

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH 64
AT HYDERABAD

OA.1254/99 and
MA.318/2000 in OA.1254/99

Dated :
6. 9. 2000

Between

S. Subhan bibi : Applicant

And

1. General Manager
Railnilayam, SC Rly.
Secunderabad

2. Chief Admn. Officer (Const)
SC Rly, Secunderabad

3. Dy. Chief Engineer
Guage Conversion, SC Rly.
Madgaon, at Secunderabad

: Respondents

Counsel for the applicant : P. P. Vittal, Advocate

Counsel for the respondents : D. Francis Paul, SC for Railways

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Hon. Mr. B.S. Jai Parameshwar, Member(Judl)

Order

Order (per Hon. Mr. B.S. Jai Parameshwar, Member (Jud))

Heard Mr. Shiva, learned counsel for the applicant and Mr. D.F. Paul, learned counsel for the respondents.

2. The applicant herein is the widow of one Sk. Ahmed Ali, who was working as Senior Section Engineer (P. Way), Guage Conversion, South Central Railway, Madgaon, and who died on 22.4.98. The applicant submits that her husband had put in 33 years of qualifying service at the time of his death. Her husband ^{has} as left behind him the applicant, two sons and a daughter.

3. The respondents have sanctioned family pension to the applicant under PPO.No.59054203516 dated 3.12.98. They have released the amount standing the credit of the employee in his PF Account and also under Group Insurance scheme.

4. The applicant submits that the respondents are yet to release a sum of Rs.4.5 lakhs under the following Heads:

- a) Death cum Gratuity
- b) Leave encashment amount
- c) Bonus for 53 days
- d) Pay for 1-4-98 to 22-4-98
- e) Packing allowances, and
- f) Pay Commission arrears.



5. The applicant submitted a representation dated 15.12.98 (Annex.IV) praying for release of the said amounts. There was no response.

6. However, the Additional Engineer (Constructions), Guage conversion, SC Rly., Madgaon, had requested the respondents to withhold payment under the above heads.

7. The applicant relies upon the decision of the Hon. Supreme Court in the case of Uma Agarwal Vs. State of Uttar Pradesh and another reported in 1999 SCC (L&S) 742 and the order dated 21.11.95 in OA.621/94 (Smt. T. Radha Bai Vs. General Manager, South Central Railway, Secunderabad and others) and order dated 6.5.98 in OA.85/98 (H.P. Ananthaswami Vs. General Manager & others) of this Bench.

8. The applicant ^shad filed this OA for the following reliefs:

To direct Respondents 1 and 2

A) to pay death cum retirement gratuity, leave entitlements, salary for 22 days in April, 1998, bonus for the year 1997-98, Pay commission arrears etc. amounting to about Rs.4.5 lakhs.

b) interest on the above amounts from 23.7.1998 onwards till actual payment at commercial rate of interest.

9. On 11.10.1999 when this OA came up for admission hearing this Bench passed the following orders:

The husband of the applicant died in April, 1998 and the hapless widow is requesting for payment of Final settlement dues of her deceased husband. A sympathetic early action is necessary in this connection by the respondents. Hence, it is not necessary for us to admit this OA. The respondents should decide the case and submit to the Court within a month from today.

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10. The respondents filed a reply and the factual aspects are not in dispute. They submit that the amounts detailed under the Heads have been withheld for the following reasons:

- a) The deceased employee while working as PWI, Guage Conversion, Madgaon, was the custodian of P.Way materials worth several crones of rupees and he had not maintained any proper accounts. All the records have to be updated and the material has to be physically verified to find out the shortage / excess if any.
- b) Earlier the deceased employee was working as PWI/D1 Tandur and at that time he was fixed with the responsibility for shortage of 28 Permanent way items valued at Rs.60,68,058 (Annex.R-1).

11. As the deceased employee has outstanding dues to the tune of several lakhs of rupees and the shortfall of material is yet to be ascertained on account of non maintenance of proper records it is not possible to release the amounts to the applicant.

12. They further submit that no interest is payable as the deceased employee himself is due to the Railway administration.

13. They submit that as per Railway Servant (Pension) Rules, 1993, the Railway Administration has every right to recover the amounts due to it out of the DCRG and other terminal benefits payable to the applicant.

14. They rely upon Rule 15 of Pension Rules, 1993. They submit that they are in the process of verification of stocks and finalisation of accounts and it may take a reasonable time and that apart the deceased employee is responsible to pay a sum of Rs.60,68,058. Thus they submit that they may be given a reasonable time to

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verify the stocks and finalise all accounts and to ascertain the amount due from the deceased employee while he was working at Madgaon at the time of his death.

15. The applicant prayed for time to file rejoinder. However, she has not filed any rejoinder.

16. On 3.4.2000 the respondents filed MA.318/2000 producing additional material. The additional materials relied upon by the respondents is to substantiate that a sum of Rs.67,40,547 is the amount payable by the deceased employee to the Railway Administration. They submit that this sum includes sum of Rs.18,54,540.

17. The applicant had filed ¹new objections to this MA stating that stock verification was done 18 months after the death of her husband and in the normal course stock verification has to be done in the presence of the Railway servant and that the stock verification sheets and the letter of AEN (GC) Madgaon, are prepared with the sole intention to disallow terminal benefits to the applicant. She submits that the respondents arrive at a conclusion to fix the responsibility on the deceased employee for the shortage of Rs.15,84,540 when her husband was not available to dispute the same. The procedure adopted by the respondents for preparing the stock verification sheets and the letter of AEN(GC), Madgaon, is in violation of principles of Natural Justice.

18. The learned counsel for the applicant submitted that the respondent authorities during the lifetime of the Railway employee had not initiated any disciplinary proceedings for the alleged shortage of P. Way materials. He further submits that under Rule 15, 4(i)(a) of the Railway (Pension) Rules, the respondent authorities before effecting recovery should record a definite finding that the loss or shortage of stores was caused only on account of fraud or negligence on the part of the Railway servant. In the absence of such a finding recorded by the Railway

administration against Sk. Ahmed Ali during his lifetime, they are not justified now in preparing the stock verification and claiming lakhs of rupees from the deceased husband of the applicant.

19. Further relying on the instructions contained in OM No.11012/7/99 Estt(A) dated 20.10.99 of the DOPT ~~contended~~ that, when a delinquent employee dies during the pendency of the disciplinary proceedings the disciplinary proceedings ^{heirs of the} will abate and the benefits shall be released to the deceased delinquent employee. Thus he submits that the respondent authorities are now admitting to prepare the verification sheets and other documents to fix the responsibility on the deceased Sk. Ahmed Ali to the extent of lakhs of rupees only to deny terminal benefits to the applicant.

20. The learned counsel for the applicant at the time of arguments relied upon the order dated 14.2.1989 passed by this Bench in the case of D.R. Rambabu Vs. Principal Secretary, Govt. of Andhra Pradesh and others reported in 1989(2) SLR 391 and the order dated 16.6.1989 in the case of S.S. Polly Vs. Union of India and others reported in 1990 (3) SLR 232. Thus he submits that the reasons quoted by the respondents for withdrawing terminal benefits are not convincing and that the respondents may be directed to release the terminal benefits to the applicant with interest.

21. Per contra, the learned counsel for the respondents submitted that the deceased employee had not maintained proper records. That non-maintenance of records is a clear negligence on the part of the deceased employee. That the deceased employee while working at Tandur was fixed with the responsibility of shortage of 28 P way material worth Rs.60,68,058 (Annex.I). That even when the deceased employee was working at Madgaon he did not maintain proper accounts.



That material worth crores of rupees was left with the custody of the applicant. That the applicant was expected to maintain a proper records. That non-maintenance of the records constrained the Department to verify the materials and to prepare the stock verification sheets. That the Railway administration has every right to recover the dues from the deceased employee out of gratuity and other terminal benefits payable to the heirs of the deceased employee. He submitted that recovery cannot be made out of pension and under Rule 15 of Railway Pension Rules. The Railway administration is entitled to recover any sums due to it even with or without consent of the heirs of the deceased employee. Thus he submitted that the material papers filed along with the MA.318/2000 has been prepared only to ascertained financial liability of the deceased employee and as can be seen from the document Annex. R-1. That the deceased employee owed lakhs of rupees to the Railway Administration and they are entitled to withhold the amount of DCRG and other amounts. Thus he submitted that the competent authority has to pass an order accepting the stock verification sheets and order for recovery. It is only thereafter if any amount is leftover, the same will be paid to the applicant with interest as contemplated under the rules.

22. It is now to be ^{considered} whether the Railway administration has any right to recover any sum due to it from a deceased employee.

23. The facts and circumstances of this case disclose that Sk. Ahmed Ali, died due to heart failure. At that time he was working as Section Section Engineer (Gauge conversion), SC Railway, Madgaon.

24. It is not in dispute that earlier he was working at Tandur as PWI. As per Annex.R-1 the Deputy Financial Advisor and Chief Administrative Officer/C-II by

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his letter dated 16.11.99 has fixed responsibility on the deceased employee to the tune of Rs.60,68,058 being the value of 28 items of Permanent way material.

25. The contention put forth by the learned counsel for the applicant is that the respondents during the lifetime of Sk. Ahmed Ali have not issued any charge memo. Moreover recovery of loss or shortage of stores as contemplated under Rule 15, 4(i) (a) of the Railway Pension Rules ^{wise} only after the authorities recorded a definite finding that the loss or shortage was on account of fraud or negligence on the part of the Railway servants. He contends that the respondents are not expected to fix the responsibility on the deceased employee.

26. In the case of SS Polley Vs. Union of India, Calcutta Bench of this Tribunal considered withholding of DCRG. The shortage of materials was noticed during his lifetime. The Railway employee was in service for more than 10 years after the shortage was noticed by the respondents therein. It is in those circumstances the Calcutta Bench of this Tribunal formed an opinion that withholding of gratuity was not justified.

27. In the case of B.R. Rambabu Vs. Principal Secretary, Andhra Pradesh, this Bench considered the scope of required number of years of Indian Railway servants (Condition of Service) Regulation Act, 1959. In that case also the Government servant was alive and formed an opinion that under pension rules, sanction has to be taken for initiating proceedings where any institution / Court four years prior to his date of retirement. Considering the said rules the Calcutta Bench of this Tribunal ordered for payment of gratuity. As already observed in the present case Sk. Ahmed Ali died while in service on 22.4.98. Till such time the ~~any proceedings to ascertain whether there was~~ respondents had not ~~initiated~~ any negligence or fraud on the part of the deceased employee, Sk. Ahmed Ali. An attempt was made to contend that a CBI

inquiry was held against the deceased employee. While they were about to submit the charge sheet, the employee died. The submission is not relevant. In fact, Rule 15, 4(i)(a) of the Railway Servants (Pension) Rules, 1993 provide liberty for Railway administration to recover any sum due to it from Railway servant at the time of his retirement or at the time of his death, provided they had recorded a finding that loss was caused due to fraud or negligence on the part of the Railway servant.

28. Therefore, what has happened in this case is that Sk. Ahmed Ali died untimely death. It is not possible to accept any of the contentions as to the work and conduct of the deceased employee for one should not make any comment on a deceased person. The shortage of stores material now ascertained by the respondent authorities is of no avail, as the employee is not alive to explain. The husband of the applicant died on 22-4-1998. Already more than two years have elapsed. The respondents were not justified in leaving the applicant in penury.

29. Hence, the following directions are given :

- a) The Competent authority shall finalise and release the outstanding terminal benefits of the deceased employee, to the applicant within a period of two months from the date of receipt of ^{copy} of this order.
- b) While releasing the terminal benefits, interest at the currently approved rates as per the standing instructions of the Railway Board shall also be added to cover the period from 22-7-1998 to the date of disbursement.
- c) MA.318/2000 is allowed. The material papers filed

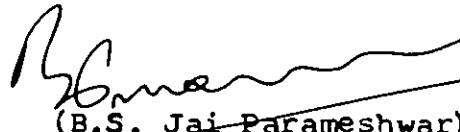
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along with the MA are taken on record. MA is disposed of.

30. With the above directions, the OA is allowed.

No costs.


(B.S. Jai Parameshwar)
Member (Jud1.)

Dated : 6 September, 2000

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