

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 4843 of 2004

Union of India and another

Petitioners

*Mr. P.S. Nayak, Sr. Panel
Counsel, Govt. of India*

Vs.

***Smt. Manikmala Maity and
another***

Opposite Parties

*Mr. S.K. Das, Advocate
(O.P.1)*

CORAM:

**DR. JUSTICE B.R. SARANGI
MR. JUSTICE S.K. MISHRA**

ORDER

03.08.2022

Order No.

10.

This matter is taken up through hybrid mode.

2. Heard Mr. P.S. Nayak, learned Senior Panel Counsel, Government of India appearing for the Union of India-Petitioners.

3. Though Mr. J.K. Das, learned Counsel entered appearance for Opposite Party No.1, but at the time of call, he was not present in Court. Since it is an old case of the year 2004, this Court is not inclined to grant further adjournment.

4. The Petitioners, who are the functionaries of East Coast Railway, Bhubaneswar, have filed this Writ Petition seeking to quash the Order dated 26.06.2003 passed in O.A No. 91 of 2002 under Annexure-3, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack, while holding that Opposite Party No.1 is entitled to get DCRG amount, has directed the Petitioners to make payment of the

DCRG amount immediately and pay interest for delay in payment @ 10% from 01.11.1997 to 31.10.2002 on the entire amount of DCRG and @ 6% from 01.11.2002 to the preceding month of issuing the order of payment and the final payment should be effected within 30 days of the receipt of the Order.

5. Mr. P.S. Nayak, learned Sr. Panel Counsel, Government of India appearing for the Petitioners vehemently contended that the husband of Opposite Party No. 1 was an employee of the Railway Department, who retired from service on attaining the age of superannuation. Due to loss caused to the Railway Department to the tune of Rs.1,04,134/- by the husband of Opposite Party No.1, which was found on inquiry, the DCRG amount was not released in her favour after the death of her husband. But the Tribunal without appreciating the reason for delay in proper perspective, vide Order dated 26.06.2003, directed to pay the DCRG amount along with interest. Thereby, the Tribunal has acted arbitrarily and unreasonably, for which the Order dated 26.06.2003 passed in O.A. No.91 of 2002 is liable to be quashed.

6. It is the specific case of Opposite Party No.1, as is borne out from the record, that her husband was an Ex-employee of the Railway Department and retired from service on attaining the age of superannuation. After his retirement, he expired, but his DCRG amount was not paid by the Authority on the plea that he had caused loss to the Railway Department. This responsibility was fixed on the deceased employee by causing an inquiry, after his death, by

the Assistant Engineer, Khurda Division, without giving any opportunity of hearing and without any intimation. Therefore, such inquiry report cannot be used by the Authority as a basis to withhold the DCRG amount of the deceased employee. Thereby, the Tribunal, after due adjudication, vide order dated 26.06.2003, directed the Petitioners to pay the DCRG amount to Opposite Party No.1 within a period of 30 days from the date of receipt of the Order. As a consequence thereof, the Tribunal has not committed any error in passing the Order dated 26.06.2003 in O.A. No.91 of 2002, which does not warrant interference of this Court at this stage.

7. Having heard learned Senior Panel Counsel, Government of India appearing for the Petitioners and after going through the records, it appears that Opposite Party No. 1, the widow of late Arabinda Maity, an ex-employee of erstwhile South Eastern Railway, filed O.A. No. 91/02 praying, inter-alia, for release of the DRCG amount with other arrear dues at an early date with 18% interest in her favour. The deceased employee retired from service on 31.10.1997 and expired on 20.03.1999, but the DCRG dues were not paid despite several representations. The Tribunal, vide order dated 22.05.2002, directed the Petitioners to release the DCRG amount within one month. But, the Petitioners filed M.A. No. 977 of 2002 for recalling/modification of the said Order permitting them to file an Additional Counter Affidavit. It was specifically stated therein that the Ex-employee, i.e., husband of Opposite Party No.1, while in service was in charge of

Railway stock. On 07.10.1997, such Railway stock was verified in presence of the husband of Opposite Party No. 1, as he was the in-charge of the stock and responsible for the stock. The F.A and C.A.O. on 31.08.1999 intimated the Sr. Divisional Engineer (North) to take action in respect of shortages. The Assistant Engineer, Khurda Division, in his report dated 13.10.2001 held that the husband of Opposite Party No. 1 was responsible for the loss and accordingly recommended for realization of the cost of the loss incurred by the Railway Department. The Sr. Divisional Engineer (North) on 09.10.2002 submitted the case record with his remarks and Inquiry Report to the F.A. and C.A.O., Calcutta for disposal and decision. The Khurda Division was directed by the F.A. and C.A.O. to take action against the shortages. Accordingly, the amount was recovered from the DCRG and the rest DCRG was released on 31.11.2002.

8. Opposite Party No.1, the wife of the deceased employee filed O.A. No.91 of 2002 claiming DCRG benefit admissible to her husband along with interest. There is no dispute that the inquiry was conducted by the Assistant engineer, who submitted his report on 13.10.2001, much after the death of the deceased employee, i.e. 20.03.1999. As such, the deceased employee retired from service on 31.10.1997. Thereby, no opportunity of hearing was given to the deceased employee and the entire inquiry was conducted behind his back and for that reason the DCRG amount was withheld. After the death of the Railway employee on 20.03.1999, the DCRG amount has not been paid to his wife-Opposite Party No.1, though she is otherwise entitled to

get the said benefit. Therefore, the Tribunal, vide Order dated 26.06.2003, directed for release of DCRG amount along with interest for delay in payment @ 10% from 01.11.1997 to 31.10.2002 on the entire amount of DCRG and @ 6% from 01.11.2002 to the preceding month of issuing the order of payment and further directed that the final payment should be effected within 30 days of the receipt of the Order. The said Order having not been complied with, Opposite Party No.1 filed C.P. No.102 of 2003 before the Tribunal. But fact remains, the Order dated 26.06.2003 passed by the Tribunal in O.A. No.91 of 2002 was assailed in the present Writ Petition on 20.04.2004. As the said Order was not complied with, the Tribunal compelled the Authority to comply with the same. Ultimately, this Court, vide Order dated 02.09.2005 directed for initiation of Contempt Proceeding against the Vice-Chairman and also the Member (Judicial). But in the meantime, more than 18 years have passed and, as such, the Contempt Proceeding was also stayed by this Court. But fact remains, for the loss caused to the Railway Department, pursuant to inquiry, DCRG amount was not released in favour of Opposite Party No.1. Such inquiry was conducted behind the back of the deceased employee, because after his retirement and even after his death, such inquiry was conducted. As such, this Court is not inclined to accept such procedure adopted by the Petitioners to shift the responsibility on the deceased employee by causing inquiry after his death without giving opportunity of hearing, as thereby the Principles of Natural Justice have been grossly

violated.

9. In that view of the matter, this Court is not inclined to entertain this Writ Petition, which is hereby dismissed. Consequentially, the Order dated 26.06.2003 passed by the Tribunal in O.A. No.91 of 2002 is upheld and the Petitioners are directed to comply with the Order passed by the Tribunal and release the entire DCRG amount with interest in favour of Opposite Party No.1 within a period of two months from the date of production/communication of this Order. The Contempt Proceedings initiated in pursuance of Order dated 02.09.2005 of this Court, are hereby dropped.

10. Issue urgent certified copy as per rules.

Alok/Ananta

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE

