

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.96 OF 2013

Cuttack this the 25th day of September, 2013

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Bijayalaxmi Panda

Aged about 58 years

W/o. late Apariti Charan Panda

Retired Senior L.I.

East Coast Railway

Cuttack – permanent resident of

Village-Anantapur

PO-Phulnakhara

Dist-Khurda

Odisha

...Applicant

By the Advocate(s)-Mr.N.R.Routray

-VERSUS-

Union of India represented through

1. The General Manager,
East Coast Railway
E.Co.R.Sadan
Chandrasekharapur
Bhubaneswar
Dist-Khurda
2. Divisional Railway Manager (P)
E.Co.Rly,
Khurda Road Division
At/PO-Jatni
Dist-Khurda
3. Senior Divisional Mechanical Engineer
East Coast Railway
Khurda Road Division
At/PO-Jatni
Dist-Khurda
4. Senior Divisional Financial Manager
East Coast Railway
Khurda Road Division
At/PO-Jatni
Dist-Khurda

5. Chief Manager
State Bank of India, Cuttack City Branch
At/PO-College Square
Town/Dist-Cuttack-753 003

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A):

The applicant in this Original Application has approached this Tribunal with a prayer that the orders of recovery dated 22.8.2011 and dated 9.1.2013 may be quashed and the Respondents, i.e, the Railway Authorities should be directed to repay the amount that they have already recovered.

Facts of the Case:

2. The applicant is the wife of late Aparti Charan Panda, who had retired from the post of Senior Loco Inspector in the East Coast Railways. It is averred in the O.A. that the husband of the applicant being initially appointed on 8.1.1965 as an Attendant in the Commercial Department of the S.E. Railways was later on switched over to the Loco Department as a Fireman and finally retired from service with effect from 31.7.2005 on attaining the age of superannuation. After retirement, the Respondents granted retirement benefits to him vide PPO No.12020060205 dated 8.8.2005 which is placed at Annexure-A/1. He was also granted the payment of DCRG vide order dated 18.1.2007 which is placed at Annexure-A/2. While granting the payment of DCRG, the Respondents made certain recoveries towards excess payment of house rent and electricity charge etc. which works out to a total recovery of Rs.47,326/-. The husband of the

applicant was receiving monthly pension regularly. Vide a letter dated 22.8.2011, the Respondent No.2 asked the husband of the applicant for payment of Rs.16,112/- for the shortage of 5205 liters of oil lying outstanding against him for recovery and it was indicated therein that if he could not produce the proof that such recovery had already been effected from the salary bills, further action in that behalf would be taken. Subsequently, on 10.10.2011, it was decided by the Respondents to advise the concerned bank authorities to recover the said amount from the dearness relief on the pension. Unfortunately, subsequent to this development, the husband of the applicant died on 7.2.2012, in consequence of which the applicant was sanctioned the family pension. The applicant on 11.9.2012 submitted an application to Respondent No.5 with a prayer not to recover the amount. In spite of the representation made by the applicant, on the basis of advice given by the Railway authorities, the State Bank of India (Res.No.5) on 23.1.2012 forwarded a draft for Rs.16,112/- in favour of the Senior Divisional Finance Manager, Khurda (Res.No.4) towards recovery of outstanding railways dues of Apariti Ch.Panda, the applicant's husband. This recovery has been challenged by the applicant in this O.A.

Facts stated in the Counter Affidavit:

3. The Respondent-Railways have filed their counter affidavit in this case, which reveals that when the applicant's husband was working as Loco Foreman at Cuttack, a stock verification was carried out on 19.10.1990 at the Railway Consumer Depot and it was found that there was shortage of 5205 liters of HSD oil as per the stock verification, the total cost of which

was assessed to the tune of Rs.16,112/-. When the stock verification report was sent to the Financial Advisor and Chief Accounts Officer of the Railways, he advised the Divisional Mechanical Engineer, Khurda Road in a letter dated 21.5.1991 to enquire into the matter and furnish an inquiry report for finalization of the issue. Further reminders were sent on 19.6.1992 and 25.11.1992 to the D.M.E., Khurda Road to expedite the reply. Thereafter, the FA & CAO in a letter dated 8.6.1998 asked the husband of the applicant advising him that he should make good such shortage since he was the stock holder and custodian of the Railways materials and stores. It was suggested in the same letter to the Senior DME, Khurda Road for taking departmental action for recovery of shortage of Railway materials from the applicant's husband. Accordingly, the applicant's husband who was then promoted as Senior Loco Inspector at Cuttack was asked to attend the departmental inquiry on 22.12.2004 in the Chamber of the DME, Khurda Road in connection with the shortage of HSD oil, but he failed to attend the said inquiry. Shri Panda, the husband of the applicant, was again intimated on 9.5.2005 to attend inquiry on 10.5.2005 and this time also he did not turn up for the said inquiry and that is how the inquiry could not be completed. In the meantime, the applicant's husband retired from railway service on 31.7.2005 on reaching the age of superannuation. Subsequently, a letter dated 22.8.2011 was sent to the applicant's husband with a direction to him to produce any proof of recovery of the said amount, failing which he should deposit this in the cash office. Thereafter, it was decided to recover the outstanding amount of Rs.16,112/- from the dearness relief on the pension of the applicant's

husband and such advice was sent to the bank authorities. In the counter, the Respondents have pleaded that this amount which is recoverable on account of the shortage of HSD oil during stock verification should have been paid by the applicant's husband. Further, the Railway authorities are always competent to recover the said amount at any point of time from the dues payable to the applicant's husband since it is an outstanding dues² pending against him.

Reply in the Rejoinder:

4. The principal argument advanced by the learned counsel for the applicant in the rejoinder is that the alleged shortage in the stock was never substantiated by the Respondents by initiating any proceedings to fix responsibility on the deceased husband of the applicant. Although there was an order for taking departmental action, the same was never carried out. After the retirement of the applicant's husband the authorities without following the proper procedure have ^{made} ~~done~~ this recovery from the dearness relief on the pension. Now the applicant's husband is also no more and the applicant is drawing her family pension. It is further submitted in the rejoinder that on 18.12.2004, the husband of the applicant was informed to attend inquiry on 20.12.2004. Again vide an order dated 9.5.2005, the husband of the applicant and one B.D.Mohanty, Senior Clerk were informed to attend inquiry on 10.5.2005. In the order dated 9.5.2005, there is no mention that the inquiry dated 20.12.2004 could not be conducted because the husband of the applicant failed to attend the inquiry. The allegation made that the husband of the applicant did not turn up for the inquiry is false and vague. It is, therefore, the case of the learned counsel

for the applicant in the rejoinder that the process of departmental inquiry to fix responsibility for the shortage of the HSD oil was treated most casually by the Respondents. In the case of alleged misappropriation of Government funds or stock, action against the employee has to be taken according to law prescribed in the service code and no authority is empowered to recover the alleged amount straightaway from the employee without initiating a departmental proceedings. On 22.8.2011, the husband of the applicant was no longer in service and since by then six years had already passed from the date of his retirement, no proceeding was permissible to be initiated against the ex- employee. Therefore, the order of recovery is completely an abuse of authority and ^{the} ~~their~~ action is not supported by law.

Submissions of both the sides:

5. The learned counsel for both the sides, during the course of hearing have reiterated their positions that they have taken in the counter and rejoinder.

6. The main thrust of the argument advanced by the learned counsel for the applicant is that the Respondents had no authority to effect recovery without fixing responsibility on the alleged shortage after completing the process of the departmental inquiry. The shortages were detected in the year 1990 and in the meantime, the applicant has not only retired but also has expired. According to learned counsel, the cause of action in the present case having arisen in the year 1990, no proceeding could be initiated against the applicant's husband in the year 2011, i.e., after six years of the date of retirement. The Respondents have not ^{shown} ~~done~~

due expedition in completing the departmental proceedings with a view to fixing up the responsibility and since such a responsibility has not been fixed on the applicant's husband, order of recovery from the dearness relief ^{an} ^e is absolutely arbitrary exercise of powers.

7. On the other hand, the learned counsel for the Respondents has emphasized the fact that the authorities are in their full freedom to recover the amount which was lying as ~~an~~ ^{an} outstanding against the applicant's husband on the basis of stock verification in which there was a detection of shortage of HSD oil worth Rs.16,112/-. Further argument is that this being ^{the} ~~the~~ public money can be recovered at any point of time. Although the learned counsel conceded that this amount was not deducted from the DCRG which was released in favour of the applicant's husband in 2007, but he has pointed out the Railway Ministry's orders which envisage that such recovery can be made from the dearness relief on the pension. He has, therefore, strenuously opposed the claim made by the applicant and has pleaded that this O.A. being without any merit should be dismissed.

Discussion:

8. We have heard the learned counsels for both the sides and perused the records. During the period when applicant's husband was working as Loco Foreman, Accounts Stock verification was conducted on 19.10.1990 of Railway Consumer Depot and HSD oil worth Rs.16,112/- was found to be short. When the stock verification report was sent to FA&CAO, South Eastern Railways, he ordered an inquiry in the matter. It appears, however, that inquiry was not expeditiously conducted. But vide a letter dated 8.6.1998, the FA&CAO wrote to the applicant's husband that being the

stock holder and custodian of Railway materials and stores he was responsible to make good such shortage immediately. A copy of this letter was sent to Sr.DME, Khurda Road with direction to take departmental action and also to ensure that 'No due Certificate' is not issued if the staff is retiring or resigning from Railway Service. It is the case of the Respondents that although departmental inquiry was initiated on 18.12.2004, and the applicant's husband was asked to appear in the enquiry, he failed to attend the same. Another date of inquiry was fixed in the year 2005, in which also the concerned railway employee failed to turn up. Thereafter, the employee retired on 31.7.2005.

9. It is a very plain inference from these facts that the inquiry was never completed. The order of recovery dated 8.6.1998 never reached its finality *and R* nor was ever enforced. Even when the employee retired in the year 2005, no recovery was admittedly made from his gratuity dues released in 2007. Since his retirement dues were released, obviously a 'no due certificate' was issued in his case. A matter relating to the year 1990 could not be finalized exhibiting an extreme case of bureaucratic neglect and even by the year 2005, final responsibility could not be fixed *for R* on the alleged shortage of stocks. It cannot be, therefore, held that the amount was finally established as recoverable from the applicant's husband through a process of departmental inquiry.

10. The order of payment of DCRG of the late railway employee dated 18.1.2007 (Annexure-A/2) shows a recovery of Rs.47,326/- towards excess payment, house rent, and electrical charges from the DCRG. How is it that the recovery demanded now *was R* as not included in the recoveries from DCRG ?

This gives rise to the premise that this amount was not decided as a recoverable amount while the DCRG was finalized.

11. The late husband was receiving his monthly pension regularly. Respondent No.2 through a letter dated 22.8.2011 wrote to the applicant saying that Rs.16,112/- was shown as an outstanding for recovery since the year 1990. It was not possible to verify whether this amount was recovered from his salary or otherwise. So he should produce the proof of this recovery from salary or in the alternative deposit this amount in cash office. Therefore, even in the year 2011, this matter lay undecided. A decision was taken thereafter, on 10.10.2011 to recover the outstanding amount from the dearness relief of the applicant's husband. Subsequently, the applicant's husband expired on 7.2.2012. In spite of representation of the applicant who is the family pensioner, the Respondents decided to recover the amount from the dearness relief on the pension.

12. Learned counsel for the Respondents has strenuously pleaded that the said amount is due to be recovered, and can be recovered from the dearness relief on pension as clarified in Estt.Srl.No.244/85 issued on 20.10.1985, even though the amount could not be recovered from gratuity. He has submitted that Govt. dues are recoverable at any point of time. His further submission is that the law has been well settled by the Hon'ble Apex Court to the effect that public money can be recovered at any point of time even after retirement of an employee. The amount to be recovered was within the knowledge of the applicant's husband, and the authorities were fully justified in recovering the amount from the dearness relief on pension.



Conclusion:

14. Having given our anxious consideration to the facts of the case, we are coming to the following conclusions.

13. First of all, the cause of action in this matter arose in 1990 and since then adequate time was available with the Respondents to complete their inquiry before the employee retired in the year 2005. The departmental action started in this regard never reached a conclusion, and the recovery was not finally established through a process of inquiry. Even when in 2007 DCRG was released and certain other recoveries were made, this recovery was not included. It is, therefore, not open to the authorities at this point of time to recover the amount from the dearness relief on pension. While agreeing with the learned counsel for the Respondents in principle that public money should be recovered even at this belated stage, we need to be conscious that due process needs to be followed and the principle of natural justice must be adhered to. The facts of this case clearly reveal failure of the authorities to assiduously follow the process. With regard to the submission about recent judgments of the Hon'ble Apex Court in the matter, we are aware that in the case of **C.P.Uniyal vs. State of Uttranchal & Ors. reported in AIR 2012 SC 2951**, the Hon'ble Supreme Court have decided that " **amount paid/received without authority of law can always be recovered barring a few exceptions of extreme hardships but not as a matter of right**". The facts in the present O.A. are different. This matter is not about recovery of excess payment, but recovery of value of alleged shortage of stock, which is yet to be established after following the due procedure of Rules. The entire procedure has not been completed in the

present case mainly due to the neglect of the departmental authorities.

There has been unconscionable delay in the matter ^{resulting} relating in a situation where the concerned railway employee has retired, and thereafter has expired, leaving the applicant to her entitlement of family pension.

14. We are, therefore, inclined to take a view that the recovery of the amount of Rs.16,112/- towards alleged shortage of stock in the year 1990 from the dearness relief on pension/family pension, as the case may be, of the applicant is not justified. The orders of recovery dated 22.8.2011(Annexure-A/3) and dated 09.01.2013 (Annexure-A/8) are accordingly quashed, and the Respondents are directed to repay the amount recovered to the applicant forthwith.

In the result, the O.A. is allowed. No costs.


(R.C.MISRA)
MEMBER(A)
BKS


(A.K.PATNAIK)
MEMBER(J)