

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1157/2000

New Delhi, this the 29th day of April, 2003

Hon^{ble} Shri Shanker Raju, Member(J)

Mrs. Kokila Devi
H-462, Nandan Nagri, Delhi .. Applicant
(Shri G.D.Bhandari, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
Moradabad .. Respondents
(Shri R.L.Dhawan with R.P.Aggarwal, Advocates)

ORDER

Applicant impugns respondents' order dated 5.12.95 (Annexure A-11) and 4.12.97 (Annexure A-1) where the request of widow of ex-gatekeeper for grant of pension and compassionate appointment has been rejected. She has sought quashment of these orders. She has further sought quashment of order dated 8.1.88 and declaration to consider her case for pension by adding half of the service rendered on casual basis.

2. Husband of applicant before being appointed as Gatekeeper on permanent basis on 14.3.78 has rendered 442 days service on casual basis.

3. The deceased was subjected to periodical medical examination in October, 1985 and was declared unfit for the post of Gatekeeper vide Medical Officer's letter dated 1.10.85 sent to DRM the relevant particulars. On 22.12.87 applicant

was directed to be present for an alternate employment, which he accordingly applied but no decision was communicated. The deceased employee by an order dated 8.1.98 on account of being declared unfit in A-3 category and was on extraordinary leave without pay upto 1.4.85 was deemed to be discharged from service w.e.f. 1.4.86 and was granted leave without pay for the aforesaid period. Request of widow for compassionate appointment was rejected as well as her request for pension on the ground that he had not completed qualifying service of 10 years even after addition of half of his service for grant of pension, giving rise to the present OA.

4. Shri G.D. Bhandari, learned counsel for applicant contended that where as the stand of respondents is contradictory applicant who has been found to be in sick list w.e.f. 31.8.94 has not been summoned for screening after being declared unfit for appointment on an alternate post. In so far as the screening held on 21.12.87 it is contended that information was sent only on 23.12.87 and there was hardly any time to report to Moardabad. This has deprived applicant an opportunity to get alternate employment. It is stated that once applicant is treated on sick list the period of absence would be treated as spent on duty and should have been added to the qualifying service as well as earlier service rendered on casual basis upto the extent of 50% which makes his qualifying service as 10 years, entitling him for pensionary benefits. Moreover, it is stated that case of applicant for screening and assessment has been unnecessarily delayed for two years and the result of which has never been communicated. In so far as compassionate appointment is concerned, it is stated that no action has been taken.

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5. It is in this backdrop stated that respondents have wrongly discharged him retrospectively w.e.f. 1.4.86 by an order dated 8.1.88 and the decision to deny him pension is hit by the doctrine of constructive estoppel because letter dated 14.1.88 particulars have been sought from PWI for settling his case for pension which was sent by PWI under whom applicant was working. This, according to applicant, is in violation of Articles 14 and 16 of the Constitution of India.

6. Shri Bhandari stated that as per PWI's letter dated 28.8.87 it has been categorically stated that applicant was not called for deployment of alternate job. As applicant kept on waiting for his deployment after his being declared unfit he has not been called for employment on the alternate job. In this backdrop it is stated that when he was directed to be present on 23.12.87 before the Board the same was not convenient and he was not subjected to any assessment.

7. Shri Bhandari further stated that there is no written proof in the form of postal communication that applicant was called for screening and as per respondents record is lost, the averment of respondents that applicant was called but not appeared, cannot be countenanced. As applicant has sufficient leave to his credit the absence period could have been adjusted towards it.

8. In so far as limitation is concerned, it is contended that plea has not been taken in the counter reply and moreover non-payment of pension is a recurring cause of action. As applicant had suffered from locomotive disability it was not possible for him to appear on the date fixed, i.e.,

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23.12.87 for assessment. If applicant was absent he should have been served upon communication, in absence of it, his absence cannot be construed. For travelling also one is entitled for free passes which were also not issued by respondents.

9. Lastly, it is contended that compassionate appointment and the rejection of it has never been communicated to him.

10. On the other hand, respondents' counsel Sh. R.L. Dhawan denied the contentions and contended that the OA is time barred and hit by Section 21 of the Administrative Tribunals Act, 1985 as after his discharge order on 10.1.88 OA has been filed in July 2000. Moreover, it is stated that applicant was declared unfit for the post of Gatekeeper and remained on sick list w.e.f. 31.8.84 and never returned on duty and on account of physical disability he was not offered any alternate job.

11. Shri Dhawan stated that even after adding the casual service to the extent of 50% applicant's qualifying service has not come to 10 years. Accordingly, he was rightly denied pension.

12. In the additional affidavit filed by respondents it is contended that applicant was called for screening on different dates for alternate employment but he did not appear. Accordingly he was retired w.e.f. 1.4.86. The period of absence has been treated as extraordinary leave for 459 days and as such the regular service of applicant from

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14.3.78 to 1.4.86 comes to 8 years, 70 days and after deducting the total period of absence, his qualifying service comes to about six years, 7 months and 11 days and adding 221 days of casual service to the extent of 50% his qualifying service remained below 10 years. In so far as benefits are concerned, DCRG and CGIS had already been paid in 1989.

13. As far as compassionate appointment is concerned, the same was rejected after being considered. Sh. Dhawan contended that letter dated 31.3.93 filed by widow clearly shows that applicant was called for the screening and could not be appointed. He has also produced the service record including personal file as well as the screening held on various occasions to show that neither any leave was on his credit and despite requisite information and communication deceased remained absent from the screening as such could not be considered for alternate employment.

14. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as limitation is concerned, husband of applicant passed away on 19.12.91. Before this, by an order dated 8.1.88 he is deemed to have been discharged from service w.e.f. 1.4.86. The present OA has been filed by applicant challenging the discharge after a long lapse of time without any justification and MA for condonation of delay. As such the relief prayed is hit by delay and laches and is not maintainable in view of the decision of the Apex Court in Udham Singh Kamal v. Union of India, 1999 (8) SCC 304. Even assuming that impugned letter at Annexure A-1 dated 4.12.97 gives a fresh cause of action to applicant, yet the OA filed

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on 17.6.2000 is hit by Section 21 of the Administrative Tribunals Act, 1985, being time barred.

15. However, in the interest of justice the matter is also considered on merits as well. Applicant who was regularised in 1978 on Group "D" post on medical examination was found medically unfit and was rightly discharged under para 1304 of IREM-I. This has been done following the rules.

16. However, immediately on being declared unfit for the post of Gatekeeper applicant was called upon for assessment by the screening committee to consider him for an alternative job. From the perusal of record it transpires that on two occasions he remained absent before the screening committee. However, there is no proof of his being called upon to appear but communication dated 23.12.87 sent to PWI clearly shows that he was afforded another opportunity but despite this he has not appeared in pursuance of letter dated 23.12.87. The ground that he was disabled on account of locomotion and the time was less cannot be a justifiable ground. Moreover, I find contradiction in so far as contention of applicant is concerned, whereas in the representation made by the widow of the deceased on 31.12.93 it is admitted that applicant was called and appeared but could not be appointed. Applicant in this OA has also averred that applicant was called for screening but had not responded to. This runs counter to the official record where applicant has been shown absent. The grounds adduced are not justifiable. Nothing prevented applicant to appear in the assessment, in absence of his presence it was not possible for respondents to have considered his case for alternate

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employment. From the additional affidavit filed by responsible officer of respondents I am satisfied that non-accord of alternate employment was to be clearly blamed on the deceased who has not followed the direction of respondents. Merely relying on various communications issued by PWI would not make any difference and would not be of any help to applicant.

17. In so far as compassionate employment is concerned, applicant was discharged in 1988 and died in 1991 whereas application was filed in February, 1992. Accordingly after applying the relevant instructions contained in Master Circular 16 the case of applicant was not approved. As compassionate appointment cannot be claimed as a matter of right and only right of consideration is available, I do not find any infirmity in rejection of request.

18. In so far as right of pension to applicant is concerned, even if assuming that the period of absence is to be treated as spent on duty his service comes to 8 years and 70 days and adding half of the days rendered on casual basis, i.e., 221 days out of 442 days yet applicant's qualifying service is not complete, i.e., 10 years and in that event as per Railway Service (Pension) Rules, 1993 applicant is not entitled to family pension.

19. In the result, for the foregoing reasons, I do not find any merit in the claim of applicant, which is accordingly rejected. No costs.

S. Raju

(Shanker Raju)
Member(J)

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