

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 457 of 2009

Tuesday, this the 05th day of April, 2011

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

M. Nagammal, aged 65 years, W/o. Maran,
Door No. 579, Jeevanadham Road,
Kallukkadai Medu, Pudumai Colony,
Erode-638 001.

..... **Applicant**

(By Advocate – Mr. T.C.G. Swamy)

V e r s u s

1. Union of India, represented by the General Manager,
Southern Railway, Headquarters Office, Park Town,
Chennai-3.

2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose)

This application having been heard on 16.03.2011, the Tribunal on
05-04-11 delivered the following:

ORDER

Hon'ble Mr. K. George Joseph, Administrative Member

The applicant is a widow, the only person eligible to receive all the death benefits of her son, late Jaganathan, who died on 05.11.2005 in an accident while working in the Railway service. She was issued with a pension calculation sheet dated 18.04.2006 as at Annexure A-5 showing



the amount of DCRG as Rs. 1,15,479/-. But she was paid only about Rs. 50,000/-. Aggrieved, she has filed this O.A for the following reliefs :

- (a) Direct the respondents to pay the death Gratuity as sanctioned in Annexure A-5 and all other death benefits liable to be paid to the applicant consequent upon the demise of her son late Jaganathan with interest calculated at the rate of 12% per annum from 01.06.2006 till the date of full and final settlement of the same;
- (b) Award costs and incidental to this application;
- (c) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant contended that the respondents are bound to pay the entire DCRG amount as indicated in A-5 and other death benefits. Non-feasance on the part of the respondents to pay the same is arbitrary and contrary to law.

3. The respondents contested the O.A. In their reply, they submitted that late Jaganathan was a habitual absentee who was removed from service twice in his career for unauthorised absence, but later reinstated in service treating the intervening period as Extra Ordinary leave. On innumerable occasions, he was on unauthorised absence. Even though his span of service extended from 1983 to 2005, his actual qualifying service after deducting the Extra Ordinary Leave for unauthorised absence which are counted as non-qualifying service, comes to 16 years only, based on which the DCRG amount is Rs. 65988/- only. From the above amount, a sum of Rs. 13255/- is to be recovered towards Railway dues which consists of funeral advance, electrical energy, rent and overpayment of pay and further an amount of Rs. 25758/- is to be recovered towards



dues to Southern Railway Employees Co-Operative Credit Society, Trichy. Thus, the total amount to be recovered comes to Rs. 39013/-. After deducting the same, the net amount payable towards DCRG comes to Rs.26975/- and the same was paid alongwith other settlement dues amounting to Rs. 26356/-. Based on a wrong notion that the late employee had got qualifying service of 21 years, his DCRG was assessed as Rs. 1,15,479/-. On verification, the qualifying service was found to be only 16 years. Accordingly, his DCRG was estimated as Rs. 65988/-. By an oversight the earlier proposed amount of Rs. 1,15,479/- towards DCRG was left out to be deleted in Annexure A-5. The applicant has no right to claim any additional amount other than what is legally due to her. The O.A is liable to be dismissed.

3. In the rejoinder filed by the applicant, it was submitted that the applicant is not responsible for the mistake alleged to have been committed by the respondents. The period of service not specifically shown as non qualifying in the service records with the acknowledgement of the railway servant concerned cannot be treated as non-qualifying service. The respondents have not shown how they can make the recovery in respect of electrical energy, rent, overpayment of pay and dues towards the Southern Railway Employees Co-Operative Credit Society in the absence of statutory empowerment of respondents to do so.

4. In the reply to the rejoinder, the respondents submitted that the inadvertent omission on the part of the respondents in making necessary corrections in Annexure A-5 will not give the applicant any added



advantage for claiming additional benefits other than what is legally due to her. Rule 15 of the Railway Services (Pension) Rules, 1993, authorises recovery of dues from DCRG.

5. In the additional rejoinder filed by the applicant, it was submitted that arbitrarily reducing the qualifying service as ascertained in Annexure A-5 without giving due notice is unsustainable. In Para 1234 of the Indian Railway Administration and Finance, it is stipulated that the signature of the employees governed by Pension Rules is to be obtained in the service book in token of their having inspected the service books. The recovery as stated by the respondents is impermissible in the absence of any statutory provision.

6. I have heard Mr. T.C. Govindaswamy, the learned counsel for the applicant and Mr. Sunil Jacob Jose, the learned SCGSC, appearing for the respondents and perused the records.

7. Late Jaganathan was an employee governed by the Pension Rules. As per Para 1234 of the Indian Railway Administration and Finance, it is the duty of every Head of Office to initiate action to show the service book to the railway servants governed by pension rules under his administrative control every year and to obtain their signatures therein in token of their having inspected the service books. As per the say of the respondents, late Jaganathan was a habitual absentee. He was removed from service twice in his career for unauthorised absence. Afterwards, considering his appeal he was reinstated in service duly treating the intervening period as



Extra Ordinary Leave. Other than Extra Ordinary Leave granted on medical certificates, the appointing authority at the time of granting Extra Ordinary Leave may allow the period of that leave to count as qualifying service if such leave is granted to a Railway servant due to his inability to join or rejoin duty on account of civil commotion or for prosecuting higher scientific or technical studies as per Rule 36 of Railway Services (Pension) Rules, 1993. Therefore, in the case of late Jaganathan, the respondents are justified in not counting his Extra Ordinary Leave for the purpose of pensionary benefits. It is true that his service book does not contain the signature of late Jaganathan in token of his having inspected it. This is a technical infirmity. The respondents have been magnanimous in reinstating a habitual absentee in service on two occasions. If the service book was not inspected by the employee, the blame should be shared by the employee also. The technical infirmity of not having employee's signature in the service book cannot legitimise counting of unauthorised absence as qualifying service for the purpose of pensionary benefits. The respondents have every right to correct an inadvertent error in calculating the qualifying service of late Jaganathan. The initial error on the part of the respondents will not confer an enforceable right on the applicant to claim additional benefits other than what is legally due to her.

8. The relevant part of Rules 15(2) and 15(4)(ii) of Railway Services (Pension) Rules, 1993, read as follows :

"15(2) : The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted



against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4)."

"15(4) (ii) :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."

9. As per the above rules, any advance, overpayment of pay and allowance, house rent, dues pertaining to Railway accommodation etc. can be recovered from the DCRG of the employee concerned without obtaining his consent. Therefore, the respondents are justified in making recovery of Rs. 13255/- from the DCRG amount of Rs. 65988/-. However, as per 15(3)(c) of the Pension Rules, the amounts payable by a railway servant to Consumer Co-Operative Societies, Consumer Credit Societies and the autonomous organisation may be recovered from the retirement gratuity which has become payable to the retiring railway servant provided he gives his consent for doing so in writing to the administration. In the instant case, the respondents have no case that late Jaganathan had given his consent for recovering the amount payable by him to Southern Railway Employees Co-Operative Credit Society, Trichy. There is no justification or legal basis for recovering the amount of Rs. 25758/- from the DCRG amount of late Jaganathan. The amount unauthorisedly recovered by the respondents towards dues to Southern Railway Employees Co-Operative Credit Society, Trichy, is to be refunded to the applicant. Accordingly, the O.A. is allowed to the extent indicated below.

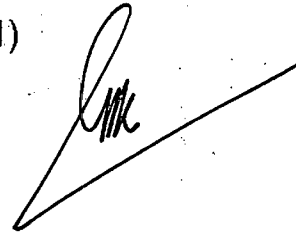
10. The respondents are directed to pay the applicant an amount of Rs.



25758/- which was recovered unauthorisedly towards dues to Southern Railway Employees Co-Operative Credit Society, Trichy, within a period of 60 days from the date of receipt of a copy of this order.

11. No order as to costs.

(Dated, the 05th April, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.