

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.156/2014

Dated this Friday the 5th day of May 2017

CORAM: HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

S. Subramaniam
Husband of late Padma S. Mudilier,
Ex-UDC Cashier
Garrison Engineer (West)
Colaba, Mumbai - 400 005.
R/o. 103, "A" Wing, Dosti IRIS
Dosti Acres Estate,
Wadala (East), Mumbai - 400 037 ... **Applicant**

(Advocate Ms. Priyanka Mehndiratta)

Versus

1. The Commander Works Engineers (Army)
24, Assaye Building,
Colaba, Mumbai - 400 005.

2. The Garrison Engineer (West)
24, Assaye Building,
Colaba, Mumbai-400 005 ... **Respondents**

(Advocates Smt H.P. Shah)

ORDER

Per : Dr. Mrutyunjay Sarangi, Member (A)

The applicant in the present OA is the husband of one Smt. Padma S. Mudilier who died in harness on 06.01.2011 while working as a Cashier with Garrison Engineers (West) (Respondent No.2). Because of certain financial irregularities, a police complaint was filed against her on

12.08.2006 and criminal proceedings were initiated in the court on 18.08.2006. She was placed under suspension and enquiry was ordered against her. On 01.10.2008 a charge sheet was served on her but she expired on 06.01.2011 before the finalisation of the enquiry proceedings. The proceedings against her abated consequent on her death and the case filed against her was closed by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. The respondent No.2 informed the applicant on 17.08.2012 that Rs.10,55,962/- was due to be paid to her, out of which Rs.4,58,002/- was towards arrears of pay and allowances and Rs.5,97,960/- towards Gratuity. On 31.05.2012, the Principal CDA (Pensions), Allahabad issued the Pension Payment Order fixing the pension of Rs.8000/- pm and payment of Rs.5,97,960/- towards Gratuity. However, the respondent No.2 has withheld these payments vide his letter dated 27.06.2012 addressed to the Syndicate Bank, Sion. Subsequently, the Principal CDA (Pensions), Allahabad issued another Pension Payment Order on 15.10.2013 directing payment of pension at Rs.8000/- pm and Gratuity of Rs.6,78,095/-. However, on 15.11.2013, the respondent No.2

directed the Bank to stop the payment on the ground that a case regarding misappropriation of public fund against late Smt. Padma S. Mudilier is yet to be finalised by the appropriate authority. Aggrieved by the above two orders dated 27.06.2012 (Annexure A-2) and 15.11.2013 (Annexure A-1), the applicant has filed the present OA praying for the following reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same may direct the respondents to quash and set aside the orders dated 15.11.13 and 27.06.12 with consequential benefits.
(b) The Hon'ble Tribunal may further be pleased to direct the respondents to immediately disburse the pensionary benefits henceforth.
(c) The Hon'ble Tribunal may further be pleased to direct the respondents to pay the arrears of salary etc to the applicant.
(d) The Hon'ble Tribunal may further be pleased to direct the respondents to pay interest @18% on the amounts due till the date of payment.
(e) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.
(f) Cost of the application be provided for."

2. The grounds on which the applicant has based his prayer are at para 5 of the OA and are reproduced herein below:-

"5. (a) The impugned orders dated 15.11.13 and 27.06.12 are ex-facie illegal.

(b) The action of the respondents withholding of the pensionary benefits and arrears of pay etc. of a deceased employee on the ground of pending cases of misappropriation etc. is illegal and bad in law.

(c) In view of the specific provision under the FR SR and CCS(CCA) Rules no recovery can be made if an employee dies in harness without charges having been proved against her till death. Accordingly imposition of penalties prescribed under the CCS(CCA) Rules is not justified. Since the proceedings have since been closed and criminal proceedings have abated. No amount can be withheld from the pensionary benefits.

(d) There is a violation of Article 14 and 16 of the Constitution of India in that Equality before Law and Equal Protection of Law have been violated.

(e) The Hon'ble Supreme Court has laid down that pension is the private property and right of the employee.

The Hon'ble Supreme Court has held in the case of Gorakpur University Vs/ Shitla Prasad 2001 SCC (L&S) 1032)

"that Pension and Gratuity are valuable rights acquired and property in hands of the Employee and delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.

f) The respondents are completely unjustified in withholding the retiral dues of the applicant's wife."

3. The respondents in their reply filed on 21.11.2014 gave a detailed statement of the proposed deduction amounting to Rs. 2,82,095/- towards various items such as recovery of income

tax, quarter damage charges, license fee, LIC recovery and recovery towards loan from MES society. It is their submission that while working as Cashier, the wife of the applicant Smt Padma S. Mudilier misappropriated public fund amounting to Rs.8,75,534/- for which FIR had been filed by the LT Col M.A. Dubey, GE(W), Colaba, Mumbai. The court of enquiry had finalised its report and the applicant was served with a charge sheet on 01.10.2008 alleging misappropriation of funds and misconduct. They have also submitted that as per the order of the Headquarters, Southern Command, a deduction of 2% on Rs.8,75,634/- on account of penal recovery and Rs.2,64,589/- on account of outstanding dues totaling Rs.2,82,095/- had been recovered from the pay and allowances of the deceased employee and the balance amount of Rs.1,93,379/- has been paid to the applicant through SBI Cheque No.173453 dated 15.05.2014. The respondents, therefore, claim that the OA should be dismissed as devoid of merit.

4. The applicant filed a rejoinder on 04.07.2016 in which he disputed the amount of recovery proposed by the respondents. It is his contention that since his wife has died while in

service the criminal proceedings as well as the departmental proceedings against her stood abated and the respondents do not have any right to recover any amount from her retirement dues.

5. During the course of arguments, the applicant and the respondents have filed statements on the recovery and the amount agreed by both the sides for the purpose of recovery from the retirement dues of the deceased employee. The statement filed by the applicant on 28.04.2017 reads as follows:-

"1. The applicant states that he has filed the above Original Application for release of Gratuity and Pay and allowances of his deceased wife. Initially, the respondents had sought to recover an amount of around 10 lakhs from her. However, after her death when the applicant filed the present Original Application in the year 2014, the respondents have released an amount of Rs.5,97,960/- and Rs.1,93,379/- on two occasions on a piecemeal basis. Finally, in the last affidavit filed by respondents on 20.04.2016, they have sought to recover an amount of Rs.2,82,095/- from a dead Employee as mentioned in a Tabular form at page 22 of their Written Statement. The applicant submitted his reply on 01.07.2016 denying the said amount to be recovered.

2. Thereafter, the matter was heard by this Hon'ble Tribunal and during the course of last arguments that took place on 06.04.2017, the respondents have presented a copy of hand written chart to the Hon'ble Tribunal, without serving a copy on the applicant, by which they

have now reduced the amount of recovery from Rs.2,82,095/- to 90,110/- against four heads. The said amount is also reflected in the Roznama dated 06.04.2017.

3. The applicant submits that he has no objection to the four heads of recoveries as mentioned in the Roznama dated 06.04.2017. The respondents may recover/retain the said amount which totals upto 90,110/-

4. The applicant therefore, prays before this Hon'ble Tribunal to direct the respondents to disburse the balance amount of Rs.1,91,985/- at the earliest to him."

6. Subsequently, the respondents have also filed an additional affidavit on 04.05.2017 with the following details:-

"1) I say that I have been authorized to file this Addl. Affidavit on behalf of the respondents.

2) I say that I have read the copy of Original Application filed by the applicant as well as the copies of replies filed in the matter and on the basis of the available records on file, I am making this present Addl. Affidavit.

3) I say that as directed by this Hon'ble Tribunal vide its order dated 06.04.2017, the respondents are making this present Affidavit.

4) The respondents submit that as per the instructions received by them from the Higher Authorities vide letter dated 08.03.2017 with regard to the recovery of amounts pertaining to Late S. Padma Mudilier which they are entitled to recover as they are justifiable and which have been admitted by the Advocate for the applicant and they are recovery of income tax on a/c of arrears of P&A amounting to Rs.27,604/- Quarter Damage Charges of Rs.9846/- and recovery of Licence fee upto 26th Dec. 2012 of

Rs.15,841/-.

5) With regard to Loan from MES Society, it is to submit that the amount of Rs.36,819/- is justifiable amount which is due to be recovered. The original record pertaining to the said recovery is being produced before the Hon'ble Court.

6) The respondents submit that the said amount of recovery is as under:

Rs.27,604/-

Rs. 9,846/-

Rs.15,841/-

Rs.36,819/-

.....

Total Rs.90,110/- (Rupees Ninety Thousand One Hundred and Ten Only)

7) It is therefore requested that after the said amount as submitted above is recovered, the balance due and payable amount will be released to the present applicant on completion of required formalities as per rules.

8) Whatever stated in the above paras is true and correct as per records.

sd/-

(Rakesh Gupta)

Lt Col

Mumbai Garrison Engineer (West)

Date: 04 May, 2017 For the Respondents"

7. When the matter was finally heard on 04.05.2017, both the learned counsels agreed that the amount of Rs.90,110/- can be recovered from the retirement dues of the deceased employee as full and final settlement of all claims on her. The respondents have agreed to pay the balance amount of Rs.1,91,985/- and the applicant has agreed to accept this amount as final settlement for the payment of arrears of salary and Gratuity.

8. In view of the above settlement between both the parties, the Original Application is disposed of with a direction to the respondents to pass the necessary orders to pay the final dues of the retirement benefits of the deceased employee to the applicant as per rules and as per the final settlement agreed upon by both the parties within a period of eight weeks from the date of receipt of this order. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

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