

38

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH  
AT HYDERABAD.

O.A.NO.621 of 1994.

Between

Dated: 21.11.1995.

Smt. G.Radha Bai

...

Applicant

And

1. The General Manager, South Central Railways, Rail Nilayam, Secunderabad.
2. Divisional Railway Manager(Personnel), South Central Railways, B.G.Sanchalan Bhavan, Secunderabad.
3. The Chief Administrative Officer(Constructions), South Central Railways, Sanchalan Bhavan, Secunderabad.
4. The Divisional Engineer(Constructions), South Central Railways, Kazipet, Warangal.

...

Respondents

Counsel for the Applicant : Sri. N.Krishna Rao

Counsel for the Respondents : Sri. D.Francis Paul, SC for RL

CORAM:

Hon'ble Mr. A.B.Gorthi, Administrative Member

Contd:...2/-

DA 621/95.

Dt. of Order: 21-11-95.

(Order passed by Hon'ble Shri A.B.GORTHI, Member (A)).

-- -- --

The grievance of the applicant, who is the widow of late Sri G.Venkataswamy is two fold. Firstly her contention is that on the death of her husband the family pension due to him was not correctly calculated by the Respondents. Her second grievance is that the respondents unlawfully retained an amount of Rs.73,987/- from the DCRG dues.

2. It is stated in the D.A. that when the employee died on 14-3-91 he was drawing pay of Rs.2,300/- in the scale of pay of Rs.1600-2660, in the post of Depot Store Keeper (Construction). The applicant states that she is entitled to 50% of the basic pay as family pension and as such it should have been fixed at Rs.1,150/- per month whereas the respondents sanctioned family pension of Rs. 900/- p.m. only.

3. The respondents in their reply affidavit have clarified that the applicant worked as an adhoc Depot Store Clerk in the scale of pay of Rs.1600-2660 and was drawing a salary of Rs.2,300/- p.m. but that was prior to his posting as Head Clerk with effect from 1-1-91. Vide office order No.1/91 dt.3-1-91 the employee was posted as Head Clerk in the scale of pay of Rs.1400-2300 as the post of Depot Store Keeper was down-graded and had to be operated as Head Clerk. Consequently the <sup>salary of the</sup> employee was fixed at Rs.1,800/- p.m. According to Rule-4(i)(a) of the family pension scheme for Railway Servants, 1964, as given in Rule-75 of

40

the Railway Servants (Pension) Rules, 1993, the quantum of family pension would be equal to 50% of the pay last drawn by the employee. The said Rule-75, sub-rule 4(i)(a) is reproduced below :-

"(4)(i)(a)Where a railway servant, who is not covered by the Workmen's Compensation Act, 1923 (Rules of 1923), dies while in service after having rendered not less than seven years' continuous service, the rate of family pension payable to the family shall be equal to fifty per cent of the pay last drawn or twice the family pension admissible under sub-rule."

4. From the above it would be evident that the last pay drawn by the employee being Rs.1,800/- pm, the family pension was correctly fixed at Rs.900/-pm. There is thus no reason for the applicant to feel aggrieved in this regard.

5. As regards the second contention of the applicant ~~is~~ that the Respondents improperly with-held a sum of Rs.73,987/-, the Respondents clarified that during the tenure of the employee in the post of Depot Store Keeper, there was a huge loss of stores, which were ~~only~~ <sup>held</sup> in his custody. The employee was not able to explain the loss, which amounted to the tune of nine lakhs. As the relevant regulations permit the government to recover the loss from the amount due to the employee, the amount of Rs.73,987/- due to the applicant was with-held.

6. Heard learned counsel for both the parties. Shri D.F.J. Paul, learned standing counsel for the Respondents has drawn my attention to Vol.II, Rule-15 (4)(i) of the Railway Servants (Pension) Rules, 1993. The said rule is

re-produced below:-

(4)(i) A claim against the railway servant may be on account of all or any of the following :-

(a) losses (including short collection in freight charges, chortage in stores) caused to the Government or the Railway as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia or outstanding advance,

(c) non-Government dues.

(ii) Recovery of losses specified in sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pensions Act, 1871 (23 of 1871).

A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity which are not subject to the Pensions Act, 1871 (23 of 1871). 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 member of his family in the case of a deceased railway servant."

42

7. There can be no doubt that in case of loss resulting from negligence or fraud on the part of the Railway Servant, suitable recoveries can be made from the retiral or terminal benefits including gratuity. The main requirement however is that not only the amount of loss should be quantified, the competent authority but there should also be a clear finding by the competent authority to the effect that loss was caused by the negligence or the fraud played by the railway employee.

~~xxxxxxxxxx~~ In the instant case Shri D.F.Paul has shown me a number of stock verification sheets where the details of excesses ~~were~~ and shortfalls ~~were~~ recorded and the said sheets were signed by the employee (late G.Venkataswamy). On receipt of the Stock verification sheets, the employee was required to offer his initial remarks but he did not do so. The department kept reminding him in a routine manner over a period of more than two years. Thus as on 14-3-91, when the employee died, there were no initial remarks offered by the employee. There does not seem to have been any enquiry held by the department to probe into this huge loss of stores amounting to over nine lakhs with a view to pin point responsibility. In other words, there is nothing on record to establish that the loss was the result of ~~the~~ either negligence or fraud on the part of the employee. In these circumstances, the respondents are not justified in with-holding the settlement dues. No specific authority has been shown to me, under which the settlement dues can be with-held even in the absence of a clear

43

finding that the loss was caused on account of the employee's negligence or fraud.

8. In view of what is stated above, there can be no doubt that the action of the respondents in with-holding the amount of Rs.73,987/- is without sanction of law. Accordingly this O.A. is partly allowed with a direction to the respondents to release payment xxxx. of Rs.73,987/- to the applicant. shall  
This shall be done within a period of three months from the date of communication of this order. No costs.

*Tharayil*

(A.B.GORTHI)

Member (A)

Dated: 21st November, 1995.  
Dictated in Open Court.

av1/

*Arul*  
Deputy Registrar (Judl.)

Copy to:-

1. The General Manager, South Central Railways, Railnilayam, Secunderabad.
2. Divisional Railway Manager (Personnel), South Central Railways, B.G.Sanchalan Bhavan, Secunderabad.
3. The Chief Administrative Officer (Constructions), South Central Railways, Sanchalan Bhavan, Secunderabad.
4. The Divisional Engineer (Constructions), South Central Railways, Kazipet, Warangal.
5. One copy to Sri. N.Krishna Rao, advocate, CAT, Hyd.
6. One copy to Sri. D.Francis Paul, SC for Rlys, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

621/95  
TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

HON'BLE MR. A.B. GORTHI, ADMINISTRATIVE MEMBER.

HON'BLE MR.

JUDICIAL MEMBER.

ORDER/JUDGEMENT:

DATED: 21/11/1995.

M.A./R.A./C.A.NO.

IN  
O.A.NO.

T.A.NO. (W.P.NO. )

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED. (partly) ✓

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

DISMISSED FOR DEFAULT.

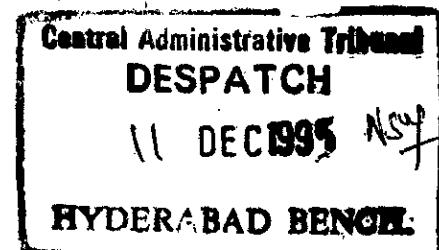
ORDERED/REJECTED.

NO ORDER AS TO COSTS. ✓

\*\*\*

Rsm/-

No Spare Copy



20