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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 139/2004

Date of order: 10.12.2004

CORAM:

THE HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN

Smt. Asha Rani W/o Late Shri Khushal Chand, aged about 55 years, resident of 12-C, Masuriyan, U.I.T. Colony, Jodhpur.

(Husband of the applicant late Shri Khushal Chand was holding the post of M.C.M. in the Railway Department at Merta Road).

.Applicant.

Mr. Kuldeep Mathur, Advocate for the applicant.

V E R S U S

- (1) The Union of India, through the General Manager, North-West Railways, Jaipur.
- (2) The Divisional Rail Manager, North-West Railways, Jodhpur.
- (3) The Divisional Personnel Manager, North-West Railway, Jodhpur.

.....Respondents

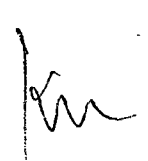
Mr. Vinay Jain, Advocate for the respondents.

O R D E R (ORAL)

:PER HON'BLE MR. KULDIP SINGH, VC:

The applicant, Smt. Asha Rani has filed this Original Application No. 139/2004 challenging the order dated 11.12.2003 (Annexure A/1) by which her representation against alleged illegal recovery from the pension had been rejected.

2. The facts of the case in brief are that the husband of the applicant late Shri Khushal Chand was an employee of Northern Railway who retired on 31st December 1996 on attaining the age of superannuation. After the sad demise of late Shri Khushal Chand, a sum of Rs. 97,906/- as commuted value @ 40% of



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pension was ordered to be paid to late Shri Khushal Chand on retirement vide P.P.O. No. 0196060873 dated 01.09.1998. However, the respondents instead of depositing a sum of Rs. 97,906/- in her pension saving pass book account in the Bank of S.B.B.J., Ajmer only credited a sum of Rs. 89,309/- in her account on 29.12.1998 and a sum of Rs. 8,596/- was recovered from the amount of commuted pension to be deposited in the applicant's account. It is also submitted that the recovery from the pension of the applicant has been made without any notice or opportunity of hearing so the recovery deserves to be declared as illegal and the same may be quashed and set aside. It is also submitted that that respondents may be directed to refund the amount illegally deducted from the pension of the applicant with interest @ 18% per annum.

3. The respondents who are contesting the Original Application have filed the reply and submitted that as far as the commutation is concerned, late Shri Khushal Chand was entitled to commutation @ 33-1/3% whereas he has erroneously been paid commutation @ 40%. It is further submitted that as per the 5th Pay Commission's recommendations, commutation value @ 40% of the pension is to be paid to the ex employees if option is given and if the ex employees expired before exercising his option his commutation will not be revised @ 40%. It is submitted that applicant's husband admittedly expired before exercising this option, therefore, she was not entitled for 40% commutation, thus, revised commutation was calculated @ 1/3 of pension therefore recovery had been effected. Similarly, applicant had made certain representations and vide Annexure

[Signature]

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R-1 she was duly informed that action of respondents is in order.
So, they pray that the recovery should not be quashed.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Admittedly, after Annexure R/1, the applicant had made another representation and Annexure A/1 was written to the applicant rejecting her representation on merits which was done on 11th December 2003 and the Original Application has been filed on 21st May 2004. Thus, on the face of it the plea regarding limitation as taken by the respondents when the applicant has filed the Original Application within one year of the rejection of the representation on merits on 11th December 2003, is liable to be rejected. Admittedly, the recovery has been affected without issuing any show cause notice to the applicant and without affording any opportunity of hearing to the applicant which is against the principle of natural justice and such type of the application cannot be sustained. So I hereby allow the Original Application and quash the recovery effected by the respondents and direct them to refund back the amount to the applicant within a period of two months from the date of receipt of copy of this order. The applicant will also be entitled to get interest @ 7% per annum on the amount from the date it was recovered to the date of refund. The respondents are at liberty to take any action in accordance with law if so advised.


(KULDIP SINGH)
VICE CHAIRMAN

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Recd. Copy
Adv
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Part II and III destroyed
in my presence on 31/10/13
under the supervision of
section officer () as per
order dated 18/10/2013
J.K. Sharma
31.10.2013
Section officer (Record)