

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 2409 of 2016

1. The Union of India, through Sri D.K. Hayan, The General Manager, East Central Railway, Hazipur (Bihar).	
2. Sri M.K. Akhori, The Divisional Railway Manager, East Central Railway, Dhanbad.	
3. Sri Ujjawal Anand, The Senior Divisional Personnel Officer, East Central Railway, Dhanbad.	
4. Sri S.C. Choudhari, The Senior Divisional Electrical Engineer (OP), East Central Railway, Dhanbad.	
5. Sri B.K. Singh, The Chief Medical Superintendent, East Central Railway, Dhanbad.	
6. Sri Animesh Kumar, The Senior Divisional Financial Manager, East Central Railway, Dhanbad	 Petitioners
Versus	
Smt. Anita Kumari Sinha	 Respondent

CORAM : HON'BLE MR. JUSTICE H. C. MISHRA
HON'BLE MR. JUSTICE Dr. S.N. PATHAK

For the Petitioners	: Mr. Vijay Kumar Sinha, Advocate
For the Respondent	: Mr. Minal Kanti Roy, Advocate.

07/ 13.04.2017 Heard the learned Counsel for the petitioners and the learned Counsel for sole respondent.

2. The petitioners in their official capacity, are aggrieved by the order dated 15.10.2016 passed by the Central Administrative Tribunal, Circuit Bench at Ranchi, in OA/051/00104 of 2015, whereby the application filed by the sole respondent in the Central Administrative Tribunal was disposed of, directing the respondents (i.e., the petitioners herein), to refund the amount of Rs. 6,55,319/- to the applicant (i.e., the sole respondent herein), within a period of two months.

3. It may be stated that the sole respondent is the widow of a deceased Group-C employee of the East Central Railway, who suffered cerebral stroke on duty on 22.1.2011 and remained in coma till his death on 6.10.2014. The widow had challenged the recovery of Rs. 6,55,319/- which was paid towards salary to the deceased employee from 22.01.2011 to 9.10.2013, which was recovered from his retiral dues, paid to the widow.

4. The impugned order shows that in the original application filed before the Central Administrative Tribunal, the written statement was filed by the Railways, in which it was stated that as per the Muster Roll submitted by CTF[R]/GMO, he (husband of the sole respondent) was under sick list 'Hurt On Duty' (herein after referred to as 'HOD'), under the Health Unit, Koderma, from 22.01.2011 to 09.10.2013 and from 10.10.2013 to 31.01.2014 mentioned as

HOD was not available. As per Rule 554 of IREC Vol.1, 2008 Edition, he was paid equal to leave salary on average pay for first 120 days by granting hospital leave by Sr. DEE[OP]/DHN vide letter No.422/IOD dated 17.08.2012. Thereafter equal to leave salary during half pay leave for the remaining period subject to maximum 28 months, being Rs. 6,55,319/- was paid for the period from 22.01.2011 to 09.10.2013. Subsequently, the CMS/DHN, vide his letter dated 9.12.2014 intimated the applicant that her husband had a brain stroke while he was going on duty, but it was not a HOD case and accordingly, the deduction of Rs. 6,55,319/- was ordered to be made from the retiral dues of her deceased husband. This was challenged by the applicant in the Central Administrative Tribunal, and upon adjudication of the matter the Central Administrative Tribunal, taking into consideration the law laid down by the Hon'ble Supreme Court of India, in **State of Punjab & Ors., Vs. Rafique Masih & Ors**, reported in (2015) 4 SCC 334, disposed of the OA filed by the applicant in the following terms:-

“11. In the instant case, the deceased employee is admittedly a Group-'C' employee who suffered cerebral stroke on duty. The concerned supervisor sent the accident report belatedly and ultimately the said employee was declared totally medically unfit for Railway service and who died soon thereafter while in coma. In such case the respondents should not make any recovery for their own fault as the responsibility of sending the accident report immediately lies with the Chief Loco Inspector [In-charge] and not with the employee concerned, who was in coma till his death.

12. In view of above, the impugned orders dated 31.05.2014 and 09.12.2014 [Annexures-A/2 & A/3 respectively] are quashed and set aside. The respondents are directed to refund the said amount of Rs. 655319/- to the applicant within a period of two months from the date of receipt / production of a copy of this order.

13. Accordingly, the OA is disposed of with above observations and directions. No costs.”

It is this order which is under challenge in the present writ application by the officials of respondent East Central Railway.

5. Though learned counsel for the petitioners has vehemently tried to impress upon us that the recovery made from the retiral dues of the deceased employee was justified, but the fact remains that the written statement filed on behalf the East Central Railway, before the Central Administrative Tribunal, clearly showed that the sole respondent, or her deceased husband, were not at all responsible to treat the case of the deceased employee to be HOD. It is now well settled by a catena of judgments that the payment of salary once made to a

Class-IV and Class-III employee, cannot be recovered even if wrongly made, if it was not as a result of any misrepresentation or fraud by the concerned employee. [Authority:- Syed Abdul Qadir & Ors., Vs. State of Bihar & Ors., reported in (2009) 3 SCC 475, State of Punjab & Ors., Vs. Rafiq Masih & Ors., reported in (2015) 4 SCC 334].

6. In **State of Punjab & Ors., Vs. Rafiq Masih & Ors.** (*supra*), the Hon'ble Apex Court has considered its earlier decisions on the point and has laid down the law as follows:-

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. (Emphasis supplied).

7. In the present case we find that the husband of the applicant was admittedly a Group-C employee of the East Central Railway, who was found to have suffered cerebral stroke on duty, and Muster Roll showing HOD was issued by CTF[R]/GMO. In that view of the matter we are of the considered view that the recovery of the amount of Rs. 6,55,319/- from the retiral dues of the sole respondent's husband was rightly quashed and set aside by the Central Administrative Tribunal, and the petitioners, in their official capacity, were directed to refund the said amount to the applicant within a period of two months. As we find from the record that even if the amount was wrongly paid, the applicant was not at all responsible for the same, we do not find any illegality

in the impugned order dated 15.10.2016 passed by the Central Administrative Tribunal, in OA/051/00104 of 2015, particularly in view of the fact that the recovery has been ordered by the East Central Railway from the retiral dues of an employee who suffered cerebral stroke on duty on 22.1.2011 and remained in coma till his death on 6.10.1014.

8. In the present case, we are of the considered view that in spite of well settled principle of law, the petitioners have filed this frivolous writ application only in order to deprive the legitimate rights of the widow of the deceased employee. The action of the East Central Railway is highly deprecated and we are of the considered view that in the facts of the case the petitioners, in their official capacity, are liable to be saddled with exemplary cost.

9. This writ petition is accordingly, dismissed, and the petitioner Union of India through East Central Railway is also directed to make the payment of Rs. 2,50,000/- (rupees two lakhs fifty thousand) to the sole respondent along with the recovered amount of Rs. 6,55,319/-, with interest @ 7% p.a., from the date of recovery till the date of actual payment.

10. Before parting with this order, we find that the petitioners have been made party in this writ application with their personal names, for which we find no reason or occasion at all. For all practical purposes, we make it clear that the petitioners shall be responsible only in their official capacity and not in their personal capacity, unless the responsibility is fixed on any of them, in accordance with law.

11. This writ application is accordingly, dismissed with the directions as above.

(H. C. Mishra, J.)

(Dr. S.N. Pathak, J.)