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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 131 OF 2004  
CUTTACK, THIS THE 6<sup>th</sup> DAY OF December, 2005.

Nepal Chatterjee.....APPLICANT

V S

Union of India & others .....RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

  
(B.N. SOM)  
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO. 131 OF 2004  
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Shri Nepal Chatterjee, aged about 60 ½ years, Son of Shri Bhola Nath Chatterjee, Ex. Mail Guard, Khurda Road under Senior Divisional Operations Manager, E.Co.Rly., Khurda Road, permanent resident of Patul, P.O. Illahipur, Dist. Hooghly, PIN -711407.

.....Applicant.

Advocate(s) for the Applicant - M/s. Achintya Das, S. Nayak .

VERSUS

1. Union of India service through General Manager, E.Co.Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN -751023.
2. Chief Personnel Officer, E.Co.Rly. Khurda Road, Chandrasekharpur, Bhubaneswar, PIN -751023.
3. Divisional Railway Manager, E.Co.Rly, Khurda Road, P.O. Jatni, Dist. Khurda, PIN -752050.
4. Medical Superintendent (In-Charge), E.Co.Rly., Khurda Road, P.O. Jatni, Dist. Khurda, PIN -752050.
5. Sr. Divisional Finance Manager, E.Co.Rly, Khurda Road, P.O. Jatni, Dist. Khurda, PIN -752050.

.....Respondents.

Advocate(s) for the Respondents - M/s. Ashok Mohanty (Sr. Counsel),  
T.Rath.

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## ORDER

### SHRI B.N.SOM, VICE-CHAIRMAN:

Shri Nepal Chatterjee, retired Guard, Khurda Road has filed this O.A. being aggrieved by the order of Sr. Divisional Finance Manager, East Coast Railways, Khurda Road contained in Memo No.PEN/KUR/07020082403/DCRG/60890/1640, dated 11/12.11.03 deducting Rs. 1,00,608/- towards alleged excess payment and other dues (Annexure-A/10). The grievance of the applicant is that no notice was served on him prior to deducting the alleged excess payment from DCRG and the applicant was not given any opportunity to submit any show cause against the impugned decision of the Railways and thus the principle of natural justice was violated. He has, therefore, approached the Tribunal seeking the following reliefs:

- “8.1 To kindly quash and set aside the letter dated 11/12.11.03 (Annexure-A/10), issued by the Sr. Divl. Finance Manager, E.Co.Railways, Khurda Road.
- 8.2 To direct the Respondents to refund Rs. 93,123/- deducted from the DCRG towards alleged ‘Excess Payment’ in obedience to the letter dated 11/12.11.03 issued by the Sr. Finance Manager, Khurda Road (Annexure-A/10).
- 8.3 To direct the Respondents to pay interest on Rs. 93,123/- from 1.10.03 till the date of actual payment.
- 8.4 To grant any other relief including cost as deem fit by the Hon’ble Tribunal.”

2. The case of the applicant in a nutshell is that while working as a Mail Guard he fell ill and was hospitalized with cardiac problem. He was first referred to the Central Hospital, Garden Reach where he was admitted as an indoor patient and, thereafter, he was referred to the hospital at Perambur where he underwent heart surgery. He was advised three months' rest and then to report for review. Subsequently, he was found fit to resume duty but was advised to be posted to a job involving no physical exertion, called, 'light job'. He was remained in light duty till he retired although, as per rules, no employee would remain on light duty for more than six months' time. As per rules, in case, the physical condition of the employee does not permit him to discharge normal duties, the case for medical decategorization should be taken up and the employee is entitled to the same pay scale and service benefits as per rule 304(1) of the Indian Railway Establishment Code, Vol.-I, 1985 and Para-1301 of Indian Railway Establishment Manual, Vol.-I, 1989. The applicant was allowed to retire on 30.9.03 on superannuation. He was paid all retrial dues on the date of his retirement except DCRG which was kept withheld for the reasons not known to him. Later on, by the impugned order, he was paid DCRG after deducting Rs. 1,00,608/- for excess payment amounting to Rs. 93,123/- and other dues totaling to Rs. 7,485/-.

3. The Respondents have opposed the application by filing detailed counter. In the reply, they have disclosed that the applicant was working as Mail Guard and reported sick from 4.3.2000 to 30.6.2000 and from 6.7.2000 to 24.9.2000 and, thereafter, from 16.9.2002 to 17.9.2002 and also was on leave from 14.10.99 to 24.9.2000 and for the period from 21.8.2000 to 17.9.02 totalling to 202 days of leave on ground of illness, but

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the applicant did not have sick leave of that many days due at his credit. However, taking into consideration his family problems, health problem and his financial needs, instead of making nil payment of pay and allowances, his salary was drawn on average pay on leave. It was also felt that the overpayment would be recovered from his pay at the time of his retirement and that the applicant had knowledge about this decision. Accordingly, at the time of his retirement, the excess payment of Rs. 93,123 on account of drawal of sick leave salary, duly certified by Sr. Divl. Accounts Officer, Khurda Road, was recovered from his retirement dues. However, no interest was charged on the excess payment so made. They have refuted the allegation of the applicant that he had no knowledge about his leave position and that he was well aware that he was being paid full salary during his sick period although he did not have any sick leave at his credit. Referring to Rule-15 of the Railway Service (Pension) Rules, 1993, they have submitted that no notice is required to be issued for recovery of excess payment made from a retired Railway servant from DCRG dues, in case the recovery is made on account of excess payment on leave salary, outstanding house rent or electricity charges. They have also further submitted that the applicant was allowed to continue to perform light job till his retirement in consideration of his illness.

4. I have heard the Ld. Counsel for both the parties and have perused the records placed before me.

5. The applicant in this O.A. has raised the following issues. First is that the alleged excess payment, on account of pay and allowances of the applicant, was made from his DCRG without giving him any notice.



Secondly, that the Respondents placed him on light duty after he was released from the hospital and did not send him for medical decategorization in terms of the provision contained in Indian Railway Establishment Manual, Vol.-I. Thirdly, as the Respondents had never informed him that he had no sick leave at his credit but drew his full salary, they are barred from recovery of excess amount from his retirement benefits and that the recovery of the said amount of Rs. 93,123/- was made in contravention of Rule 15 of Railway Service (Pension) Rules, 1993 because the Head of Office has neither ascertained nor assessed the government dues payable by the applicant before retirement took place on 30.9.03.

6. I have perused the records carefully and had also called for the leave account records in respect of the applicant from the beginning of his career, i.e., 26.2.72 which was also made available to the applicant for inspection and comments. I had also called upon the Respondents to workout the various types of leave entitlements of the applicant during his service career and whether there was any scope for adjustment of leave not availed by him during his service career, in any manner, to give him relief.

7. The Respondents, by submitting a note dated 30.9.05, have submitted that the applicant had rendered 31 years, 7 months and 6 days of service in Railways and as per Railway Leave Rules, the applicant had E.L. of Rs. 211 days at the end of his service which was allowed to be encashed by him. He had earned 632 days of Leave on Half Average Pay (LHAP, in short) during his service out of which he has availed 616 LHAP leaving 16 days unavailed at the time of retirement but that leave is not encashable. The Respondents, by submitting leave account of the applicant, have disclosed

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that he had taken 190 days commuted leave from 4.3.2000 to 30.6.2002, 81 days commuted leave from 6.7.2000 to 24.9.2000 and 2 days commuted leave from 16.9.02 to 17.9.02, a total of 202 days of commuted leave when he did not have any sick leave in his account during the relevant period referred to earlier. They have submitted that as the applicant did not have any Half Pay Leave at his credit during the relevant period, normally, no salary should have been drawn for him. However, taking a humanitarian view, as he had undergone heart surgery/hospitalization, they decided to draw his full salary with the condition that the excess payment, so made, would be recovered from his future dues. They, however, waited till the time of his retirement, i.e. September, 2003, when they recovered the excess paid amount from his DCRG. On 30.9.05, they further clarified that as per their rules, excess leave, availed by a staff is not adjusted against the future earning as that will lead to monetary loss to the employee. They have further submitted that the above procedure regarding adjustment of over-payment is followed in the Railways as a matter of policy. The Ld. Counsel for the Respondents by drawing my notice to Rule 544(vii) of Leave Rules, dealing with leave salary, submitted that if, in case, Railway servant retires and the leave already availed is more than the credit so due to him, necessary adjustment shall be made in respect of leave salary, if any overdrawn. The provision of adjustment of over-payment or adjustment of leave availed in excess of entitlement being enshrined in the leave rules itself, the allegation that the action taken by the Respondents is violative of Rule 15 of the Railway (Pension) Rules is not tenable. The Respondents in their note have also illustrated that if the period of overpayment would have been adjusted against the LHAP and LAP, earned by the applicant, how he would have

been put to financial loss. For the sake of clarity the calculation is reproduced below:

"a) If the over-payment would have been adjusted against LAP (Leave on Average Pay or Full Pay), he would have got 42 days of LAP at the time of retirement i.e. on 30.9.03.

i) He has got leave encashment for 211 days LAP: Rs. 1,20,665/-

ii) Over-payment of 202 days, excess leave (-):Rs. 93,123/-  
recovered. 27,542/-

He has got net pay : Rs. 27,542/-

i) After adjustment of over-payment with LAP, : Rs. 24,019/-  
he would get 42 days LAP @ of pay Rs 8,300/-  
and the leave encashment will be

ii) Even after adjustment of over-payment with (-): Rs. 6,647/-  
LAP, over-payment of 14 days, excess leave  
is recovered @ of Pay: Rs. 7,775/-  
Rs. 17,372/-

He would have got on net pay : Rs. 17,372/-

From the above, it is very clear that the Staff concerned would have to refund Rs. 10,170/- (i.e. Rs. 27,542-17,372/- = Rs. 10,170/-) to the Rlys., if his Over-payment of 202 days would have been adjusted against the LAP (Leave on Average Pay or Full Pay)."

8. Having regard to the submissions made by the Respondents including the calculations of financial loss and gain for the applicant, there is no doubt that whatever the Respondents have done in the matter for protecting his interest does not appear to be going against his interest. The



allegation of the applicant that he was confronted with deduction of certain amount from his DCRG without notice appears to be without merit and, in view of the provisions available under Rule 544(vii) of the Leave Rules and also the provision available under Rule 15(ii) and 4(4)(1)(b), adjustment of overpayment of pay and allowances is a legitimate charge on Railway servant and is available for recovery and adjustment from his pensionary benefits. In view of the above provision of rules, the relief sought by the applicant in this O.A. appears to be misconceived.

9. Before concluding, I would also like to point out that the plea taken by the applicant that the Respondents instead of giving him light duty should have sent him for medical decategorization is of no avail because by not medically decategorising him, the Respondent Department did not put him to any prejudice either in the matter of pay and allowances or in the matter of other service entitlements and, therefore, this plea is liable to be ignored being without merit.

10. In conspectus of the facts and circumstances of the case, the O.A. is dismissed being devoid of merit. No costs.

  
( B.N.SOM )  
VICE-CHAIRMAN

KUMAR