

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/0053/2019

Dated this Tuesday the 4th day of February, 2020

Coram : Dr.Bhagwan Sahai, Member (Administrative)

Smt.Nanda Baban Tikole,
Widow of late Shri Baban Ramchandra (Tikole),
ex.Pointsman, Vilad, Solapur Division of
Central Railway, Solapur - 413 001.
R/o.C/o Shri D.V. Devkate, E-50/A,
Railway Quarter, In front of Vikas Hotel,
Station Road, Solapur - 413 001. .. Applicant.

(By Advocate Shri D.N. Karande).

Versus

1. Union of India, through
the General Manager,
Central Railwa, 1st Floor of
GM's Office Building,
CSMT, Mumbai - 400 001.
2. Chief Personnel Officer,
Central Railway,
2nd Floor of GM's Office Building,
CSMT, Mumbai - 400 001.
3. Divisional Railway Manager,
Central Railway, Solapur Division,
Modi Khana, Solapur - 413 001.
4. Sr. Divisional Personnel Officer,
Central Railway, DRM's Office,
Solapur - 413 001. .. Respondents.

(By Advocate Ms.Sangeeta Yadav).

Order reserved on : 28.01.2020

Order delivered on : 04.02.2020

O R D E R

Smt.Nanda Baban Tikole, widow of late Shri
Baban Ramchandra Tikole, resident of E-50/A,
Railway Quarters, Solapur has filed this O.A. on

22.11.2018 seeking quashing and setting aside of orders dated 26.11.2012 and 08.08.2013 conveying to her that she is not eligible for compassionate allowance and direction to the respondents to consider her claim for the compassionate allowance from the date of death of her husband, as per Pension Rules and orders of the Railway Board. She also seeks cost of this application from the respondents.

2. Summarized facts:

2(a). The applicant has stated that she is widow of late Shri Baban Ramchandra Tikole, who was posted as Pointsman at Vilad Station in Solapur Division of Central Railway and removed from service from 23.06.1998, and later expired on 29.04.2003. In terms of proviso to Rule 65(1) of Railway Services (Pension) Rules, 1993, the authority passing the order of removal/dismissal from service has to mention its decision to grant or not to grant compassionate allowance (upto 2/3rd of pension or gratuity or both) to the dismissed/removed employee (Annex-A-4) if the case is deserving of special consideration. But the Disciplinary Authority who passed the order of removal from service for late Shri Baban Tikole did not pass any specific order for or against grant of compassionate allowance because of which the

applicant has not received the compassionate allowance or family pension. This has violated her fundamental right to life and livelihood guaranteed under Article 21(e) of the Constitution.

2(b). As per Railway Board letter dated 04.11.2008, it was decided that out of the past cases in which the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance, if any one appears to be deserving for consideration, it may be reviewed by the concerned disciplinary authority on receipt of representation of family members of the dismissed or removed employee (Annex-A-5).

2(c). The applicant submitted representations to the D.R.M. (P), Solapur on 16.07.2008 and in Pension Adalat on 10.10.2011, copies of which were also endorsed to General Manager, Central Railway, Railway Board, SC/ST Commission (Annex-A-6). When she did not get any response to her representations, she submitted an application under RTI Act, on 22.12.2016 demanding documents or papers in support of her claim and she received a reply on 26.12.2016 stating that the requested information was not available with them as the case is of 1998 i.e. more than 10 years old. Therefore, this O.A. has been filed.

2(d). The applicant has also filed M.A.46/2019 on 02.01.2019 for condonation of delay stating therein that being a widow she is dependent on her in-laws and takes action as per their guidance but could not take any legal action due to her poverty. She made representations to the respondents from 2008 but they have been rejected. The respondents have informed her that record of disciplinary proceedings against late Shri Tikole is not available with them. But as per Apex Court decision in case of **Esha Bhattacharjee vs Mg.Commit.Of Raghunathpur Nafar** decided on 13 September, 2013 CIVIL APPEAL NOS.8183-8184 OF 2013 (Arising out of S.L.P. (C) Nos. 24868-24869 of 2011), delay should be condoned if sufficient cause is shown by considering various factors and taking a non-pedantic approach. Therefore, the delay in filing of the present O.A. may be condoned.

3. Contentions of the parties:

In the O.A. and during arguments the applicant and her counsel have contended that -

3(a). as per Rule 65(1) of Railway Services (Pension) Rules, 1993, it is mandatory for the authority issuing orders of dismissal or removal from service to decide about sanction or rejection of compassionate allowance but it has not been done in case of late Shri Tikole. The applicant is

wholly dependent on her brother and relatives for survival. The failure of the respondents to follow the rules and instructions of the Railway Board have deprived her of the right to life and livelihood with dignity;

3(b). the Railway Board in letter dated 04.11.2008 has already modified its earlier letter dated 09.05.2005 allowing consideration of past cases for grant of compensatory allowance in deserving cases but even then her case has not been considered. Therefore, the O.A. should be allowed;

3(c). during arguments the applicant's counsel also admitted that the applicant has submitted representations but prior to 2003 no representation had been made for grant of the compassionate allowance by late Shri Tikole or his family members.

In reply the respondents and their counsel in arguments on 28.01.2020 have contended that -

3(d). it has been categorically replied to the applicant that no record or case papers relating to service of late Shri Tikole were available with them. The applicant herself has not annexed any document relating to service of late Shri Tikole with the Railways. She has also not supplied any evidence in support of her claim to be the legally married wife of late Shri Tikole;

3(e). as per Apex Court decision in case of D.C.S. Negi Vs. Union of India and others, reported in (2019) 1 SCC (L&S) 321, the Court has to first consider the issue of limitation and thereafter admit the application/case if found to have been made within the period of limitation or if sufficient cause has been shown for not doing so within the period of limitation. Hence this issue be decided first in the O.A.;

3(f). the O.A. filed by the applicant is totally devoid of merit and suffers from limitation, hence it should be dismissed. After removal from service of late Shri Tikole from 23.06.1998 and his death on 29.04.2003, no claim for the compassionate allowance was submitted by any of his family members. The service record of Shri Tikole being almost 20 years old, it is not available and it cannot be traced because the period of preservation for service record is already over;

3(g). the respondents have already replied to the applicant about factual position in the letters dated 26.11.2012 and 08.08.2013, i.e. the impugned orders. Hence the O.A. is dismissed.

4. Analysis and conclusions :

4(a). I have considered the contents of the O.A., the application for condonation of delay and arguments of the applicant's counsel. I have also

considered the reply submitted by the respondents to the O.A. and the M.A. filed for condonation of delay. Based on such consideration, the case is analysed as follows:

4 (b). The undisputed facts of this case are that late Shri Baban Ramchandra Tikole was removed from service of the Railways from 23.06.1998 and later on he died on 29.04.2003. At the time of removal from service, the concerned disciplinary authority did not pass any order for grant of compassionate allowance to late Shri Tikole and he also did not make any request or representation for it during his life time. The present applicant seems to have submitted a representations to the respondents only on 31.03.2008, 03/04.06.2008, 16.07.2008 and 10.10.2011. The present applicant has neither submitted to the respondents nor brought on record in the O.A. any evidence in support of her marriage with late Shri Tikole. In spite of the cause of action having arisen in June, 1998, the present O.A. has been filed after more than 20 years i.e. on 22.11.2018. Because of period for preservation of service record being already over, no service record of late Shri Tikole is available with the respondents. The present applicant has also not brought on record any document or paper pertaining to service of late Shri Tikole with the

respondents. In view of these undisputed facts, the present O.A. is totally devoid of merits. Hence it cannot be considered for any relief.

4(c). For the delay of more than 20 years in filing of the O.A., it is necessary to submit sufficient reasons but the applicant has not brought on record any justifying reasons at all which might have prevented her from approaching the Tribunal in time. Therefore, in total absence of any reason, the O.A. being hopelessly time-barred, the delay cannot be condoned. Hence the M.A.46/2019 filed for condonation of delay is rejected.

4(d). As explained above, because of the unjustified long delay and no record of any kind pertaining to the claim of service of late Shri Baban R. Tikole with the respondents and no evidence produced about marital status of the present applicant with late Shri Tikole, I do not find any merit in the present O.A. It is a wasteful litigation and deserves dismissal.

5. Decision :

The O.A. is dismissed. No costs.

(Dr. Bhagwan Sahai)
Member (A).