

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.480 of 2005

Wednesday, this the 20th day of September 2006

C O R A M :

HON'BLE MR.K.B.S.RAJAN, JUDICIAL MEMBER

Chandrika Rajan,
Karayil House,
Sankara Iyer Road, Thrissur – 4.

...Applicant

(By Advocate Mr.K.R.B.Kaimal & Sandesh Raja)

Versus

1. Union of India represented by its Secretary
Ministry of Railways, New Delhi.
2. The Senior Divisional Manager,
Southern Railways, Thiruvananthapuram.
3. The Senior Divisional Accounts Officer,
Southern Railways, Thiruvananthapuram.
4. The Senior Divisional Personal Officer,
Southern Railways, Thiruvananthapuram.

...Respondents

(By Advocate Mrs.Sumathi Dandapani)

This application having been heard on 20th September 2006, the Tribunal on the same day delivered the following :-

ORDER

HON'BLE MR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant's husband, while employed in the Railways as senior Section Engineer, Permanent Way, Chalakkudi, expired on 28-10-1999 and the applicant has been granted the Family Pension, Welfare Fund and the Provident Fund accumulations of her husband. However, D.C.R. Gratuity was not paid to her. When she approached the respondents vide letter dated 01-03-2000, she was informed that the applicant was issued with a charge memo dated 15.07.1998 on account of non furnishing of the stock position while joining duty at Chalakkudy. In fact, according to the applicant, necessary reply was given by

her husband on 17-09-1998 and subsequently no further action was taken in the matter. Thus, no inquiry was conducted during the life time of the applicant's husband, much less any amount has been arrived at as due from the applicant. Hence, according to the applicant, her husband's D.C.R. Gratuity cannot be appropriated or adjusted and the same is liable to be disbursed to her. This O.A has thus been filed with the relief for a direction to the respondent to pay the D.C.R. Gratuity of the husband of the applicant with interest at 18%.

2. The O.A has been resisted by the respondents. Their contention as contained in the reply is as under:-

“3. ... The applicant's husband, while working as a Senior Section Engineer/Permanent Way/Chalakkudi expired on 28.10.1999. During his tenure at Chalakkudi from 10.6.1997 no stock verification of materials in the Section could be conducted due to non-submission of Stores return statements by him. After his demise on 28.10.1999, K.R.Kochuraman was posted as in-charge Section Engineer of Chalakkudi Section and in the absence of statements the inventory of Stores materials was undertaken by competent officials Stock Verifiers and all the available materials in the Section were taken into account. On scrutinizing the inventory it was noticed that different materials costing to an amount of Rs.1,320,883 were deducted as excess and materials costing to an amount of Rs.1,342,955 were detected as short. The valuation of these materials was done at scrap value. The variation had occurred due to failure on the part of the Senior Section Engineer in maintaining the accounts of the materials under his custody properly. The materials found in excess were accounted as Railway property and for the deficiencies detected, cost has to be recovered from the employee who was the custodian of the materials and also responsible for the proper accounting of the materials. Accordingly, the amount of Death Gratuity of the late employee had to be withheld. It is submitted that the

amount of Death Gratuity in the case of the late employee is Rs.3.5 lakh. Out of this, Rs.4446 (Rs.4000, Rs.146 and Rs.300 towards Electrical Energy Charges, Rent and Diet Charges respectively) has been withheld for releasing on receipt of advice regarding settlement of accounts of materials.

4. Regarding the averments in paragraphs 4(1) and 4(2) it is submitted that contrary to the averments by the applicant the Death-cum-Retirement Gratuity of her late husband T.G.Rajan has not been paid not because of the service of the charge sheet, but because of certain lapses on his part as explained above, due to which Railways suffered huge loss. During his tenure as Senior Section Engineer/Permanent Way/Chalakkudi he failed to facilitate stock verification of materials in the Section as the custodian of the materials he was responsible for proper accounting of the same. For the deficiencies detected, cost has to be recovered from the ex employee. Hence the Retirement Gratuity has been withheld as explained in the above paragraph."

3. The counsel for the applicant argued that when no regular inquiry had been held there cannot be a decision by the respondents as to any amount due by the husband of the applicant, as otherwise, it would amount to visiting the Govt. servant with civil consequences without inquiry.

4. Learned counsel for the respondents referred to the counter as extracted above and stated that recovery is permissible in accordance with the decision of the Apex Court in the case of ONGC Vs. V.U. Warrior (2005 SCC (L & S) 676). As regards any rule in regard to such recovery the counsel read out the same, which provides for holding an inquiry and then only to arrive at any sum due and recoverable from the employee..

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5. Arguments were heard and documents perused. Admittedly no inquiry had been held against applicant's husband. And the relevant Rules contemplate holding of inquiry before effecting any recovery from DCRG, unless such due is admitted. Thus, a mere issue of charge memo or reply thereto alone would not suffice for coming to a decision that some amount is due from the husband of the applicant. The authority relied upon (i.e. ONGC Vs V.U. Warrior) is not assisting the respondents as in that case there is a specific provision to recover and the same is as under :-

"5. Recovery of dues – The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of the Commission's dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of a deceased officer, as the case may be."

6. In contra, instructions to the same in the case of Railways, disciplinary proceedings should be first conducted. Further the complaint against the husband of the applicant is non maintenance of proper accounts. The exact amount of alleged loss also has not been worked out. It is settled law that when certain act of the Government results in a civil consequence, principles of natural justice should be thoroughly complied with. In this regard, reference is invited to the decision of the Apex Court in the following case:-

(a) *Inderjeet Kaur v. Nirpal Singh*, (2001) 1 SCC 706, wherein it has been held,

"10. At the same time, it is well settled and accepted position in law that no one shall be subjected to suffer a civil consequence like eviction from a premises resulting in hardship to him without providing adequate and effective opportunity to disprove the case against him and establish his case as pleaded."

(b) *Union of India v. E.G. Nambudiri*, (1991) 3 SCC 38, wherein the Apex Court has held:-

The purpose of the rules of natural justice is to prevent miscarriage of justice and it is no more in doubt that the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of both quasi-judicial as well as administrative enquiry, an unjust decision in an administrative enquiry may have more far-reaching effect than decision in a quasi-judicial enquiry. Now, there is no doubt that the principles of natural justice are applicable even to administrative enquiries. See: A.K. Kraipak v. Union of India (1978) 1 SCC 405.

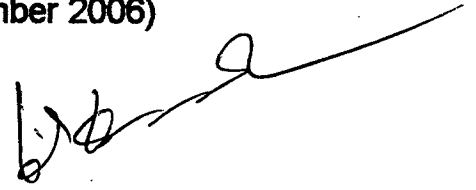
8. The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for the decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See: Regina v. Gaming Board for Great Britain, ex p. Benaim and Khaida (1970) 2 QB 417. Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons should be stated.

7. In the case of Railways, in conformity with the principles of natural justice, there has been a statutory provision for conducting due inquiry which, admittedly has not taken place. In view of the above, the decision to adjust the DCRG against alleged dues is to be held illegal and it is so

declared.

8. The O.A., therefore, succeeds. The respondents are directed to release the DCRG payable to the applicant with interest @ 6% from 1.3.2000 (from the date of issue of PPO for family pension) till the date of payment. The amount shall be paid within three months from today. In case the payment is not made within three months, respondents shall pay interest @ 9% from 1.3.2000 instead of 6% and if the delay is attributable to the inaction of the concerned official (at the level of Gazette Officer), the difference in interest shall be recovered from the erring official after issue of show cause notice. No costs.

(Dated, the 20th day of September 2006)



K.B.S.RAJAN
JUDICIAL MEMBER

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