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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 11.9.2002

OA 57/2002

Smt. Bhagwati Devi w/o Late Shri Jamunadas r/o Gehloto ki Gali, Taparia Bera, Outside Chandpole Gate, Jodhpur.

... Applicant

Versus

1. Union of India through General Manager, N/Rly, Baroda House, New Delhi.
2. Divisional Rail Manager, N/Rly, Divisional Office, Jodhpur.
3. Divisional Personnel Officer, N/Rly, Jodhpur.

... Respondents

CORAM:

HON'BLE MR. A. P. NAGRATH, ADM. MEMBER

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

For the Applicant

... Mr. Praveen Dave

For the Respondents

... Mr. Salil Trivedi

ORDER

PER MR. A. P. NAGRATH

Applicant is the wife of late Shri Jamunadas who, while holding the post of Passenger Driver, took retirement on medical grounds on 25.6.97. While releasing his retiral benefits, an amount of Rs.10000/- was withheld from his gratuity. Shri Jamunadas expired on 20.9.97. Out of the amount of Rs.10000/-, withheld by the respondents, the applicant received payment of Rs.4333/- by cheque dated 22.2.2000. She submitted a representation to the department claiming interest on the delayed payment of the balance amount of DCRG and also protested against the deduction of an amount of Rs.5667/- vide her representation dated 3.4.2000. By the order dated 8.3.2001 (Ann.A/1) it has been informed that the amount deducted from the total sum of Rs.10000/- was on account of refixation of her husband's pay and that on such withheld amount, no interest is payable. It is this communication which is under challenge in this OA, wherein the applicant has made a prayer that the respondents be directed to release the balance amount and also pay interest on the entire amount of Rs.10000/-.

2. Heard the learned counsel for the parties.

3. It is not the case of the respondents that they had detected wrong

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fixation of late Shri Jamunadas while he was still alive and in service. It is only vide impugned letter dated 8.3.2001, the applicant has been advised that this amount has been withheld on account of re-fixation of pay of late Shri Jamunadas. Any order which is adverse to an employee and because of which he is visited upon by civil consequences cannot be taken unless a show-cause notice has been given to the person affected and his explanation heard or taken into account. No such thing has been done in this case. It is not in dispute that if a wrong pay fixation has been done, the competent authority is within its right to take a corrective action but such a corrective action cannot be taken without hearing the person affected by the same. In this case, where the employee had not only retired but had also expired, there could be no occasion for the respondents to have taken any action in respect of his pay detrimental to his interest after his death. This action is simply not sustainable legally and any consequence arising out of that cannot be enforced. As a matter of fact, the legal position is well settled even in respect of such employees who are well in service but who received wrong payments but due to no fault on their part. It has been held that in such cases while the pay can be corrected and re-fixed, no recoveries can be made for the payments already made.

4. In Sunil Baran Mukherjee v. Union of India & Ors., (1992) 21 ATC 80, it was held by the Calcutta Bench of this Tribunal that over-payments made during service of the petitioner could not be recovered from his retiral benefits.


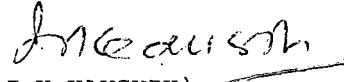
5. In Shyam Babu Verma & Ors. v. Union of India & Ors., (1994) 27 ATC 121, it was observed by the Apex Court that the higher scale was received by the petitioners due to no fault of theirs and that scale was being reduced in the year 1984 w.e.f. 1.1.1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, it was directed that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.

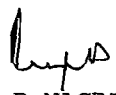
6. In P.H.Reddy & Ors. v. National Institute of Rural Development & Ors., 2002 (2) ATJ 208 SC, it has been held by Hon'ble the Supreme Court that while authorities are entitled to re-fix the pay if the same is erroneously fixed earlier but no recovery can be made from the employee

concerned.

7. In view of such clearly settled legal position, the respondents have no right to make any recovery from the retiral benefits of late Shri Jamunadas. It is not the case of the respondents that the applicant had any contribution when his pay was allegedly fixed wrongly. If at all any fault lies, it lies with the functionaries who so fixed his pay and the department is free to take action against them. There is no occasion now available with the department to make any change in the pay of late Shri Jamunadas as such an action would be in total violation of the principles of natural justice. The amount of Rs.5667/-, which has been withheld from the gratuity, must be released to the applicant at the earliest.

8. In the conspectus of the circumstances as brought out above, this OA is allowed. The respondents are directed to release the withheld amount of Rs.5667/- alongwith interest, as per rates applicable to GPF accumulation from time to time, w.e.f. 1.11.97 upto the date of actual payment. Similar interest is also payable w.e.f. 1.11.97 on the amount of Rs.4333/-, which was paid on 22.2.2000. The respondents are directed to comply with this order within a period of two months from the date of receipt of a copy of this order. No order as to costs.



(J.K.KAUSHIK)
MEMBER (J)


(A.P.NAGRATH)
MEMBER (A)