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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. No.2796 OF 2003

Dated: 1-4-05 A.M.

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Smt. Hira Rani Wd/o Late Shri Rajesh Kumar  
R/o H.No.202, Moh.Jatav,  
Near Anil Tent House, Qutubpur,  
Rewari (Haryana). ....Applicant.

(By Advocate : Shri Yogesh Sharma)

Versus

1. Union of India through the General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, Ambala Division,  
Ambala. ....Respondents.

(By Advocate : Shri Rajender Khatter)

**O R D E R (ORAL)**

Applicant, who is a widow of deceased Govt. employee, through this OA has sought quashing of orders dated 10.9.2002 as well as 26.9.2002 and also seeking benefit of refixation of family pension, DCRG and other retiral dues on the basis of last pay of her husband of Rs.3650/- p.m. with all consequential benefits. She is further seeking a direction to the respondents to grant the ex-gratia lump sum compensation of Rs.5 Lakhs with interest.

2. Applicant's husband, who was working as Diesel Assistant, died while performing his duties on 11.1.2001. Last pay drawn by the deceased Govt. employee was Rs.3650/- on the basis of which retiral benefits etc. were accorded to the applicant. Whereas later on, the respondents, while correcting the last pay of the deceased husband of the applicant, have fixed the pay to Rs.3425/- and consequently recovery has been ordered to be

made from gratuity & other retiral dues of the deceased husband of the applicant. As the claim regarding ex gratia lumpsum compensation, which had been assailed by the applicant before the respondents vide her representation, was not being disposed of, applicant had filed OA 1961/2002, which was disposed of vide order dated 26.7.2002 with a direction to the respondents to dispose of the pending representation of the applicant. Respondents vide orders dated 10.9.2002 and 26.9.2002, rejected the request of the applicant for refixation of the pensionary benefits and also denied ex-gratia lump sum compensation.

3. Learned counsel states that before recovery has been made while refixing the pension of the applicant, no reasonable opportunity to show-cause has been afforded, which is in violation of principles of natural justice. It is also stated that recovery has been made from the retiral benefits on account of wrong fixation of the pay of her husband as on scrutiny of records of the applicant's husband, it was found that during the year 1992, 1997 and 1998 increments were wrongly given to applicant's husband due to LWP, without passing any order and without show cause notice, which is illegal in the eyes of law. To substantiate the aforesaid plea, reliance is placed on the decision of the Apex Court in the case of Shyam Babu Verma vs. Union of India, 1994 (2) SCC 521, as well as the decision of the Division Bench of Jabalpur Bench of this Tribunal in the case of K.K. Dubey vs. Union of India and others, 2003 (3) ATJ 535.

4. As regards ex-gratia lumpsum compensation is concerned, it is stated by the learned counsel for the applicant that payment of ex-gratia lumpsum compensation, as reflected in Ministry of Personnel, Public Grievances & Pensions OM dated 11.9.1999, which is adopted by the

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Railways through their RBE No.285/1999 dated 5.11.1999, provides that in case of death occurring due to accidents in the course of performance of duties, the compensation provided elsewhere would not affect the ex-gratia lumpsum compensation. This is in addition to the aforesaid.

5. On the other hand, respondents' counsel vehemently opposed the contentions of the applicant's learned counsel and stated that unauthorized absence period is not to be counted for annual increment, as such last pay was corrected as Rs.3450/- and consequent to it, recovery has been effected. As regards ex-gratia lumpsum compensation is concerned, it is stated that once the applicant, who had been paid under the Workman Compensation Act, is not entitled for lumpsum payment as an ex-gratia compensation.

6. I have carefully considered the rival contentions of the parties and perused the material placed on record. In the light of the decision of the Apex Court in the case of **Shyam Babu Verma's case (supra)**, it is no more res integra that before the last pay has been refixed in the case of deceased Govt. servant, no opportunity has been afforded to the legal heirs. Accordingly, aforesaid wrong fixation cannot be countenanced and the same is in violation of principles of natural justice. The decision of the Division Bench of Jabalpur Bench of this Tribunal in the case of **K.K. Dubey (supra)** covers the issue in all fours. Moreover, no recovery can be effected from gratuity etc. as these are not admitted dues.

7. As regards ex-gratia lumpsum compensation is concerned, though the applicant has been granted a sum of Rs.4,07,700/- as compensation under Workman Compensation Act, yet Office Memorandum dated 11.9.1999, which is adopted by the Railways also, clearly shows that in the

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case of death of an employee while performing duties, gratuity and other dues would not be taken into consideration. The said compensation in other cases has also been awarded upto Rs.5 lakhs. Therefore, the reasoning given in the impugned order is contrary to aforesaid RBE letter.

9. In the result, for the foregoing reasons, OA is partly allowed. Refixation of last pay of the deceased Govt. employee as well as recovery is declared illegal and accordingly, the same is set aside. Respondents are directed to refix the retiral dues of the applicant on the basis of last pay of the deceased husband of the applicant i.e. Rs.3650/- and refund the recovered amount, if any. Insofar as ex-gratia lumpsum compensation is concerned, the case of the applicant would be re-examined in the light of RBE letter dated 5.11.1999 and necessary follow up action may be taken. The aforesaid directions shall be complied with within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju  
(SHANKER RAJU)  
MEMBER (J)

/ravi/