

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 526 OF 2013

Thursday, this the 20th day of February , 2014

CORAM:

HON'BLE MR.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

K.Jagadamma
Retired Senior Track Man
Southern Railway, TVC
Block No. 159, Thonnakkal, Vengode, Kudavoor PO
Trivandrum – 695 313 ... Applicant

(By Advocate M/s Varkey & Martin)

versus

1. Union of India represented by the
General Manager
Southern Railway Headquarters Office
Park Town, Chennai – 3
2. The Divisional Railway Manager
Southern Railway, Trivandrum Division
Trivandrum – 14
3. The Assistant Divisional Finance Manager
Southern Railway, DRM Office Complex
Trivandrum – 14 ... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 20.02.2014, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

Applicant is the widow of a retired Railway employee who had admittedly faced Disciplinary Proceedings on the charge that he had continued in service beyond his actual date of superannuation by playing fraud on the Administration. To be more specific, the case of the Railway Administration is that going by the actual date of birth of the deceased employee, he ought to have retired from service on September 30, 2001. But he managed to continue in service till May 31, 2009.

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2. It is the admitted position that at the conclusion of the Departmental Proceedings the husband of the applicant was compulsorily retired from service with effect from September 30, 2001. Thereafter, the Administration had computed the total dues recoverable from the employee and fixed at ₹ 7,87,745/- It is on record that a sum of ₹ 3,84,000/- was recovered from the terminal benefits of the employee before his death on January 21,2011.

3. Applicant has filed this Original application when the Pension Disbursing Authority, State Bank Of India, Trivandrum Branch initiated steps to recover the Dearness Relief portion of her pension as instructed by Respondent No.3, the Assistant Divisional Finance Manager, Southern Railway towards the balance recoverable from the deceased employee.

4. Learned counsel for the applicant, Mr.Martin G Thottan contends the above action of the respondents is manifestly illegal and arbitrary. He has invited my attention to the decision of the Hon'ble Supreme Court in **Smt.Violet Issaac and Others vs. Union of India and Others, 1991 SCC (L&S) 51**. The question that came up for consideration in the above case was whether the family pension payable under the Service Rules could be bequeathed by means of a will by the deceased employee during his life time. While dealing with the above issue, the court observed thus:-

" The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family

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Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The Family Pension Scheme is in the nature of a welfare scheme framed by the Railway Administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his life time for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

(emphasis supplied)

5. In the above judgment, the Court has referred to an earlier decision in **Jodh Singh v. Union of India & Anr., [1980] 4 SCC 306** in which it has been laid down thus:

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

(emphasis supplied)

6. Going by the dictum laid down in the above two decisions, it is evident that Family Pension does not form part of the estate of the deceased employee. Therefore, the contention raised by the applicant that no recovery can be effected from the Family Pension payable to her is unassailable. In view of the above settled legal position, I have no hesitation to hold that the respondents are entitled in effecting any recovery from the Family Pension payable to the applicant. Annexure A-2 order / communication issued by Respondent No.3 is therefore quashed. Amount, if any, that has already been recovered pursuant to Annexure A-2 shall be reimbursed to the applicant forthwith.



7. Original Application is **allowed**. No costs,

Dated, the 20th February, 2014.


JUSTICE A.K. BASHEER
JUDICIAL MEMBER

VS