directed to release the annual increment on 01.08.1998 and 01.08.1999 and to refund Rs.702/- to the applicant within the time fixed.

With the above directions and observations, the OA is allowed. No costs.

*Yashwant*  
04.04.2002

Member (Judicial)

*AFD*