IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

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Date of Decision: 08.1.97

1. OA 480/95 - Kishna (Applicant),
2. OA 484/95 - Smt. Omwati (Applicant),
3. OA 485/95 - Smt. Tulsi Devi (Applicant),
4. OA 486/95 - Magha Ram (Applicant), and
5. OA 487/95 - J.H.Turner (Applicant)

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. FA&CAO, Northern Railway, B.H.N.D.L.S. (New Delhi).
3. Divisional Personnel Oficer, Northern Railway, Jodhpur.
4. Divisional Accounts Officer, Northern Railway, Jodhpur.
5. Divisional Audit Officer, Northern Railway, Jodhpur.
6. Divisional Railway Manager, Northern Railway, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN

For the Applicants ... Mr.N.K.Khandelwal

For the Respondents ... Mr.R.K.Soni

O R D E R

PER HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN

Applicants, named above, have filed these applications u/s 19 of the Administrative Tribunals Act, 1985, impugning Ann.A-1, by which the amount, mentioned therein, is sought to be recovered from their pensionary benefits and their pension is being reduced/revised. These applications involve common questions of law and facts and, therefore, these are being disposed of by a common order.

2. Heard the learned counsel for the parties.

3. Applicants, Smt.Omwati and Smt.Tulsi Devi, are widows. Their hushands had retired on superannuation from railway service. The other applicants namely Kishna, Magha Ram and J.H.Turner retired from railway service on superannuation on various dates mentioned in their applications. The applicants were drawing pension, as fixed by the respondents in accordance with the extant rules. However, respondent No.4, on the basis of an audit report, issued the impugned orders, by which the excess payments made to the applicants are sought to be recovered from their

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pensionary benefits without issuing any show-cause notice or affording an opportunity of hearing to them. It is contended by the applicants that there was no fault on their part and they were allowed to draw their respective pensions for a considerably long time and, in the circumstances, any over payments made to them cannot be recovered now. It is also contended that the recovery, after a lapse of a considerably long time, is unconstitutional and such recoveries may be waived in view of the provisions contained in Rule 1016 of the Railway Establishment Manual Vol.1. The respondents have contended in their reply that the recovery of excess payments is regulated in terms of Para 1047 of the Manual of Railway Pension Rules and such over payments can only be recovered from the relief on pension. It is also stated by the respondents that the power to waive the recovery of over payment is discretionary. It is also contended by the respondents that the impugned recovery is being made from the retirement benefits of the applicants and the respondents are well within their rights to do so.

4. It is borne out by the record that before issuing the impugned orders, at Ann.A-1, by which the amount mentioned therein was sought to be recovered and pension was sought to be reduced or revised, no opportunity of hearing or show-cause notice against it was given to the applicants. The applicants have obviously been visited with civil consequences but they have not been granted any opportunity to show-cause against the impugned orders and, in such circumstances, there is no doubt that the impugned orders were passed in flagrant violation of the principles of natural justice since the applicants have been made to suffer substantial financial loss without being heard. The impugned orders, at Ann.A-1, are, therefore, liable to be quashed. Reliance is placed on a decision of Hon'ble the Supreme Court, reported in (1994) 28 ATC 258, Bhagwan Shukla vs. Union of India and others.

5. In the result, the impugned orders, at Ann.A-1, are set aside. However, the respondents are free to pass a fresh order in accordance with law after issuing a show-cause notice to the applicants and after affording an opportunity of hearing to them in respect of the recoveries sought to be made from them. These applications are decided accordingly with no order as to costs.

(GOPAL KRISHNA)
VICE CHAIRMAN

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