

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1402 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Smt. Amiya Biswas, W/O late Amulya
Kumar Biswas residing at South Eastern
Railway Quarter No.L/93/D P.O. Adra,
Dist. Purulia, West Bengal

... Applicant

VS

1. Union of India, service through
The General Manager, South Eastern
Railway, Garden Reach, Calcutta-43

2. Divisional Railway Manager,
South Eastern Railway, Adra Division,
P.O. Adra, Dist. Purulia, West Bengal

3. Senior Divisional Mechanical Engineer,
South Eastern Railway, Adra Division,
P.O. Adra, Dist. Purulia, West Bengal

4. Divisional Personnel Officer, South
Eastern Railway, Adra Division, P.O.
Adra, Dist. Purulia, West Bengal

5. Divisional Mechanical Engineer, South
Eastern Railway, Adra Division, P.O. Adra
Dist. Purulia, West Bengal

... Respondents

For the Applicant: Mr. P.C. Das, counsel

For the Respondents: Mr. P. Chatterjee, counsel

Heard on 8.5.1998

: : Date of order: 8.5.1998

O R D E R

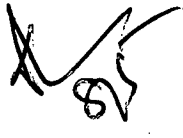
Heard Mr. P.C. Das, learned advocate appearing on behalf of the applicant, Smt. Amiya Biswas who is a widow wife of late Amulya Kumar Biswas, retired O.S. Grade I in Sr. Divisional Mechanical Engineer's office, S.E. Railway. The applicant filed this application for a direction upon the respondents to release the DCRG money admissible to her husband with interest at the rate of 18% per annum from the due date of payment till payment is made. He also prayed for staying the operation of the orders dated 4.6.96, 3/4.9.96, 16/31.10.96, 13/16.11.82 being annexures- E, F, H & C to the application. The

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applicant submits that her husband while he was working with capacity stated above expired on 27.1.91. After expiry of the applicant's husband on 27.1.91 her son Sri Apurba Biswas was appointed as a Junior Trained Clerk on compassionate ground and the family pension in favour of the applicant has been sanctioned by the respondents and the applicant has been drawing the family pension with effect from 21.8.91 and the respondents also allotted a quarter in favour of her on 4.11.91 on out of turn basis. But respondents withheld the DCRG money amounting to Rs.51,940/- illegally and thereby she has filed this application for a direction upon the respondents to release the DCRG money of Rs.51,940/- with interest at the rate of 18% per annum.

2. The case of the applicant is resisted by the respondents by filing a reply in this case. In the reply it is stated that in course of Accounts stock verification during the year 1987-88 in Carriage Shed, it was detected that there had been some shortage of M.S. Plate 5 mm for a tune of 12,840 kg., alongwith other items. The matter was enquired into by the authorities and from the enquiry report it is found that the applicant's husband, late Amulya Kumar Biswas was held responsible for the irregularities in the maintenance of store records and thereby, the applicant cannot escape the responsibility of the husband. It is also stated that the respondents made attempt to write off the said amount and steps were taken to pay full DCRG money to the applicant but ultimately it was not possible as existing rules do not permit any relaxation except to recover the Government dues. Accordingly the order for recovery from the DCRG and relief of pension of the widow for the amount of Rs.71,392.34 has been passed by a letter dated 13.11.92 (Annexure/C to the application) and by another letter dated 3.9.96 (Annexure/F to the application). So, the applicant is not entitled to get any relief in this case.

3. Mr.P.C. Das, learned advocate submits that during the



life time of the applicant's husband no enquiry was held in his presence and no responsibility has been fixed, as stated in the application after due enquiry within the knowledge of the applicant or her husband and the responsibility as fixed cannot be acted upon as per alleged enquiry report of the respondents ^{which was done} without giving any opportunity to the applicant. Mr. Das further submits that after the death of the applicant's husband nothing can be recovered because no chargesheet has been filed on the applicant's husband because of alleged missing of the M.S. plate from the store. No departmental enquiry has been made within the knowledge of the applicant's husband. So, for such missing ^A plate, DCRG amount cannot be withheld. Thereby the applicant is entitled to get refund of the entire amount of DCRG money with interest.

4. Mr. P. Chatterjee, learned advocate appearing on behalf of the respondents submits that the respondents has authority to deduct the Government dues from the admissible family pension or DCRG money due to the applicant's husband. As per provision of Rule 323 of Manual of Railway Pension Rules, 1950 the respondents are entitled to recover the Government dues from the pensionary benefits without taking any consent from the Government servant concerned or his legal heirs. So, according to Mr. Chatterjee, the respondents had rightly deducted the said amount from the DCRG money of the applicant's husband. It is specifically stated in the said rule that 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. Mr. Das, learned advocate submits that ^{new} pension rule is not applicable in this case, since the applicant's husband died in the year of 1991 and the present ^{Rule} rule has come into operation from the year 1993.

5. In view of the aforesaid circumstances and divergent

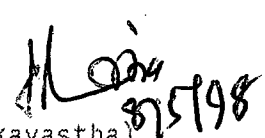
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arguments advanced by the learned advocates in this case, I do not find any dispute about the power vested upon the respondents for the purpose of recovery of the Government dues from pensionary benefits, but it should be ascertained whether before due enquiry was held against the applicant's husband for holding responsibility for causing loss to the Government on the allegations made therein. It is now well settled law of the land that no order detrimental to the interest of the citizen should be issued without giving him a reasonable opportunity of being heard to present his case or without giving him an opportunity to state his case. In the reply the respondents nowhere stated that enquiry was held in the presence of the applicant's husband and he was given an opportunity to state his case on the missing of the M.S. plate, as alleged in the reply. In support of the averments made in the application the respondents did not produce any material or evidence before me to show that any notice was served upon the applicant's husband in respect of missing of M.S. plate for which responsibility has been fixed against the applicant's husband. In the absence of any material in support of the case of the respondents it can be safely presumed that such responsibility has been fixed without giving any opportunity to the applicant's husband and the widow wife who ~~has~~ as a legal representative has a legal right to challenge any action of the respondents against her husband while her husband was in service. it remains admitted fact in this case that no proceeding or chargesheet has been drawn up against her husband fixing the responsibility for the missing of the said M.S. plate, as alleged in the reply, even after granting family pension to the applicant and after giving appointment to the son of the applicant on compassionate ground. So, action of the respondents for withholding the DCRG money on the basis of the so called enquiry report which was conducted by the respondents against the applicant's husband violating the principle of natural justice,

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is not sustainable and the husband of the applicant cannot be held responsible for payment of the said loss to the Government.

6. In view of the aforesaid I hold that the applicant is entitled to get the DCRG money as claimed in the application and that should be paid within three months from the date of communication of this order with interest at the rate of 12% per annum on that amount and accordingly I quash the impugned orders at Annexures 'E', 'F', 'H' and 'C' of this application and accordingly this application is disposed of awarding no costs.


(D. Purkayastha)

MEMBER (J)

8.5.1998