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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 347 of 2001

DATE OF DECISION 25.9.2002

Smt. Sumitra Petitioner

Mr. Y.K. Sharma Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. K.K. Vyas Advocate for the Respondent (s)


CORAM :

The Hon'ble Mr. Gopal Singh, Administrative Member.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter ~~or not~~ ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.


(J.K. KAUSHIK)
Judicial Member.


(GOPAL SINGH)
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

O.A. NO. 347 of 2001

Date of Order: 25.9.2002

Smt. Sumitra W/o Late Shri Girish Kumar Gupta, Head Train Examiner, Sabarmati, Western Railway, aged about 42 years, R/o 5, Pareek Building, K.E.M. Road, Bikaner - 334001.

...APPLICANT.

V E R S U S

1. General Manager, Western Railway,
Church Gate, Mumbai.
2. Divisional Railway Manager,
Western Railway,
Vadodara - 390002.
3. Divisional Personnel Officer,
Western Railway,
Vadodara - 390002.
4. Senior Divisional Accounts Officer,
Western Railway,
Vadodara - 390002.

...RESPONDENTS.

Mr. Y.K. Sharma, counsel for the applicant.

Mr. K.K. Vyas, counsel for the respondents.

CORAM:

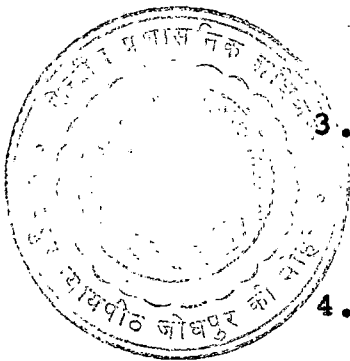
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

O R D E R

PER MR. J.K. KAUSHIK, JUDICIAL MEMBER.

Applicant Smt. Sumitra W/o Late Shri Girish Kumar Gupta
has filed this Original Application under Section 19 of the
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Administrative Tribunals Act, 1985 and has prayed the following reliefs :-

"a) That this Hon'ble Tribunal may kindly be pleased to quash the impugned order placed vide Annexure A/1 as far as it relates to recovery of Rs 203645/-.

b) The Respondents may further be directed to refund the sum of Rs 138581/- as shown in Para 4.14 along with interest @ 12% P.A.

c) The Respondents may also be directed to refund the amount of Dearness Allowance which has been deducted from her family pension w.e.f. 01.5.2000 with further directions to SBI/Bikaner not to recover any amount from Dearness Allowance payable on Family Pension from time to time.

d) That any other orders/Relief/directions may kindly be passed/granted which this Hon'ble Tribunal deems fit, proper and just in favour of the applicant.

e) That the cost of the application may also be awarded

2. The brief facts of this case as narrated in the Original Application are that the applicant is the wife of Late Shri Girish Kumar Gupta. Late Shri Girish Kumar Gupta was last employed as Head Train Examiner at Sabarmati Station in Western Railway. He was inflicted the penalty of removal from service w.e.f. 05.06.1991 and had completed about 17 year of qualifying service. Late Shri Gupta challenged the penalty order before Ahmedabad Bench of this Tribunal vide O.A. No. 60/1993. During the pendency of the said O.A., he expired on 03.12.1996. No final settlement of applicant's husband was made during his life-time.

3. The applicant had to take up the matter regarding the payment of P.F. vide O.A. No. 80/98 before this Bench of the

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Tribunal and the same was allowed vide order dated 20.09.1999. The applicant was paid Rs 18951/- and this amount was short of Rs 21968 as shown in the P.F. Slip. A Contempt Petition was moved in the matter. An order came to be issued by the respondent vide letter dated 29.04.1999 by which final settlement of Late Shri Girish Kumar Gupta, was made as per the order maximum compassionate allowance, was ordered to be paid in pursuance of letter dated 28.12.1992. Thereafter, certain papers were got signed by the applicant in the name of Family Pension Papers without explaining their contents.

4. That the matter was represented with the Authorities at several times but of no avail. A reply was given to the applicant vide letter dated 11.07.2000 (Annexure A/4), intimating that the recoveries have been worked out to Rs 2,03,345/- but did not spell out from which source these recoveries will be made and the matter was referred to Accounts Department. The applicant submitted detailed representations in the matter and she was forced to sign an application dated 28.08.2000 by the Official Respondent No. 4 with a warning that the pension will not be released unless she signed the papers. Thereafter, the pension pay order has been issued and a direction has been given to the disbursing office that adjustment of the family pension has been made towards the outstanding dues and an amount of Rs 65064/- is still outstanding and the same should be deducted/adjusted from the Dearness ~~relief~~ which is payable to the applicant after 01.05.2000 and onwards.

5. The Original Application has been filed on number of grounds i.e. family pension is the property of the individual and no recovery be made from the same, as regards the accommo-

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dition, the deceased Shri Gupta was removed from service w.e.f. 05.06.1991 and expired on 03.11.1996 and no action was taken to vacate the accommodation and Shri Gupta retained the accommodation with the consent of the respondents, the penal rent cannot be recovered from the family pension. There is a provision to make adjustment of certain recoveries from the gratuity amount, that too if conditions precedent thereof are satisfied as per Rule 16 or Rule 98 of Railway Services (Pension) Rules, no details regarding any advance scooter advance/festival advance have been given and if the interest is being charged on the advance then applicant also ought to have been given interest on her dues, the applicant did not give any consent for making deductions from family pension and the same was obtained by force and can have no legal sanction.

6. The respondents have filed the counter reply to the Original Application and have controverted the facts and grounds mentioned in the Original Application. It has been averred that the applicant served only for 16 years, 4 months and 2 days. The applicant deliberately did not vacate the railway quarter, the P.F. dues alongwith interest have been paid in pursuance with the judgement of this Tribunal and even a C.P. was dismissed after satisfying the compliance of the same. It is wrong to contend that the pension papers were got signed from her without explaining the contents of the same.

7. It has been further averred in the reply that applicant's husband remained in occupation in the Govt. accommodation and the penal rent has been worked out as per the calculation-

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sheet (Annexure R/3) and because without the consent of the payee ~~from~~ no recovery can be made from the pension/P.F. therefore fact of recovery could not be mentioned in the PPO and recoveries have been made from the family pension pensioner's on ~~amount~~ / written consent. The representation of the applicant regarding waiving of the recovery of the penal rent was not considered proper because ~~of~~ the huge amount was involved and since it affected the public exchequer adversely. All the adjustment have been done after her consent which was voluntarily given in the office of the respondents. Therefore, Original Application deserves to be dismissed with costs.

8. We have heard the learned counsel for the parties and carefully perused the records of this case, In addition to the relevant rules relating to the grant of pension/family pension and recoveries to be made thereof.

9. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application and has submitted the order of compassionate allowance, was made in the year 1992 but during the life-time of the deceased Govt. servant no amount was paid and it is only on 29.4.99., a communication for final settlement was issued. Not only this even the PPO has been issued on 31.05.2000. The PPO does not make any mention regarding any recovery but with a view to defeat the claim of the applicant, the complete amount of compassionate allowance/family pension, gratuity leave encashment etc. has been withheld in the garb of recovery of penal rent and recovery of some advances.

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10. It has been further submitted that the deceased Govt. servant remained in occupation of the railway accommodation with the consent of the department and at no occasion any action was taken for his eviction during his life-time or thereafter. The house was vacated on 18.01.1997. Huge amount is involved and had the department acted diligently the applicant would have not been made to suffer for none of ~~any~~ her faults.

11. It has been further stressed that the amount of the P.F. or the pension/family pension are not the bounty, they are the property of the individual and the same cannot be made subject to any adjustment. The applicant has not given any consent for making adjustment from due amount. He has placed strong reliance on a judgement of Apex Court in Gorakhpur University & Ors. Vs. Dr. Shitla Prasad Nagendra 2001 (2) SCSLJ, 247, & Ors., wherein their Lordships have held that University did not take any action to enforce their right to recover possession of quarter in accordance with law, impugned order of withholding the pension and P.F. for recovery of penal rent issued, the High Court ordered for payment of entire pension and P.F. amount with interest and has held that penal rent cannot be recovered from the pension and P.F. account. Hence, the action of the respondents is ex facie, illegal and the applicant is entitled to all the reliefs claimed in this Original Application.

12. The learned counsel for the applicant has also invited our attention to Rule 16 of Railway Services

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(Pension) Rules, 1993. The sub-rule 6 & 7^{and 8 of Rule 16} are relevant and the same are extracted as under :-

"(6) The recovery of licence fee for the occupation of the Government accommodation beyond the permissible period of four months after the date of retirement of allottee shall be the responsibility of the Directorate of Estates. Any amount becoming due or amount of licence fee for retention of Government accommodation beyond four months after retirement and remaining unpaid licence fee may be recovered by the Directorate of Estates through the concerned Accounts Officer from the dearness relief without the consent of the pensioner. In such cases no dearness relief should be disbursed until full recovery of such dues have been made.

NOTE: For the purpose of this rule, the licence fee shall also include any other charges payable by the allottee for any damage or loss caused by him to the accommodation or its fittings.

(7) A railway servant shall vacate the railway accommodation immediately after his retirement.

(8) In case where a railway accommodation is not vacated by a railway servant after superannuation or after cessation of service such as voluntary retirement, or death, the full amount of the retirement gratuity, death gratuity or special contribution to Provident Fund, as the case may be, shall be withheld. The amount so withheld shall remain with the administration in the form of cash which shall be released immediately on the vacation of such railway accommodation."

It has been submitted that licence fee can be recovered from the dearness relief and after cession of service full amount of retirement gratuity, death gratuity or special contribution to P.F. shall be withheld. Further our attention was drawn to sub-para 4 of para 15 of Railway Services (Pension)

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Rules, 1993. The contents of the same are extracted as under:-

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

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

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). It is permissible to make recovery of Government dues from the retirement, death, terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the members of his family in the case of a deceased railway servant."

13. The learned counsel for the applicant has also submitted that the husband of the applicant seems to have been never informed about any recovery of the amount of

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advance towards purchase of Scooter or the Festival advance. Specific averments have been made in the Original Application but the respondents have not furnished any particulars even in the reply and thus these amounts cannot be recovered even from the amount payable towards the gratuity of the deceased Government servant.

14. On the other hand, the learned counsel for the respondents has reiterated the stand of the respondents ^{reply to} narrated in the Original Application and has submitted that the amount of pension and other dues has been adjusted after obtaining the consent of the applicant. There has been no illegality or infirmity in the action of the respondents in as much as it was incumbent upon the husband of the applicant to vacate the Government accommodation within 4 months from the date of his removal from service and also clear the ~~de~~ outstanding dues as mentioned in his service book i.e. Scooter advance and Festival advance.

15. We have given our considerable thought to the rival contentions raised before us in this case. The perusal of Rule 15, 16 and even 98 of the Railway Services (Pension) Rules, 1993, makes a provision of recovery for making recoveries, adjustment from the gratuity amount. There is a provision even to withhold the amount payable towards gratuity, in case of the penal rent but we have not been shown any provision where the recovery can be made from pension/family pension except the Rule 9 of the said Rules wherein the power has been given to the President to withhold or withdraw the pension. In the present case no proceedings have been taken under Rule 9 of the said Rules.

16. Taking all the events together in relation to the action of the respondents, we can safely conclude that the case of the applicant has been treated by neglect and the possibility of getting signed under duress the letter of her consent (Annexure A/6) from her cannot be ruled out. However, there is no rule that any recovery can be made from the amount payable towards pension or P.F. even with the consent of the individual. In this view of the matter, we are of the firm opinion that the action of the respondents has not been fair and making of the adjustment to meet out certain recoveries from the compassionate allowance/family pension is illegal and arbitrary.

17. Now the other question for our examination is as regards the charging of the penal rent, it is admitted that no proceedings were ever taken by the respondents for evicting the deceased Government servant till the vacation of the Government accommodation. The respondents seems to be not coming out fairly as regards to the action taken by them for recovering the penal rent/damage rent or any proceedings for eviction of the deceased Government servant during life-time. The damage rent is being thrust upon the widow of the deceased Government servant without any prior notice. Just to deny the payment of the amount of compassionate allowance/family pension and other retiral dues of the deceased Government servant in the name of adjustment of huge recoveries. We are not persuaded with the contentions of the respondents that there is no illegality in their action in adjusting the amounts dues and payable to the widow of the deceased Government servant

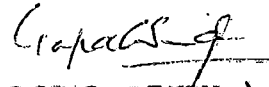
by deducting the amount of certain recoveries which are coming out like a bolt from blue. The respondents are to thank themselves for their inaction or negligence and in our opinion no recovery from the amount of pensionary benefits specially from a widow like the present applicant can be held to be justified. However we would only permit the recovery of the normal rent for the period from the date of removal to the date of vacation of the Government accommodation.

18. In view of the foregoing discussions, we are of considered opinion that the Original Application deserves to be allowed in part and we pass the order as under :-

"(i) The impugned order dated 17.10.2000 (Annex. A/1) is hereby quashed. The respondents are directed to refund the amount of compassionate allowance/ family pension, leave encashment, gratuity etc. payable to the applicant except that the respondents may make recovery of normal rent for the Government accommodation from 5.6.1991 to 18.01.1997 during which period the quarter remained in occupation of deceased Government servant/applicant. However, no interest on any amount shall be payable/charged.

(ii) This order shall be complied with within a period of three months from the date of receipt of a copy of this order, failing which interest @ 9% per annum shall be payable on the due amount on expiry of the stipulated period. There shall be no order as to costs."


(J.K. KAUSHIK)
JUDICIAL MEMBER


(GOPAL SINGH)
ADM. MEMBER