

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH****OA No. 885 of 2015****OA No. 1002 of 2016****Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Jasoda Mohanta, aged about 52 years, W/o Late Bivision @ Bibhisan Mahanta, permanent resident of Vill/PO – Kuradhika, PS-Baisinga, Dist.-Mayurbhanj.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, S.E.Railway, Garden Reach, Calcutta, At/PO/PS/Dist-Calcutta, West Bengal.
2. The Divisional Railway Manager, S.E.Railway, Kharagpur Division, At/PO/PS/Dist.Kharagpur, West Bengal.
3. The Senior Divisional Personnel Officer, S.E.Railway, Kharagpur Division, At/PO/PS/Dist.-Kharagpur, West Bengal.
4. The Sr. Section Engineer/Permanent Way Inspector, S.E.Railway, Jaleswar, At/PO/PS-Jaleswar, Dist.-Mayurbhanj, Odisha.

.....Respondents.

For the applicant : Mr.R.K.Samantsinghar, counsel

For the respondents: Mr.T.Rath, counsel

Order reserved on : 13.8.2020

Order on : 18.08.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed both the OAs seeking the following reliefs :

OA No. 885 of 2015

“Under the facts and circumstances of the case, this Hon’ble Tribunal may kindly graciously be pleased to admit the original application, issue notice to the Respondents and after hearing both the side allow the case of the applicant and further be pleased to direct the respondents to appoint the applicant in any Group-D post under Rehabilitation Assistance Scheme and sanction the death benefits in her favour.

And pass such other order/orders as may deem fit and proper for interest of justice.”

OA No. 1002 of 2016

“Under the facts and circumstances as stated above this Hon’ble court may graciously be pleased to admit the original application and upon hearing the Respondents pass the following orders :

(i) To direct the respondents to pay the family pension, DCRG amounts, gratuity and other pensionary benefits in favour of applicant w.e.f. the month of October 2005 the month following the date of death of her husband;

(ii) Further direct to pay 18% interest per annum for the delay payment of the pensionary benefits to the applicant as delay is attributable to the Railway authorities.

(iii) And pass any other order/orders as deem fit and proper in the interest of justice.”

2. The applicant is the wife of late Bivision @ Bibhisan Mahanta, who died on 18.7.2005 while in service under the respondent-Railway as a Trackman. The applicant submitted an application for compassionate appointment on 2.9.2005 (Annexure-A/2) and for release of other benefits like family

pension and gratuity etc. to the respondent no. 4. On being advised, the applicant submitted all relevant documents like legal heir certificate and photographs etc. alongwith her claim application on 27.2.2006 and 30.3.2006 (Annexure-A/4 series & A/5 respectively) and submitted a representation on 3.9.2007 and 17.12.2007 (Annexure- A/6 & A/7).

3. It is averred in the OA that even after submission of the documents as advised by the respondents, no decision was taken by the authorities till 2009 when the Welfare Inspector was deputed for inquiry. Thereafter, the applicant was advised to produce the Succession Certificate. Accordingly she filed a case before learned Civil Judge and obtained the Succession Certificate in July, 2012. It is further averred that the office of the respondent no. 4 refused to accept the said certificate with malafide intention, for which she sent the said certificate alongwith another representation to the respondent no. 4 on 1.8.2012 (Annexure-A/8 series).

4. Since no decision was taken by the authorities even after submission of Succession Certificate, the applicant sought certain information about her case under the RTI Act, 2005. The information furnished by the respondents belatedly on 20.7.2015 (Annexure-A/11) stated that the case could not be finalized due to legal heir dispute. Being aggrieved, the applicant filed the OA No. 885/2015, seeking the reliefs for disbursement of the service benefits and employment assistance on compassionate ground. The applicant has also filed the OA No. 1002/2016 praying for sanction of family pension and other service benefits of her husband, including interest thereon. Since in both the OAs the issue is the eligibility of the applicant to receive service benefits of late Bibhsan Mahanta, both the OAs were considered together and are being disposed of by this common order.

5. The respondents filed a preliminary counter dated 6.11.2017 in OA No. 885/2015, opposing maintainability of the OA on the ground of plural remedies and submitting that for family pension and other service benefits, another OA No. 1002/2016 has been filed by the applicant. Following averments *inter alia* have been made by the respondents in the said

preliminary counter:-

- i. As per Railway records, another person i.e. Smt. Basanti Mahanta was recorded as the wife of the deceased employee and the GIS nomination and Medical Card were in her favour. During inquiry, it was revealed that Smt. Basanti was his first wife and she left him long back and had settled with one Purusottam Mohanta.*
- ii. Mother of the deceased employee Smt. Meena Mohanta had complained to the respondents in writing that the applicant was not her daughter in law. But subsequently, she admitted before Welfare Inspector that the applicant was her daughter in law.*
- iii. The Succession certificate was issued in favour of Smt. Jasoda @ Basanti Mahanta and it was claimed that Jasoda Mahanta (present applicant) is the same person as Basanti Mahanta.*
- iv. The death benefits can be granted to the applicant on the basis of the Succession Certificate, but employment assistance on compassionate ground cannot be given as the said relief does not flow from the death benefits.*

6. The Rejoinder dated 12.3.2019 was filed by the applicant in OA No. 885/2015, stating that she is also called as Basanti by her deceased husband and she was married since 31.3.1990. The contentions in the preliminary Counter regarding first wife of her deceased husband were denied. It is also averred in the Rejoinder as under:-

“7.....If however, the respondents claim both the cases are same in nature and counter filed accordingly, the applicant prays to forgo the relief relating to employment assistance on compassionate ground in her favour to be rejected and the reliefs sought for relating to death and pensionary benefits with other claims as deem fit be disposed on hearing.”

7. No new point has been advanced by both the parties in OA No. 1002/2016. The respondents, in preliminary Counter dated 18.12.2017 in the said OA, have stated as under:-

“In view of the above conflicting facts, on the subject, the Railway Administration decided that the death benefits as prayed for in O.A. No. 260/885/2015, may be granted to the applicant on the basis of succession Certificate.”

8. Learned counsels for both the parties were heard on 7.2.2020. Learned counsels for both the parties broadly reiterated their pleadings on record.

Thereafter, the matter was listed on 18.7.2020, when no one was present on behalf of the applicant. When the OAs were listed on 7.8.2020, no one was present for the applicant, for which last opportunity was allowed to the applicant to pursue the OAs vide order dated 7.8.2020. When the OAs were again taken up on 13.8.2020, no one was present on behalf of the applicant. As per the order dated 7.8.2020, the matter was taken up in absence of the applicant's counsel under the rule 15 of the CAT (Procedure) Rules, 1987.

9. Learned counsel for the respondents was heard and he also filed the copy of the instructions of the respondents on 13.8.2020, which revealed that vide the PPO No. 20187070100362 dated 10.08.2020, the family pension at the rate of Rs. 3188/- with Dearness Relief has been sanctioned to be paid to the applicant from 19.7.2005 till 18.7.2015 and thereafter, the family pension is payable at the rate of Rs. 1913/- with Dearness Relief as admissible is payable. In addition, the Medical Allowance as per the rules is mentioned to be payable from 19.7.2005 and Gratuity of Rs. 2,15,985/- has been sanctioned in the said PPO dated 10.08.2020.

10. The pleadings on record and submissions by both the parties were duly considered by me. The only relief surviving in both the OAs after the applicant averred in Rejoinder filed in OA No. 885/2015 to reject the relief pertaining to employment on compassionate ground, is the relief relating to the family pension and other service benefits of late husband of the applicant. From the pleadings in the Counter, it is clear that there was some dispute regarding legal heirs of the deceased employee, for which the applicant was advised to submit the Succession Certificate from the competent court. The contention of the applicant in para 4.8 of the OA that she had furnished the Succession Certificate issued by the competent court in August, 2012, has not been disputed by the respondents. It is a matter of concern that even after submission of the Succession Certificate by the applicant as per the advice of the respondents, no decision was taken by the Railway authorities although the death of the applicant's husband was in 2005. No reason or explanation has been furnished by the respondents in

their pleadings for delaying the decision to grant death benefits as per the Succession Certificate till filing of the OA No. 885/2015. No action was also taken by the respondents to seek appropriate direction of this Tribunal

under section 19(4) of the Administrative Tribunals Act, 1985 to release the death benefits to the applicant as per the Succession Certificate. The PPO has been issued by the respondents belatedly on 10.08.2020, without seeking approval of the Tribunal.

11. Regarding the applicant's claim of interest, it is noted that the rule 87 of the Railway Services (Pension) Rules, 1993 provided for interest on delayed release of gratuity if it is due to administration's lapses. It states as under:-

"87. Interest on delayed payment of gratuity: - (1) In all cases where the payment of gratuity has been authorised later than the date when its payment becomes due, including the cases of retirement otherwise than on superannuation, and it is clearly established that the delay in payment was attributable to administrative reasons or lapses, interest shall be paid at the rate applicable to State Railway Provident Fund amount in accordance with the instructions issued from time to time:

Provided that the delay in payment was not caused on account of failure on the part of the railway servant to comply with the procedure laid down by the Government for processing his pension papers....."

12. Taking into consideration the facts and circumstances of the case as discussed above, I am of the view that delay in release of the gratuity beyond August, 2012 i.e. after submission of the Succession Certificate, is clearly attributable to the lapses on the part of the respondents since there is nothing on record to justify any delay in sanctioning the gratuity and family pension after submission of Succession Certificate in August, 2012. Hence, under the rule 87 supra, the applicant is entitled to interest on the gratuity amount from August, 2012 till the date of actual payment.

13. In the facts and circumstances as discussed above, both the OAs are disposed of with the following directions to the respondents:-

- i. The amount of arrear family pension and gratuity as per the PPO dated 10.08.2020 will be disbursed to the applicant within two months from the date of receipt of a copy of this order, if the same is not disbursed

already.

- ii. The applicant will be paid the interest on the gratuity amount under the rule 87 of the Railway Services (Pension) Rules, 1993 for the period from August, 2012 till the date of actual disbursement to the applicant.
- iii. The applicant will have liberty to challenge the respondents' decision regarding sanction or disbursement of family pension and other service benefits in accordance with law if she is aggrieved by the said decision.

14. There will be no order as to costs. Registry is to send a copy of this order to the applicant by post apart from giving a copy each to learned counsel for both the parties.

(Gokul Chandra Pati)
Member(A)