

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 263 of 1997

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

Smt. Surya Prabha, W/o late P. Satyanarayana at present residing at Narasingh Rao Badi, Behind Viswakarma Mandir, Kharida Bazar, PO & PS, Kharagpur, Dist. Midnapore

.... Applicant

VS

1. Union of India, service through General Manager, S.E. Railway, Calcutta-43

2. General Manager, S.E. Railway, Garden Reach, Calcutta-700 043

3. F.A. & C.A.O.(Pen), S.E. Railway, GRC, Calcutta-43

4. Dy. FA & CAO(W/S), S.E. Railway Kharagpur

5. Manager, Bank of India, Kharagpur

.... Respondents

For the Applicant : Mr. B. C. Sinha, counsel
Mr. P. K. Ghosh, counsel

For the Respondents: Mr. P. Chatterjee, counsel

Heard on 26.5.1999

... Date of order: 26.5.1999

O R D E R

One, Smt. Surya Prabha being widow of Railway employee, late P. Satyanarayana filed this application seeking the following reliefs :

a) To set aside and quash the order dated 28.9.96 addressed to the Bank of India, Kharagpur Branch and Bank's letters dated 9.10.96 and 18.12.96 (Annexures 'A3' and 'A5' respectively)

b) To direct the respondents to pay the original Family

Pension without effecting any recovery month by month

c) To direct the respondents to refund the amount

recovered from the family pension and DCRG to

V

18% interest per annum and costs.

2. The grievance of the applicant, as stated in the application, is that the husband of the applicant died in harness on 14.6.85 in the Kharagpur Railway Hospital. Thereafter her son got the appointment in the Railway on compassionate ground. But unfortunately, her son also died leaving behind the widow mother the present applicant. The respondents took action to allot the quarter in favour of the son under the father and son rule. It is also stated by the applicant that she was getting family pension at the rate of Rs.1030/- per month as per PPO dated 3.5.86 issued by the authority and she was shocked and surprised to receive a letter dated 9.10.96 issued by the Manager, Bank of India, Kharagpur Branch, Kharagpur informing her that the Bank authorities have been advised by the Dy. authorities have been advised by authorities have been advised by the Dy. FA & CAO (W/S), Kharagpur to recover a sum of Rs.24,138/- from the Family Pension of the applicant in reasonable installments and accordingly, the Bank has started recovering Rs.555/- per month from the relief from September, 1996 onwards from the family pension of the applicant. Feeling aggrieved by and dissatisfied with the said recovery, the applicant filed this application.

3. The respondents filed a written statement denying the allegation of the applicant and it is stated that the applicant's husband, P. Satyanarayana who was working as Fitter Gr.II was allotted a Government quarter No.L-8AI-7 at the New Settlement area Kharagpur. After the death of P. Satyanarayana his son, Shri P. Ravi was appointed on compassionate ground in the month of June, 1986. Unfortunately, son, P. Ravi expired on 20.9.91. But on account of death of late P. Satyanarayana the settlement dues were to be paid to the applicant and the DCRG money has been assessed as Rs.17,816.40 by the authority for payment. But the applicant after the death of her husband and son did not vacate the quarter and she retained the quarter in her possession till

24.4.1995. The applicant was evicted from the said quarter on 25.4.1995 by the officers. As per assessment an amount of Rs.41,954/- was due to the Railway from the applicant on account of licence fee including damage rent, electricity charges and outstanding festival advance. So, Rs.17,816.40, which is payable to the applicant as DCRG money, has been adjusted against the said amount of Rs.41,954/- and after deduction of the said amount Rs.24,137.60 was still remained outstanding to be recovered from the applicant and that has been ordered to be deducted from her dearness relief. Thereby the applicant is not entitled to get any relief in this case and thus the application is liable to be dismissed.

4. Mr. Sinha, learned advocate appearing on behalf of the applicant has drawn my attention to the letter dated 26.4.95, Annexure/R1 to the reply and submits that the applicant was not in occupation of the quarter on 25.4.95 when some unauthorised persons were evicted from the quarters. Thereby the applicant cannot be held responsible for paying the licence fee for the period she ~~was~~ ^{was} not in possession of the quarter after the death of her husband. So, the assessment of the damage rent and realisation of the licence fee, as assessed by the respondents, from the applicant are arbitrary and without application of mind as per the letter dated 26.5.1995. Hence, the action of the respondents in respect of assessment of the damage rent as well as licence fee is arbitrary and illegal and that cannot be recovered from the DCRG money as well as from the family pension of the applicant. So, all the orders under challenge are liable to be quashed.

5. Mr. Chatterjee, learned advocate appearing on behalf of the respondents submits that no amount has been recovered from the family pension of the applicant. The respondents are authorised to recover the Railway dues under the provisions of Rule 15(4) (i)(b) & (c) and 15(4) (ii) of Chapter II of the

Railway Services (Pension) Rules, 1993 and the said rule states that other Government dues such as house rent, outstanding advance, non-govt. dues shall be recovered from retirement, death, terminal or service gratuity which are not subject to Pension Act, 1871 (23 of 1871) and it is permissible to make recovery of Govt. 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. Mr. Chatterjee, 1d. advocate further submits that the applicant did not challenge the order of assessment made by the authority for the purpose of recovery from the family pension of the applicant. Thereby the applicant cannot travel beyond the pleadings made in the application. So, the application is liable to be dismissed.

6. I have considered the submissions of the learned counsels of both the parties and I have gone through the records as well as the application and the reply filed by the respondents. It is found that the applicant did not make any grievance in the application about the assessment made by the authority for the purpose of recovery from the family pension. From the application it is found that the applicant's grievance was that the authority has no jurisdiction to deduct the amount of house rent or damage rent from the family pension of the applicant under the rules. Mr. Sinha, learned advocate submits that the applicant has no knowledge about the assessment order; ~~thereby~~ ^{and} she was not given any opportunity to state her case about the assessment made by the authorities. It is found that the applicant is getting family pension at the rate of Rs.375/- per month. In addition to that she is also getting dearness relief at the rate of Rs.597/- and interim relief of Rs.200/- per month. Total amount, the applicant getting is ~~to the extent of~~ Rs.1172/- per month and the respondents deducted Rs.555/- every month from the said amount of Rs.1172/-. On a perusal of the

amount of dearness relief and interim relief and the calculation as stated in para 8 of the reply it can be said that the said amount of Rs.555/- has not been deducted from the basic pension of the applicant. Dearness relief and interim relief cannot be said to be part of the pension under the rules since the definition of 'pension' has clearly excluded them to be part of pension. So, on a perusal of the rule quoted above, I find that that the respondents are authorised to deduct the licence fee or damage rent, from the dearness relief, gratuity etc. though the authority was not authorised to deduct the same from the pension. Since the applicant did not challenge the assessment of the actual house rent in this application, thereby, I am of the view that the applicant cannot ~~travail~~ beyond the pleadings in the application and she did not sought any relief in respect of the amount of assessment made by the authority for the purpose of deduction. So, in view of the aforesaid circumstances, I find no justification to set aside all those orders under challenge. However, it is found from the letter dated 26.4.95, Annexure/R1 to the reply that on 25.4.95 some unauthorised persons were on occupation of the quarter No.L/8A1-7, New Settlement, Kharagpur, for which licence fee and damage rent have been recovered from the applicant. The respondents could not produce the names of such unauthorised persons at the time of hearing and the said document/letter at Annexure/R1 has come from the possession of the respondents. The applicant of course in the application stated that she vacated the Railway quarter, but did not mention on what date she actually vacated the quarter. So, it would be appropriate on the part of the respondents to enquire about the facts as disputed by the applicant regarding the date of eviction, as stated in the letter dated 26.4.95. If it is found that the applicant was holding the quarter on 25.4.95 and no other persons have been evicted except the applicant by Police force on 25.4.95, the question of assessment need not be

disturbed' and if it is found that some other persons except the applicant were evicted from the said unauthorised occupation, it is obligatory on the part of the respondents to reassess the licence fee and damage rent, that has ^{been} ~~E~~ recovered. The enquiry as ordered by this Tribunal today, should be conducted by the respondents within two months from the date of communication of this order and till the enquiry is completed, no deduction should be made from the dues of the applicant.

7. In view of the aforesaid circumstances and with the observation made above, I dispose of the application awarding no cost.

D. Purkayastha
(D. Purkayastha)

MEMBER (J)