

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/01696/2017****Dated Friday , the 7th day of February, 2020****PRESENT****Hon'ble Mr. T. Jacob, Administrative Member**

N. Devaki,
D/o. Munusamy,
W/o. Late Mr.N.NandaKumar,
No.45/64, Ammaiayammal Street,
Pulianthope,
Chennai – 600 012.Applicant

(By Advocate Mr. R.Rengaramanujam)

Vs

1. The General Manager,
Southern Railway,
Moore Market Complex,
Chennai – 600 003.
2. The Chief Workshop Manager,
Carriage and Wagon Workshop,
Southern Railway,
Perambur,
Chennai – 600 023.Respondents

(By Advocate Ms. R.Sathyabama)

ORDER**(Pronounced by Hon'ble Mr.T.Jacob, Member (A))**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "i. To direct the respondents to pay the entire Death cum Retirement Gratuity amount due to her husband late Mr. N. Nanda Kumar, and also the family pension together with interest from the date on which it became due to till the date of realization.
- ii. To pass such further or other orders as this Hon'ble Tribunal may deem and proper in the circumstances of the case and thus render justice"

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant submits that her husband N. Nanda Kumar was working under the control of the 2nd respondent from 16.08.1979. He went missing from 31.03.1997 and his whereabouts are not known. Therefore, the applicant lodged a complaint with the Thiruvallur Police Station on 25.11.1999 and a case was registered in Crime No.665/99 under section 'man missing'. Thereafter she had made wide publicity through pamphlets and also through television channel, Doordarshan. Despite her best efforts to trace her missing husband, he was not found and could not be traced. Therefore, the Sub-Inspector of Police, Thiruvallur Police Station had issued an 'Undetectable' certificate dated 07.04.2003 relating to her missing husband. Thereafter she made representation to the respondents on 19.03.2003 praying to grant her family pension and gratuity and appointment on compassionate grounds since she was only 40 years of age at the time of her application. But there was no reply from the respondents. On enquiry, she was informed that she is not entitled for any

retirement benefits since her husband who was missing from 31.03.1997 was imposed with the punishment of Removal from Service w.e.f 31.03.1997 for his continued unauthorised absence. The applicant submits that imposing a major punishment of removal from service on a missing person without following the principles of natural justice is totally unjustified and arbitrary. Thereafter on advice, the applicant filed a petition before the Controlling Authority in the year 2009 under the Payment of Gratuity Act, 1972 praying for a direction to the 2nd respondent to pay the gratuity of her husband. Thereafter, the 2nd respondent by letter No.CPB/227/A/5/96/ 30/W1795 dated 12.04.2010 had sanctioned 2/3rd of eligible pension and gratuity to the applicant with effect from the date of report of the police officer certifying that her case of missing husband was 'Undetectable' i.e from 08.04.2003 and subsequently it was modified w.e.f 23.11.2000 by order dated 15.02.2011 to till the date of the death of the applicant or her husband returns to family, whichever is earlier. The applicant submits that even the sanctioned amount was not paid to her and the issue is still under the correspondence. The above fact was admitted by the respondent before the Controlling Authority and Assistant Labour Commissioner (Central), Puducherry, where after the Controlling Authority by its order dated 07.11.2012 had directed the 2nd respondent to pay the Gratuity amount of Rs. 62308/- (Rupees Sixty two thousand three hundred and eight only) and also the interest thereon at the rate of 10% per annum from the date on which the gratuity became due to till the date of actual payment of gratuity amount to the applicant. Challenging the order passed by the Controlling Authority and Assistant

Labour Commissioner (Central), Puducherry, the respondent preferred an appeal before the Appellate Authority and the same was also dismissed by the Appellate Authority by its order dated 08.07.2013. Thereafter, challenging the orders of the Appellate Authority, the 2nd respondent had filed a writ petition in W.P. No. 27720 of 2013 before the Hon'ble High Court, Madras and the said writ petition was dismissed for non-prosecution by order dated 21.06.2017. Thereafter it was informed to the applicant by the 2nd respondent by letter dated 22.09.2017 that a petition for restoration of the W.P. No 27720 of 2013 has been filed and action will be taken on the final disposal of the above Writ Petition. Meanwhile, the applicant has sent a letter by registered post that she is not pressing her claim for gratuity under the Payment of Gratuity Act since she wanted to pursue her remedy before the Central Administrative Tribunal praying for DCRG and pension as admissible under the Railway Pension Rules and therefore the question of restoring the above Writ Petition No.27720 of 2013 filed by the respondents does not arise. When the applicant's husband and his service with the respondents are not disputed and based on the railway records, her nomination to receive the retirement benefits was also not disputed by the respondents there is no reason as to why her genuine claim was not settled for the past 20 years. Hence the applicant has filed this OA seeking the above reliefs inter-alia on the following grounds:-

- i. As per the Railway Board order dated 19.09.1986, the families of the disappeared employees are eligible for the family pension and other benefits after expiry of one year from the date of disappearance of the railway servant and as per the RBE No.63/91 dated 27.03.1991, it was clarified that the date of

disappearance of the employee will be reckoned from the date on which the FIR was lodged with the police. But even after a lapse of nearly 20 years, the DCRG and the family pension was not paid to the applicant..

ii. The 2nd respondent by his letter dated 12.04.2010 had sanctioned 2/3rd of the family pension and the gratuity to the applicant w.e.f 08.04.2003 and by his letter dated 16.07.2010, the family pension was sanctioned to the applicant at the rate of Rs.1275/- p.m + Dearness Relief w.e.f 09.04.2003 to 31.12.2005 and at the rate of R.3500/- p.m. + Dearness Allowance w.e.f 01.01.2006 to till her death or her husband returns to family, whichever is earlier. But yet the same was not paid to the applicant and the respondents are deliberately delaying the grant of even the sanctioned amount in a most arbitrary and discriminatory manner.

iii. Conducting an enquiry on an missing employee is highly impossible and therefore, the Respondent should not have imposed the punishment of Removal from Service on the Applicant's husband for unauthorized absence, instead the respondents should have treated her husband as a missing person and should have sanctioned pension and gratuity as per the Rules applicable to a missing employee. But the pension and gratuity was not paid despite the best effort taken by the applicant for nearly 20 years and the denial of the above benefit due to her is highly arbitrary and discriminatory.

iv. The applicant belongs to a poor family and her husband is the sole bread winner of the family and therefore, not granting the sanctioned amount of DCRG and family pension is in violation to Article 14, 16 and 21 of the Constitution of India.

v. The respondents had already sanctioned the family pension to the applicant by its order dated 16.07.2010 but it was not granted so far.

3. The respondents have filed a detailed reply statement in which it is stated that the Sri. N.Nandhakumar, Tech- II was removed from service w.e.f 31.03.1997 for his unauthorized absence from duty for the period from 12.05.1995 to 29.02.1996 after

following the prescribed procedure under the Railway Servant (Discipline & Appeal) Rules 1968. The applicant made representation dated 05.08.1997 requesting settlement benefits. She was replied that Sri. N.Nandhakumar was removed from service w.e.f 31.03.1997 by letter No.CPB/227/PII dated 19.08.1997. Again, she submitted representation dated 30.10.2002 stating that her husband found missing for more than 6 months and requested for pension. She was replied by letter No.CPB/227/A/5/96/30/W1795/96 dated 22.02.2003 that her husband was removed from service w.e.f 31.03.1997. On 06.03.2003, the applicant has requested for pensionery benefits stating that her husband disappeared and produced FIR dated 23.11.1999 in support of her claim. Since FIR was filed only on 23.11.1999 after the date of removal from service i.e., 31.03.1997, it was treated that a removed employee found missing subsequently claiming as disappeared prior to his removal. Only after knowing that her husband was removed from service the applicant has filed FIR. This is only an after thought. The applicant being the legal heir of ex-employee was sanctioned compassionate allowance both pension and gratuity notionally w.e.f 31.03.1997 i.e., the Gratuity from the date of removal of ex-employee and family pension from 08.04.2003 vide this Office Memorandum dated 12.04.2010. The relevant papers claiming the same were sent to Associate Accounts for arranging payments to the applicant. The Associate Accounts have returned for certain clarification. The Competent Authority on review of the case has sanctioned the compassionate allowance notionally from the date of lodging FIR with police w.e.f 23.11.1999. Again, the Accounts Department returned the sanction for clarification

and the papers were again resubmitted to Accounts. In the meanwhile, the applicant filed Gratuity Application No.48(36) 2009-B2/B4/PDY claiming Gratuity for the period from 16.08.1979 to 31.03.1997 the service rendered by Sri. N.Nandakumar under payment Gratuity Act 1972. In the claim petition, she has stated that her husband was disappeared from 31.03.1997 and lodged a police complaint on 25.12.1999. The Controlling Authority under the payment of Gratuity Act 1972 and ALC (Central) Puducherry in his order dated 07.11.2012 allowed the petition. The respondents have preferred an appeal before the Appellate Authority under the payment of Gratuity Act 1972/RLC (C) Chennai. The Appellate Authority has confirmed the order passed by the controlling authority & ALC (C). The respondent herein has filed Writ Petition before the Hon'ble High Court/Madras. The Hon'ble High Court/Madras granted interim stay by order dated 08.10.2013. When the Writ Petition was taken up for hearing on 21.06.2017, the Railway Counsel on record did not appear as his name was not included in the panel of Advocate for Railways. Hence, the Writ Petition was dismissed for non-prosecution. The respondent herein has filed restoration petition. The same is likely to be allowed. Hence, the respondents pray for dismissal of the OA.

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. The points for consideration in this OA are:

- i. Whether there is delay in settlement of retirement dues to the applicant and if so,
- ii. Whether the applicant is entitled to interest for the delay in payment of

retirement dues;

6. Admittedly, based on a complaint lodged by the applicant on 25.12.1999 that her husband went missing on 31.03.1997, a case was registered in Crime No.655/1999 and an "Undetectable" certificate was issued on 07.04.2003. Since the applicant was only 40 years of age at the relevant time, she submitted an representation to the respondents dated 19.03.2003 seeking family pension and gratuity and appointment on compassionate grounds. The respondents vide letter dated 22.02.2003 have informed that she is not entitled for any retirement benefits since her husband who was missing from 31.03.1997 was imposed a major punishment of removal from service for his unauthorised absence. The applicant approached the Controlling Authority under the Payment of Gratuity Act (Assistant Labour Commissioner (Central), Chennai which was allowed in favour of the applicant by order dated 07.11.2012. Challenging the said order, the General Manager/Law, Southern Railway, Chennai filed an appeal in GA. No. 7/2013 before the Appellate Authority under the Payment of Gratuity Act (Regional Labour Commission (Central) Chennai wherein by order dated 08.07.2013 the Appellate Authority dismissed the GA and ordered to deposit Rs.62,308/- with 10% interest accrued thereon before the Appellate Authority. But the applicant has not yet received the said amount and has filed an affidavit dated 25.10.2019 duly notorised to that effect that she will not claim Gratuity under the Payment of Gratuity Act on the ground that she has filed the present OA before this Tribunal claiming DCRG and pension together with interest from the date on which it became due to till the date of

realization. It is the contention of the applicant that the respondents have unnecessarily dragged the issue by filing a Writ Petition No.27720/2013 before the Hon'ble High Court of Madras which ultimately ended in dismissal for non prosecution by order dated 21.06.2017 and the respondent by letter dated 23.09.2017 has intimated that a petition has been filed for restoration of the same. While so, the applicant has addressed the respondents that she is not interested to pursue the case before the Hon'ble High Court and has approached this Tribunal by filing the present OA seeking payment of the entire Death cum Retirement Gratuity amount due to her husband and also the family pension together with interest from the date on which it became due to till the date of realization.

7. The fact remains that since the applicant's husband is governed by the Railway Service (Pension) Rules, 1993, she is to be granted pension and gratuity under the Railway Service (Pension) Rules, 1993 and not under Payment of Gratuity Act, 1972. It is the further contention of the applicant that as per Railway Pension Rules, monthly pension is admissible to a railway employee on his retirement from service after rendering 10 years of qualifying service. It is also contended that the applicant's husband has rendered 18 years of qualifying service from 16.08.1979 to 31.03.1997 and hence, she is eligible for DCRG at the rate of 12 times of the monthly emoluments as per the said

Rules. The respondents have issued an OM dated 12.04.2010 with regard to grant of compassionate allowance, the relevant portion of the said letter reads as follows:-

Shri N. NANDAKUMAR, W.1.95 Technician Gr.II (Fitter)
WR Shop/CW/PER was removed from service with effect from

31.03.1997 vide Penalty Advice under reference (1) above. He was missing and found not detectable vide Not Detectable Report issued by Sub-Inspector of Police, Thiruvallur Taluk on 07.04.2003.

In the light of instructions contained in Railway Board's letter No.F(E)II/2003/PN1/5 dated 04.11.2008 competent authority hereby accorded sanction of compassionate allowance both pension and gratuity as under notionally from the date of removal of the employee ie. 31.03.1997 and family pension from the period commencing from the date following the date of Police report certifying not detectable ie. 03.04.2003 to Smt N. Devaki, wife of N. Nanda Kumar after considering the circumstances of the case in term of Rule 65 of Railway Services (Pension) Rules, 1993.

Now, sanction of the competent authority is hereby accorded for the grant of the following pensionary benefits after the consideration of the circumstances of the case in terms of Rule 65 of Railway Services (Pension) Rules, 1993.

- (i) Pension to the extent of 2/3
- (ii) Gratuity to the extent of 2/3

8. Regarding delay in payment of pension and payment of interest, the Hon'ble Supreme Court held in Union of India V. Justice S.S.Sandhawalia, reported in (1994) 2 SCC 240 as follows:-

"Once it is established that an amount legally due to a party was not paid to it, the party responsible for withholding the same must pay interest at a rate considered reasonable by the Court."

In the case of State of Kerala and others vs. M. Padmanabhan Nair reported in 1985 1 SCC 429 the Hon'ble Apex Court held as follows:-

Pension and Gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

9. In the conspectus of the above facts and circumstances of the case and the

decisions of the Hon'ble Apex Court (supra), I am of the view that the respondents have erred in delaying disbursement of retiral dues to the applicant immediately after receiving the representation from the applicant about missing of her husband and submission of the FIR thereto. Hence the applicant has made out a cast iron case for grant of interest on the belated payment of retiral dues to her. The respondents are directed to pay compassionate allowance both pension and gratuity from the date on which it became due to till the date of payment with interest at the bank rate (simple interest) for the fixed deposit at the relevant point of time. Since the applicant has filed an affidavit that she has not received the amount of Gratuity with interest that was deposited before the Appellate Authority under the Payment of Gratuity Act, the applicant is directed to file an affidavit before the Appellate Authority stating that the amount deposited may be transferred to the Railways with a copy to the respondents. Thereafter the respondents are directed to disburse all settlement benefits due to the applicant as stated above within a period of three months from the date of receipt of a copy of this order.

10. The OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER (A)
-02-2020

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