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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH,CUTTACK.**

O.A.NO. 91 OF 2002

Cuttack, this the day of June, 2003

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Smt. Manikmala Maity	Applicant
Vs.		
Union of India and others	Respondents

For instructions

1. Whether it be referred to the Reporters or not? *Y*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *Y*


(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

Original Application No.91 of 2002
Cuttack, this the 26th day of June, 2003

CORAM:

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

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Smt. Manikmala Maity, aged about 50 years, w/o late Arabindra Maity,
Ex.SE(P.Way)/BHC, C/o Saroj Kumar Maity, At Charampa, P.W.1 Colony, Bhadrak,
Dist. Bhadrak **Applicant**

Vrs.

1. Union of India, represented by its General Manager, S.E.Railway, Garden Reach, Lien Soren Road, Calcutta, At/PO/Dist.Calcutta.
2. Senior Divisional Engineer (Co-ord.), South Eastern Railway, Khurda Road, At/PO/Dist.Khurda.
3. Accounts Officer, F.A. & C.A.O.(Pension), S.E.Railway, Garden Reach, Calcutta 700 043 **Respondents**

Advocates for applicant - M/s K.K.Das, N.S.Panda, & P.K.Mohanty

Advocates for Respondents - M/s D.N.Mishra, C.R.Mishra & Ashok Mohanty

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This O.A. has been filed by Smt. Manikmala Maity, seeking direction to the Respondents to release DCRG amount payable to her husband. While her husband was paid pension and other retirement benefits, the Respondents did not make payment of DCRG amount, although he had been representing to them regularly. In the meantime, her husband died on 20.03.1999, a fact which she intimated to the Respondents, but without any effect. Aggrieved by inaction on the part of the Respondents, she has approached the Tribunal for immediate release of DCRG amount with 18% interest for the delay caused.

2. The Respondents, while admitting that the DCRG amount was not released to the husband of the applicant, have submitted that when the Ex-employee, husband of the applicant, Mr. A. Maity was in service as Section Engineer, Bhadrak, stock verification was carried out in that office on 07.10.1997. Huge quantity of Railway store materials were found short, amounting to Rs.1,04,134/- It is because of this report that the Respondents did not release DCRG amount to the ex-employee all these years.

3. I have heard the I.d. Counsels of both parties and have also perused the records placed before me. From the facts of the case, it appears

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that the inquiry into the matter which started in 1997 has been a long run affair. The Respondents have admitted in the counter that the Assistant Engineer, Khurda Division, who enquired into the matter, submitted his report on 13.10.2001, i.e., after the death of the ex-employee. His report was further submitted to the F.A & C.A.O along with remarks of Senior Divisional Railway Manager (SER), Khurda Road, for final orders which, at the time of submission of counter on 25.10.2002, were awaited.

4. I have perused Annexure R-1, which is a copy of the stock verification report containing the remarks of the Senior Engineer (Permanent Way) as also Assistant Engineer. From the explanation submitted by the Divisional Engineer/Executive Engineer/Assistant Engineer, it reveals that losses in respect of a few items have been recommended to be set off and in respect of some other writing off of the amount has been recommended. I have also perused the detailed explanation furnished for the shortages by the Senior Divisional Engineer, North, to the F.A. & C.A.O (Annexure R-4) and the report of the Assistant Engineer/JKKR at Annexure R/3.

5. In the light of these facts of the case, the merit of the Application needs to be adjudged. In terms of Railway Services (Pension) Rules, 1993, the Railway or Govt. dues, as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, may be adjusted against the amount of the retirement gratuity or death gratuity

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or the terminal gratuity. It has also been provided in the said Rules that recovery of the dues against the retiring Railway servant shall be regulated in accordance with the provisions of sub-rule (4)(i)(a) of Rule 15, which reads as follows:-

“(4)(i) A claim against the railway servant may be on account of all or any of the following:-

(a) loss (including short collection in freight charges, shortage in stores) caused to the Govt. or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;”

6. It is thus permissible under sub-rule (4)(i)(a) of Rule 15 of the Railway Services (Pension) Rules, 1993 to recover loss caused to the Railway as a result of negligence or fraud on the part of the Railway servant while he was in service. From the report of the Divisional Railway Manager (Engineering Branch) (Annexure R/4), I find that he had reported to the F.A. & C.A.O. that the Assistant Engineer/JKKR had made enquiry and fixed responsibility for the loss on the deceased Railway servant, vide his report dated 13.10.2001. The report of the Assistant Engineer/JKKR is available at Annexure R/3. In his report, the Assistant Engineer had stated that 52 nos. of U/s CST/9 plates were submerged under water for prolonged period and had not been reclaimed/recovered subsequently. He thereafter stated that the loss was certified and the responsibility for the loss was fixed on late A.Maity (who had already retired and expired by that time). The report of the Assistant Engineer is not a reasoned one and the enquiry was held after the demise of the Railway servant (Mr.A.Maity).

Obviously, there was no opportunity for the inquiring officer to know the cause of the damage to the stores that were submerged under water and to what extent the deceased Railway servant was directly responsible for the same. Furthermore, the death of the Railway servant forecloses the option on the part of the disciplinary authority to proceed in any manner under the Railway Services (Pension) Rules, 1993. In the circumstances, the action of the Respondents in withholding the DCRG amount for payment to the family of the ex-employee is not in order.

7. In view of the above discussion, this Application succeeds and the applicant is entitled to the relief prayed for. In the circumstances, I hereby direct that the Respondents should immediately make payment of the DCRG amount and pay interest for delay in payment @ 10% from 01.11.1997, to 31.10.2002 on the entire amount of DCRG and @ 6% from 01.11.2002 to the preceding month of issuing the order of payment. The final payment should be effected within 30 days of the receipt of this order.



(B.N. SOM)
VICE-CHAIRMAN

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