

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.154/1998

Dated this FRIDAY, the 30th Day of March, 2001.

Smt. Kunjamma A. D'Cruz .... Applicant

(Applicant by Shri H.T. Ametha, Advocate)

Versus

1. Dvl. Rly. Mgr. (Pension A/c) W/R & 3 Ors... Respondents

(Respondents by Shri V.S. Masurkar, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A),

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(3) Library.  *B.N.B.*

(Shri B.N. Bahadur)  
Member (A)

sj\*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.154/1998

DATED: This, Friday, the 30th Day of March, 2001.

CORAM:  
HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Smt. Kunjamma A. D'Cruz  
Libra Apartments, Flat No.201  
2nd floor, Pathanwadi,  
Malad (E),  
Mumbai 400 097. .... Applicant

(Applicant by H.T. Ametha, Advocate)

vs.

1. The Divisional Rly. Manager,  
(Pension A/c.)  
Mumbai Divisional Office,  
Mumbai Central, Mumbai 400 008.
2. The General Manager, Western Railway  
W.R. Head Quarters, Churchgate,  
Mumbai 400 020.
3. The Union of India,  
Through: The Secretary,  
Min. of Railway, Railway Board,  
Rail Bhavan, New Delhi 110 001.
4. The Branch Manager,  
Bank of Maharashtra,  
Mumbai Central Branch,  
Mumbai 400 008. .... Respondents.

(Respondents by Shri V.S.Masurkar, Advocate)

O R D E R [ORAL]

[Per: B.N.Bahadur, Member (A)]

This is an Application made by Smt. K.A.D'Cruz who is a pensioner drawing pension having retired from the Railways on 28.2.1995. In the present O.A. the relief sought by the



Applicant are substantially contained in para 8 (a) and 8 (c).

These paras read as follows:

**8 (a):** This Hon'ble Tribunal will be pleased to direct the respondents (1 to 3 to release and No.4 to pay) the current pension, arrear4s of pension, accumulated pension not released to the applicant, immediately, along with interest @ 18% on delayed payments from its due date till payment.

**8 (c):** Further this Hon'ble Tribunal will be pleased to direct the R-1 & R-2 to fix the responsibility for passing improper orders, as in the present case, which resulted in extreme hardship and a matter of starvation/survival for this applicant and if found *prima-facie*, negligent, corrupt, *malafide*, *malacious*, be proceeded against departmentaly. If necessary, relevant records be called for by the Hon'ble Tribunal for its satisfaction as to the causes of allowing the things to go to such an extent of extreme-hardship and assess the damages and the same to be awarded to this applicant.

In other words, the grievance of the pensioner arises because the Bankers, on instructions from Official Respondents, deducted certain amounts from her pension. Although certain background issues of the case are raised again by the Applicant are reurged by her learned Counsel, I must, at the outset, take note of the earlier proceedings in this Tribunal in regard to the same Applicant with reference to the decision of the judgement of this Tribunal in O.A. 1272/95 delivered on 23.7.1996 (copy at page 33). The entire issue and background about the occupation/unauthorised occupation of the Quarter has been gone into in this and issues have been settled as per orders made in this O.A.

2. I have seen the written pleadings on both sides, and have heard learned Counsels Shri H.T. Ametha and Shri V.S.



Masurkar on behalf of rival parties. At the start, it must be made clear as rightly pointed out by Shri V.S.Masurkar, that the issues that are already settled in the O.A.1272/95 cannot be reopened. This includes the contention made by the learned Counsel Shri Ametha that he still disputes the amount of Rs.25,622/calculated. The amount has been calculated as pointed out by the Respondents on the basis of judgement in the O.A. The amount cannot now be disputed before this Court except in regard to purely arithmatical calculation if disputed. These issues can always be taken up by the Applicant directly with the Respondents and should there be any purely calculation mistakes etc. this can be corrected by bilateral correspondence/discussion. In view of the principles of *res judicata* this Tribunal will not go into the matter again.

3. Learned Counsel Shri Ametha ultimately came to the point that the Department had itself admitted in Written Statement that wrong figures were communicated to the bank and because of that the bank has started deductions very unfairly against a pensioner lady and this is adversely and unfairly affected her and thus she was entitled to interest and cost of litigation etc. The learned Counsel also pleaded strenuously that for this act, the Railway administration should be directed to fix responsibility on the official who has caused harrassment to the applicant.

4. Learned Counsel for the Respondents who argued the case as pointed out earlier then came to making his submission on these points of interest, costs and fixing of responsibility

also. He stated that the manner in which deductions were made from the bank are contained at page 86 and some excess recovery was made.

5. In this connection, learned Counsel Shri S.V.Marne who appeared for Respondents No.4 made the point that his client viz. R.4 was outside the jurisdiction of this Tribunal and hence this was a case of misjoinder making the O.A. liable for dismissal on this count. Also, damage was to be claimed in other forums he argued.

6. In the background of the position, one thing is clear that while certain amounts were admittedly to be deducted from the applicant there is an admitted mistake in the communication of the amount. In fact, this mistake has been gone into already in the Tribunal's Order dated 6.1.2000 and in view of the excess recovery having been made to the tune of Rs.8589/- this Tribunal vide its order dated 6.1.2000 has directed the release of this amount within one week from the date of receipt of copy of the order (P.84). It is, therefore, clear that the amount of Rs.8,589/- was wrongly deducted and held back. Admittedly also the deductions were made as detailed out at page 86, in instalments ranging from Rs.293/- in Feb 1998 to Rs.721/- in Sept. 1999 as per the tabular statement shown. It will be more than just to award interest on the excess amount deducted and this will have to be paid to the applicant by Respondents (1-3). It is indeed unfortunate that due to admittedly wrong communication of amounts the applicant in her days of retirement had to undergo this harassment, as it truly is. The calculation will need to be made by the Railways, <sup>and</sup> it will be a

month to month calculation. This will undoubtedly take further time. This will create further discomforture for the Applicant undoubtedly. Learned Counsel for the Applicant agreed that simpler formula could be adopted without prejudice to either side. The total amount is of Rs.8589/- and considering the months etc. an adhoc payment can be ordered at Rs.1,500/- by way of interest and costs to the Applicant. Well as the claim of other damages may lie outside the purview of this Tribunal and, needless to say, cannot be entertained here, in regard to the harassment caused and the request for fixation of responsibility I would like to mention here that this matter may be looked into at the administrative level by Respondent No.1 who is a Senior Officer. He is directed to takee note of the matter, and take necessary remedial steps in the interests of justice so that people like the pensioners are not put to such trouble again.

7. Before parting with this case, I would like to deal with the point raised by the learned Counsel for R.4. It is well and true that no direction can be given to R.4 by this Tribunal, and I have not done so. Directions/Orders are only for Railway Administration. The argument regarding misjoinder is far too technical in a service matter and will not lie.

8. The case is disposed of with the direction/Order that the payment of interest and cost of Rs.1500/- as decided shall be made within 2 months from the date of this Order.

*B.N.Bahadur*  
(B.N.Bahadur)  
Member (A)