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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R .
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O.A.NO.329/96

Date of order: 30.8.1996

Smt. Pushpa Saini

: Applicant

Vs.

1. Union of India through
General Manager, Western Railway,
Churchgate, Bombay.

2. Divisional Railway Manager (East)
Western Railway, Jaipur Division,
Jaipur.

: Respondents

Mr. S.Kumar, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRAVASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRAVASH, MEMBER (JUDICIAL))

The applicant herein, Smt. Pushpa Saini has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for declaring the impugned order dated 1-4/5-1996 (Annx.A-1) to be illegal and arbitrary by which the respondents propose to recover the amount of Rs. 22,453/-.

2. Facts relevant for the disposal of this application in short are that late husband of the applicant Shri O.P.Saini was initially appointed in the Respondents Railways on the post of Apprentice Fireman in the year 1956 and while working as Safety Counsellor at Jaipur Division Western Railway he expired on 28.4.1991. By letter dated 16.9.1988 of the Railway Board, the orders for stepping up of the pay and for removing the pay anomaly was issued. The late husband of the

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applicant having fulfilled the eligibility conditions was allowed the stepping up benefits and vide orders dated 18.7.88 and 10.1.1988 such benefits were also allowed to similarly situated persons. It is the grievance of the applicant that after five years of the death of her husband, respondent No.2, the Divisional Railway Manager (Estt.), Western Railway, Jaipur Division, Jaipur has issued the impugned order dated 1-4-5-1996 proposing to recover the aforesaid amount from the applicant, wherein they have also show with-holding of an amount of Rs. 40,000/-. It has been contended by the applicant that since the stepping up has been done in pursuance of the railway Board letter dated 16.9.1988, the benefits received cannot be recovered now which is being received by her even after the death of her husband for almost five years.

3. The respondents have opposed this application by filing a reply to which a rejoinder has also been filed. The stand of the respondents has been that impugned letter Annexure A-1 is not a notice or order directing the recovery or initiating the process of recovery of the amount mentioned therein. Hence, this OA is premature. It has also been contended that the proposed recovery to be made is within the competence of the respondents and as per rules and that the application is without any substance.

4. I have heard the learned counsel for the applicant and also the learned counsel for the respondents and have perused the pleadings.

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5. The only question which is to be answered in this OA is whether an amount which has been paid to the employee in pursuance of an order issued by the competent authority and having remained in vogue for a number of years can be recovered subsequently on revision of policy?

6. The chief contention of the learned counsel for the respondents has been that since the applicant has approached this Tribunal without making any representation to the respondents and no order of actual recovery has been issued, the application being premature should be dismissed. It has alternatively been suggested that the applicant be directed to file a representation and appropriate order would be issued by the respondents in view of the law laid down by Hon'ble the Supreme Court.

7. I have given anxious thought to the able arguments advanced on behalf of both the parties.

8. After judgment of Hon'ble the Supreme Court in the case of Sahib Ram Vs. State of Haryana and Others, 1995 SCC(LRS) 248 there remains no ambiguity that where a benefit of pay scale has been given to an employee and it is not actuated on account of any mis-representation by him and the employee has not been at fault, the amount paid may not be recovered from him. This principle has further been reiterated by Hon'ble the Supreme Court in the case

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of State of Orissa and others Vs. Alwait Charan Mchanthy and others, 1995 SCC(LAS) 522 decided on 27.1.1995 wherein the employee even after the age of superannuation was allowed to continue till the age of 60 years and was also paid the salary and benefits throughout, but the respondents were ~~restrained~~ restrained from making its recovery. In the instant case also since the late husband of the applicant has been in receipt of the benefits from the year 1986 till he expired and thereafter also the applicant has been receiving such benefits regularly, the ratio laid down by Hon'ble the Supreme Court in the aforesaid cases applies squarely to the facts of the instant case.

9. In view of above, the impugned order dated 1-4/5-1996 (Annex-A-1) cannot be sustained in the eye of law.

10. Therefore, while answering the question raised above in the negative, the OA is allowed and the impugned order dated 1-4/5-1996 (Annexure-A-1) issued by the respondents is hereby quashed to the extent of proposing to recover an amount of Rs. 23,453/-. The parties to bear their own costs.

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Ratan Prakash
 (RATAN PRAKASH)
 MEMBER (J)