

(Reserved on 23.02.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This the 13th day of *March, 2018*.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/00699/2012

Smt. Malini Devi, widow of Saukhi Lal, resident of Village Pure Sanjhia, P.O Charwa, District - Kaushambi.

.....Applicant.

VER S U S

1. Union of India through the General Manager, North Central Railways, Allahabad.
 2. Divisional Railway Manager, N.C. Railway, Allahabad.
-Respondents

Advocate for the applicant : Shri A.N. Pandey

Advocate for the Respondents: Shri Anil Kumar

ORDER

By means of the present original application the applicant has prayed for a direction to quash the order dated 12.05.2010 (Annexure A-1 to the O.A) passed by the respondent No. 2. Prayer has also been made for a direction to the respondent No. 2 to release retiral dues of the deceased employee in favour of the applicant.

2. The facts of the case, as per the O.A, in brief are that the applicant is widow of Late Saukhi Lal (hereinafter referred to as

deceased employee), who was working as Class IV employee in the respondents' department. The husband of the applicant suffered from illness leading to his death on 24.02.2002. A copy of death certificate is at Annexure A-2. Due to his illness, he could not attend duty and It is stated that despite information to the authorities about illness of deceased employee, a departmental proceeding was initiated and he was terminated from service. An appeal was preferred by the deceased employee and considering the grounds in appeal the appellate authority passed the order of compulsory retirement on 08.04.1999 (Annexure A-3 to the O.A), which could not be contested by the deceased employee. No retiral dues were paid either to the deceased employee or to the dependents.

3. After the death of her husband, the applicant wrote a letter dated 28.09.2002 (Annexure A-4 to the O.A) for payment of retiral dues. The respondent No. 1 vide letter dated 28.02.2003 (Annexure A-5 to the O.A) asked the concerned authority to submit the claim of the applicant. Thereafter, the applicant also preferred representation dated 27.05.2017 (Annexure A-6 to the O.A). Having received no response, the applicant filed O.A No. 968/2007 which was disposed of by this Tribunal vide order dated 19.02.2009 with direction to the respondents to pass a reasoned and speaking order. Thereafter, the respondents rejected the

claim of the applicant vide order dated 20.10.2009 which she challenged by way of O.A No. 405/2010. The Tribunal disposed of this O.A vide order dated 25.02.2010 (Annexure A-7 to the O.A) with direction to the respondents to decide the representation of the applicant specifying about the retiral dues to be paid to the applicant. Thereafter, the respondents vide impugned order dated 12.05.2010 (Annexure A-1) again rejected the claim of the applicant.

3. Aggrieved by the impugned order dated 12.05.2010, the applicant has filed instant O.A in third round of litigation on the ground that the order is illegal and unjustified as her husband worked for 12 years 6 months and 14 days, which is qualifying service for pensionary benefit but the respondents deducted the period of 4 years 8 months and 22 days as non-qualifying service during which her husband was ill and information in this regard was already given to the respondents. It is also contended that the inquiry was conducted ex-parte and no due information was given. It is further contended that the respondents have adjusted the amount of gratuity against the government dues which is also illegal and against the settled principle of law.

4. The respondents have contested the claim of the applicant and have filed Counter Reply. It is stated that husband of the

applicant was removed from service as per the departmental proceeding in the year 1998 and on consideration of his appeal, the punishment was reduced to compulsory retirement vide order dated 08.04.1999. Later on, husband of the applicant died on 24.12.2002. It is contended that the deceased employee did not submit any claim for settlement of dues after order for compulsory retirement was passed. It is further stated that as per the extant rules, all the Government dues against the husband of the applicant were ascertained and huge amount was found recoverable from the deceased employee and accordingly, same has been deducted, as reflected in the impugned order. It is further stated that qualifying service period of the deceased employee has been correctly counted as per rules which comes to 7 years 9 months and 22 days and as such the applicant is not entitled for family pension as per the extant rules.

5. The applicant has filed Rejoinder in which it is stated that the Railways have not issued any order / notice before ascertaining the dues for recovery and such action is illegal. Further, although the husband of the applicant was removed from service on 03.01.1998 but it was subsequently reduced to compulsory retirement , hence he was entitled for all benefits.

6. Heard Shri A.N. Pandey, learned counsel for the applicant who submitted that the recoveries stated to have been made from the retiral dues are not permissible. To support this stand, he furnished a copy of the judgment of Hon'ble Apex Court in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) – 2014 Law Suit (SC) 1075.

7. The learned counsel for the respondents has raised a preliminary objection with regard to the delay in filing this O.A. He also reiterated the contention that huge amount was to be recovered / adjusted from the retiral dues and such adjustment has been effected after which no amount was found payable. Learned counsel also filed copy of judgment of CAT in O.A No. 486/2002 – Shyam Behari Lal Vs. U.O.I & Ors decided by Allahabad bench on 06.02.2013 and the judgment in the case of N.C. Sharma Vs. U.O.I & Anr – 2003 (1) SLJ 38 CAT decided by Mumbai bench of CAT .

7. The submissions of the parties have been duly considered by me. Regarding objection on the ground of delay, it is that in this case, the applicant has filed a delay condonation application which has already been allowed vide order dated 01.08.2013 and the delay has been condoned by this Tribunal. Hence the objection on the ground of the delay at this stage is not at all acceptable.

8. In the impugned order dated 12.05.2010 regarding the retiral dues, it is stated as under : -

*"796/E2/Pension/jan 98
Date:- 12.05.2010*

*DRM (P) Office
Allahabad*

*Smt nalini Devi W/O late Saukhi lal
R/O Rahsarai, Chail Post-Rahsarai Distt – Kaushambi*

Sub:- Implementation of Hon'ble CAT-ALD's order dated 25.03.2010 in O.A. no. 405/2010 – Smt Malini Devi Vs UOI.

I have gone through the order passed by Hon'ble CAT/ALD and have also gone through your representation dated 13.04.2010 regarding your claim for PF, Trf, Grant, Insurance, GIS, other retirement benefits and CG appointment.

It is available on record that your husband Sri Saukhi lal, fireman ' C' under LF/CNB was removed from service w.e.f. 03.01.98. After careful consideration of his revision appeal the competent authority reduced his punishment of removal from service to compulsory retirement vide punishment notice No. P.76/Un-ALD/CNB/97 dt 08.04.99 and later on died on 24.12.2002. During his lifetime Sri Saukhi lal did not submit his claim on prescribed form for payment of settlement dies.

The details of dues worked out is as under:--

<i>1.PF -</i>	<i>Rs. 4816/-</i>	<i>Pay order no. 2844 A dated 20.7.2000</i>
<i>2.Group Insurance Service</i>	<i>Rs. 8559/-</i>	<i>Co7 No. 85 dt 16.06.05</i>
<i>3.Gratuity/DCRG</i>	<i>Rs. 66874/-</i>	<i>Total outstanding Amt Rs. 115971/- against House Rent, Damage Rent and electric</i>

4. Leave encashment	Rs. 3824/-	<i>Bill.</i> Rs. 70698/- is not to be paid as adjusted. The remaining Govt dues Rs. 45273/- is to be deposited by you.
5. Bill of Rs. (unpaid) 4000/-		No fact are given by you to verify the claim, please provide details to deal the matter further

The Details of qualifying service is as under:-

*Date of Appointment – 19.06.85
Date of Compulsory retirement – 03.01.98
Total Service - 12 years 6 month 14 days
Non qualifying service – 4 years 8 months 22 days
Total Qualifying service – 7 years 9 months 22 days
(less than 10 yrs.)*

As per extant rule Pension/Family pension is not admissible in your case as the qualifying service is less than 10 yrs. Only service gratuity is admissible and the same is adjusted against Govt dues. Please deposit remaining outstanding amount in station earning and advise this office.

In regard CG appointment it is mentioned that your husband was compulsory retired on 03.01.98 in a DAR case and later on he died on 24.12.2000 when he was not in service as such CG appointment in the instant case is not permissible. Your claim for transfer grant is also time barred.

In view of the facts given above no benefit is admissible to you, your representation is disposed of in compliance of Hon'ble CAT's order.

*(MUDIT CHANDRA)
Sr. DPO, Allahabad ”*

The respondents were not issuing any reply to the applicant till she moved this Tribunal. Vide order dated 27.03.2010 in O.A No. 405 of 2010 filed by the applicant in second round of litigation, this Tribunal observed : -

“7.The competent authority shall clearly specify in its order about the retiral dues to be paid to the applicant while deciding the representation of the applicant. The competent authority in the respondents' establishment shall positively consider the grievance of the applicant and pass appropriate and reasoned order taking into account the grievance of the applicant as to why the retiral benefits have not been paid to him in spite of lapse of several years.”

9. From the above, it is clear that the respondents authorities have not bothered about intimating the details about the recovery of dues alongwith copy of the order in which it was determined while effecting the recovery from the retiral dues as mentioned in the impugned order dated 12.05.2010 (Annexure A-1) in compliance to the order dated 27.03.2010 of this Tribunal.

10. Learned counsel for the applicant has cited the judgment of Hon'ble Apex Court in State of Punjab vs. Rafiq Masih (supra) which is relating to recovery of dues in cases where excess payment was made to the employees due to mistake of authorities. This judgment is not applicable for release of retiral dues.

11. Learned counsel for the respondents cited the judgment of this Tribunal in following two cases at the time of hearing:-

a. Shyam Behari Lal vs. UOI thr...in OA No. 486/2002
(By Allahabad Bench)

b. NC Sharma vs. UOI & another (Mumbai Bench)
2003(1) SLJ 38 CAT

In the case of Shyam Behari Lal, dispute was relating to recovery of Rs. 32575/- towards penal quarter rent and the Tribunal held the recovery from DCRG to be in order after noting that the balance DCRG amount has been released. In the present case, full amount of DCRG and all retiral dues have been adjusted without communicating the details of penal rent to the applicant beforehand. In fact, no letter was being issued to the applicant by the respondents in this case, till this Tribunal directed them to do so. Hence, the assessment of penal rent in this case was not communicated to the applicant before adjustment, which was not the case in the cited case of Shyam Behari Lal, who was aware of the penal rent that was assessed and he was disputing its recovery from DCRG.

12. In other case of NC Sharma vide order dated 24.10.2001 of Mumbai Bench of this Tribunal cited by the respondents' counsel, the dispute was for recovery of Rs. 54,609 from DCRG out of which Rs, 32,826 was for penal rent. This Tribunal dismissed the OA after noting that the penal rent related to the period when the employee had occupied the quarter even when posted in another station. **But**

this order dated 24.10.2001 of the Tribunal was challenged before Hon'ble Bombay High Court in a Writ petition N.C.Sharma vs. Union of India and Ors. reported in 2004(3) MhLj 478 and which disposing of this writ vide judgment dated 10.02.2004, Hon'ble Bombay High Court held as under:-

"By this petition under Article 226 of the Constitution of India, the petitioner challenges an order dated 24th October 2001 passed by Central Administrative Tribunal, Mumbai in O.A. 305 of 1997. By the impugned order the Tribunal upheld the order dated 30th October 1996 issued by the respondents herein. The challenge arises in the following factual Background.....

.....

21. There is another angle from which this controversy can be appreciated. Assuming that Rule 15 of the 1993 Rules would apply, even then, a bare perusal of the Rule indicates that the railway or Government dues should be (a) ascertained and assessed and (b) they should remain outstanding till the date of retirement or death of railway servant. Only then, it is permissible to adjust the same against the amount of retirement gratuity or terminal gratuity and (c) recovery of all dues against railway servant shall be regulated in accordance with the provisions of Sub-rule (4) of Rule 15. Now, it is well settled that whenever the Legislature uses the words "ascertained and assessed" pertaining to the dues, they necessarily pre-suppose crystallisation of the dues after adjudication. That such an adjudication only will result in ascertainment and assessment of the dues is apparent. Further, that such an adjudication should be prior goes without saying.....

22. Therefore, it is obvious that principles of natural justice have to be adhered to and an opportunity will have to be given to the concerned employee before recoveries or adjustments are effected by the Railway or Government. In the instant case, in our view, merely addressing the letters as noted above, would not by any stretch of imagination mean compliance with the principles of natural justice. There is nothing in the order dated 31st October 1996 which would indicate that prior opportunity was given to the

petitioner before adjustments were made from the terminal dues/benefits admissible to him. In this view of the matter, the conclusion of the Tribunal that opportunity was given or that there was no dispute about the dues is contrary to the material placed on record and wholly erroneous. It is difficult to agree with the conclusion of Tribunal on this aspect.

23. For the reasons aforesaid, in our view, the impugned order cannot be sustained. Consequently, the Rule is made absolute in terms of prayer Clause (a). In view of the decision of the Supreme Court in the case of R. Kapoor v. Director of Inspection (Printing and Publication), reported in 1995 SCC (L and S) 13 Rule is also made absolute in terms of prayer Clause (b). Respondents to make the payment as directed in prayer Clause (b) with interest at 9% p.a. within a period of twelve weeks from today. All concerned to act on an authenticated copy of this order."

13. It is also noted that in the case of Union Of India Thru The Gen Mgr. N.C.R. & Ors. vs. Central Administrative Tribunal & Anr. In WRIT - A No. - 20681 of 2009, Hon'ble Allahabad High Court has also upheld similar legal principles with following observations:-

".....We fully agree with the view of Bombay High Court. Rule 15 (1) says it shall be the duty of the Head Office to ascertain and assess Government or Railway dues payable by a railway servant due for retirement. The words 'due for retirement', according to us mean the dues upto the date of retirement. Rule 15 (2) of the Rules, 1993 provides for the recovery of Railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, means the dues as ascertained and assessed on the date of retirement or death of the railway

servant. It does not contemplate dues accruing after the date of retirement. Thus, the penal interest which accrued after the retirement is not covered under Rule 15 (2).....

.....

The Division Bench of this Court in the case of Smt. Marjaddi Vs. Central Administrative Tribunal, Allahabad Bench, Allahabad and others (supra) has also held that the recovery of damages for retention of official quarter against the gratuity is illegal. In the case of Gorakhpur University vs. Dr. Shitla Prasad Nagendra and others, reported in 2001 92) SCSLJ 247, the post retiral dues of the Professor of the University had been withheld on the ground that the Professor has retained the University's accommodation after his retirement. The Apex Court has held that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.....”

14. A similar dispute has been decided by the Hon'ble Apex Court in the case of Union of India & Ors. Vs. Madan Mohan Prasad reported in 2003 (1) ATJ 246. In this case, the Hon'ble Apex Court has held as under: -

“3. It cannot be said that the case put forth on behalf of the appellants can brought in any one of these categories. The claim made on behalf of the appellants is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated therein is ‘admitted’ and ‘obvious’ dues. The payment resulting in penal damages is neither ‘admitted’ nor ‘obvious’ dues apart from the fact that determination has to be made in such a matter. It is also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either ‘admitted’ or ‘obvious’. Hence, we do not think that the view taken by the

tribunal calls for any interference. However, it is made clear that while the appellants have to disburse the DCRG to the respondent the normal house rent, inclusive of electricity and water charges, which are 'admitted' or 'obvious' dues can be deducted out of the same, if still due."

15. The present case is squarely covered by the cases as discussed in paragraphs 12 -14 of this order. In the present OA, the impugned order simply states the amount due towards rent/damage/electricity bill etc. without disclosing the details like the reasons, period for which the amount was due and whether the employee concerned was informed about consequences etc. and issued notice before levying the charges. As observed by Hon'ble Supreme Court in the case cited at paragraph 14 of this order, penal damages is not admitted dues. It has to be determined under appropriate rules. Further, such penal rent / damage can be waived under appropriate rules. **Adjustment of such outstanding dues from the retiral dues without any prior notice and details, is gross violation of natural justice.**

16. As observed earlier, the respondents never bothered to communicate details regarding the retiral dues to the applicant, who is the widow of a railway servant, who died apparently due to serious illness. It is stated in the OA that the husband of the applicant, while fighting the serious illness had to face departmental proceeding, leading to his removal from service. The punishment was modified by the appellate authority to 'compulsory retirement' in the order attached

at Annexure A-3, which has not been challenged by the applicant. In spite of that, the applicant, after death of her husband on 24.02.2002 (Annexure A-2), had to run from pillar to post and undergo three rounds of litigations in this Tribunal for release of retiral dues, which is being prevented by the respondents in spite of direction of this Tribunal to communicate a reasoned order taking into account the grievance of the applicant about payment of retiral benefits.

17. In view of the foregoing discussions and following the ratio of the decisions of Hon'ble Apex Court, Hon'ble Bombay High Court and Hon'ble Allahabad High Court as discussed in para 12-14 of this order, the impugned order dated 12.05.2010 (Annexure A-1) is set aside and quashed and the respondents are directed to disburse the retiral dues payable to the applicant as per rules without any deduction alongwith interest at the rate of 12% per annum from the date of the death of applicant's husband till the date of actual payment to the applicant within three months from receipt of a copy of this order.

16. The OA is allowed with above directions. No costs.

(GOKUL CHANDRA PATI)
MEMBER- A.

Anand...

