

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.**

**Original Application No. 188 of 2010**

Reserved on 22.11.2013

Pronounced on 20<sup>th</sup> December, 2013

**Hon'ble Ms. Jayati Chandra, Member-A**

1. Smt. Kanti Bajpai, aged about 53 years, Widow of Uma Shanker Bajpai, E-3427 Rajajipruam, Lucknow.
  2. Rajesh Kumar Bajpai, aged about 33 years, S/o deceased Uma Shanker Bajpai, E-3427 Rajajipruam, Lucknow.
  3. Kumari Suman Bajpai, aged about 28 years, unmarried daughter of deceased Uma Shanker Bajpai, E-3427 Rajajipruam, Lucknow.
- (Applicant nos. 1 to 3 are the legal heirs of Uma Shanker Bajpai S/o late Banarsi Lal, R/o E-3427 Rajajipruam, Lucknow, U.P. died on 10.10.2009)

.....Applicant

By Advocate : Sri R.C. Saxena.

Versus.

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. Senior Divisional Mechanical Engineer, C&W, Jhansi.
3. Financial Advisor & Chief Accounts Officer, North Central Railway, Allahabad.
4. Divisional Railway Manager, North Central Railway, Jhansi.
5. Additional Divisional Railway Manager, Central Railway, Jhansi.

.....Respondents.

By Advocate : Sri B.B. Tripathi

**ORDER**

The present Original Application has been filed by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

“The Hon'ble Tribunal may graciously be pleased to quash the impugned orders dated 27.7.2004, 13.10.2005, 24.7.2007 and order dated 2.7.2009 contained in Annexure No. 1, 2, 3 and 4 respectively to the O.A. and direct the respondents to refund Rs. 1,28,980/- illegally recovered from his gratuity amount and further direct the respondents to also pay the interest @ 12% on the total gratuity amount which was illegally withheld w.e.f. 24.7.2007 upto

*J. Chandra*

the actual date of payment and also allow litigation charges and heavy cost in favour of the applicant.”

2. The brief facts of the case are that the husband of the applicant No. 1 and the father of applicant No. 2 and 3 earlier filed O.A. No.170 of 2008 prayed for quashing of the orders dated 27.7.2004, 13.10.2005 and 24.7.2007 and also prayed for refunding the amount of Rs. 1,28,980/- which was recovered from the ex-employee from the gratuity amount. O.A. No. 170 of 2008 was disposed of vide judgment and order dated 11<sup>th</sup> February, 2009. The operative portion of the order reads as under:-

“7. It is a fact that the applicant was under suspension during this period and was reinstated only on the last date i.e. 25.11.2000. It is also a fact that keys of the Almirah and stores had been taken on 17.11.2000 from him when the verification process began. In consideration of his appeal, a notice was issued to him (Ann.14) asking him to present himself for an inquiry, but the results of his inquiry are not available. Therefore, it cannot be said that his submissions contained in the appeal against the fixation of responsibility to him for the shortage have been disposed of, although he was given a personal hearing later on.

8. Therefore, in the interest of justice, this case is remitted back to the competent authority to dispose of the representation of the applicant by a reasoned order dealing with all the contentions which had advanced in his defence plea. Since the applicant had already retired from service, it would be deemed that regular proceedings had been started on the basis of the notice issued to him while he was in service and the proceedings would be taken up from that particular stage. It is also made clear that in case, the respondents decided to effect any recovery from the retrial dues after giving due opportunity to the applicant and after considering all his pleas, the approval of President under Rule 9 of the Railway Service (Pension) Rules, 1993 has to be obtained before any recovery is finally made.”

3. The applicants submitted a representation requesting for refund of Rs. 1,28980/-. In pursuance of the said representation and direction of the Tribunal, the respondents gave an opportunity to the applicant and the husband of the applicant No 1 and father of the applicant Nos. 2 and 3 to appear on 24.3.2009 before the respondent No. 1. But without disposing of the points raised by the applicant through a reasoned and speaking order

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passed the very cryptic order dated 2.7.2009 (Annexure-4). The learned counsel for the applicant has categorically pointed out that the Tribunal while deciding the earlier O.A made it clear that in case respondents decided to effect any recovery from the retrieval dues, the approval of the President under Rule 9 of the Railway Service (Pension) Rules, 1993 has to be obtained before any recovery is finally made. Therefore, in effecting the recovery by order dated 23.7.2004 the respondents had acted hastily and without proving the applicant fully responsible. This miscarriage of justice was not rectified even after the order dated 11.2.2009 passed in Original Application No. 170 of 2008. As a matter of fact, the only stand taken by the respondents is that there were shortage of stock and the recovery was affected upon the applicant. Infact the case of the applicant is that he had been under suspension from 22.9.2000 to 25.11.2000. At the time of suspension, the keys of the store were taken from him without verifying what was the actual stock. The verification started on 17.11.2000 and was completed on 25.11.2000 He has called on the last day of verification merely to sign the verification memo. What may have happened between 28.9.2000 to 24.11.2000 and subsequently is not known to him. Infact in the O.A. No. 170 of 2008 he had alleged malafide against respondent no.5 Sri Rishi Raj Verma who was a respondent by name and had not filed his reply despite service, thereby concealing his complicity. Since the O.A. was disposed of with a direction for disposal of his application, this fact should have been taken cognizance by the respondents. Not only this, it is also argued by the learned counsel for the applicant that the recovery from any government servant cannot be effected after the retirement unless a finding is recorded in a fair enquiry holding him guilty of the charges relating to pecuniary loss caused to the Government and after the retirement of the railway servant the recovery can be made permissible under Rule 9 of Railway Service (Pension) Rules 1993. The learned counsel for the applicant also pointed out that the respondents have acted in an arbitrary and illegal manner. As such, the impugned orders are liable to be quashed and the amount of Rs. 1,28,980/- may be settled in favour of the applicant.

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4. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was categorically pointed out by the respondents that during the course of verification, it was found that few items worth Rs. 1,28,980/- were missing at the time of stock verification for which the applicant was in charge and the applicant was given number of opportunities to defend his case. The respondents have also taken a plea that the deceased employee presented his case before the Senior Divisional Mechanical Engineer C&W on 24.3.2009 and he was having the opportunity to place his case before the competent authority, but he failed to do so. As such, it is wrong to state on the part of the applicant that the father of the deceased employee was not given opportunity of hearing. Not only this, the applicant was under suspension from 22.9.2000 to 24.11.2000 and he joined the duties on 25.11.2000 and signed SV sheet in presence of four supervisors without any pressure. The ex-employee was also looking after the store of Juhi Depot and he was responsible for collection and distribution of store material as well as it was the duties of the deceased employee to maintain the account of the store properly. The averments of the applicant are denied to the extent by the respondents that the deceased employee was not aware of the statement recorded by the railway employee at the time of enquiry and have also put their signature on SV sheet. As such, after considering all aspects of the matter, the recovery can be made. Not only this, the learned counsel appearing on behalf of the respondents have also relied upon the Railway Service (Pension) Rules, 1993 and has categorically pointed out that the recovery from gratuity can be made from the railway servant due to losses (including short collection in freight charges, shortage in stores) without the prior sanction of the President of India.

5. The learned counsel appearing on behalf of the applicant filed their rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. Once again, it is vehemently argued by the learned counsel for the applicant that no witnesses in support of the charges were ever examined to sustain the charges before the alleged enquiry officers and the opportunity of cross examination with reference to the statement of witnesses was

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also not given to the applicant's husband. According to the statutory rules that after retirement, the recovery can only be made under Rule 9 of Railway Service (Pension) Rules 1993.

6. The learned counsel for the respondents filed their supplementary counter reply and no new facts are mentioned by the learned counsel for the respondents.

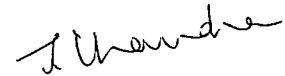
7. Heard the learned counsel for the parties and perused the record.

8. The applicant No. 1 is the wife of the deceased employee whereas the applicant No. 2 and 3 are the son and the daughter of the deceased employee who died on 10.10.2009. The applicants challenged the orders dated 23.7.2004, which is said to have a show cause notice before passing an order of recovery of an amount of Rs. 1,28,980/-. The applicant has also challenged the order dated 13.10.2005 dated 24.7.2007 as well as the order dated 2.7.2009 which is passed by the respondents in pursuance of the decision of the Tribunal dated 11.2.2009 whereby, the respondents have categorically pointed out that the ex-employee was given a number of opportunities to defend his case, but since he fail to submit any representation against the shortage at the time of stock verification as such the competent authority feels that the recovery of Rs. 1,28,980/- from the applicant is justified. The main contention of the applicant is that before deciding to recover an amount of Rs. 1,289,80/-, no opportunity of hearing was given to the applicant and since the applicant was placed under suspension on 28.9.2000 and the said suspension was revoked on 25.11.2000 and the entire verification was done prior to that date. The keys of the store room were taken from the applicant and on the last date of finalization of the stock verification i.e. 25.11.2000, the applicant was allowed to join and he was asked to sign the SV sheet and in that sheet, a shortage of Rs. 1,28,980/- is shown. The averment made by the learned counsel for the applicant cannot be denied to the extent that no regular inquiry was conducted and he had not been given any opportunity to establish his defence plea and requested for the full fledged inquiry be taken where he may be given opportunity to put his case effectively. It is very surprising

*J. Anandha*

that when the stock verification was started on 17.11.2000 then only the keys of the Store and the Almirah was taken from him, but he was not called for stock verification. Since, the husband of the applicant that is Sri Uma Shanker Bajpai expired on 10.10.2009 as such, now it is not possible for the respondents to conduct an inquiry in which he can be associated. Not only this as per the observations of the earlier decision of the Tribunal, the approval of President of India is also required under Rule 9 of the Railway Service (Pension ) rules, 1993, but in the instant case, no such permission is obtained .

9. In view of the above, O.A. succeeds. The impugned orders dated 27.7.2004, 13.10.2005 and 24.7.2007 and 2.7.2009 contained in Annexure No. 1, 2, 3 and 4 are liable to be quashed and are accordingly quashed. The amount so recovered be refunded to the applicant without any interest. No costs.



**(Ms. Jayati Chandra)**  
**Member (A)**

Girish/-