

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

O.A.2082/2013

Dated this Thursday the 05th day of March, 2020.

Coram: Dr.Bhagwan Sahai, Member (Administrative).

Shri Aashish Anil Patil,
R/o. Near Boudha Vihar,
Kawarapeth, Shantinagar,
Nagpur.

.. Applicant.

(By Advocate Shri C.L. Deharia).

Versus

1. Union of India, through
General Manager,
South East Central Railway,
Bilaspur.

2. Divisional Railway Manager,
South East Central Railway,
Kingsway, Nagpur.

3. Assistant Engineer (Track),
D.R.M. Office,
South East Central Railway,
Kingsway, Nagpur.

.. Respondents.

(By Advocate Shri N.P. Lambat).

Order reserved on : 19.02.2020

Order delivered on : 05.03.2020.

O R D E R

Shri Aashish Anil Patil, resident of Kawarapeth, Shantinagar, Nagpur filed this O.A. on 28.05.2013 seeking grant of appointment on compassionate grounds as per his application dated 30.07.2012 and declaration of action of the non-applicants in not considering his application as illegal, arbitrary and bad in law.

2. Summarized relevant facts:

2(a). The applicant has stated that his father (late Shri Anil Ramchand Patil) died on 08.02.2004 leaving behind his wife, present applicant (his son) aged 21 years at that time and 3 daughters. Late Shri Anil Patil had joined as Gangman under CPWI Kamptee on 08.05.1982 and was confirmed on 30.04.1984.

2(b). It has been claimed that late Shri Anil Patil was very regular and punctual in attending to his duties but since 24.06.1993 he had been missing and a report was also lodged with Lakadganj Police Station on 05.07.1993. The Police also could not find him. By treating him as absconding, the respondents conducted exparte inquiry and holding him guilty terminated his service from 24.11.1994.

2(c). The respondents did not accept the applicant's request to presume his father as dead and to give settlement dues to his family. So his mother filed O.A.2152/2000 which was decided by the Tribunal by order dated 21.09.2001 directing the respondents to conduct full inquiry into the matter in terms of instructions contained in Railway Board Circular dated 22.08.1991 to ascertain whether late Shri Anil Patil was alive and if he was not traceable, then to take action to grant retiral benefits to her by treating the employee dead in

terms of Section 108 of the Evidence Act.

2(d). When the respondents did not take any action as per the direction of the Tribunal, the applicant's mother filed C.P.No.2007/2003 which was dismissed by the Tribunal on 19.10.2004. Thereafter the applicant and his mother made representations dated 30.07.2012 and 03.12.2012 but he was replied by the respondents dated 14.08.2012 (Annex-A-7) that the Competent Authority has rejected the representation because as per stipulations under the Railway Services Rules, there was no provision for providing employment on compassionate grounds to dependents of Railway employees removed from service.

2(e). The applicant was also advised to submit necessary papers/forms for taking action about any pending dues of late Shri Anil Patil. As per Railway Board Establishment Circular No.197/1986, guidelines have been issued for releasing retiral benefits to dependent family members of Railway employees who suddenly disappear and whose whereabouts were not known.

2(f). Then the applicant's mother Smt.Pushpa Anil Patil filed a Writ Petition No.3045/2014 in the Bombay High Court (Nagpur Bench) which was dismissed by order dated 17.06.2014. Since the respondents have not complied with the order of the

Tribunal dated 21.09.2001 in O.A. and have violated the provisions of Article 14 of the Constitution by not releasing retiral benefits including family pension to applicant's mother and have not provided appointment on compassionate grounds, this O.A. has been filed.

2(g). This O.A. was dismissed in default by order dated 29.04.2016, then M.A.2242/2019 filed by the applicant for restoration of the O.A. was also dismissed on 04.11.2019. However, the O.A. was subsequently restored to its original position by allowing the M.A.2004/2020 on 21.01.2020 and the respective counsels for the parties were heard on merits on 19.02.2020.

3. Contentions of the parties:

The applicant in the O.A. and during arguments of his counsel on 19.02.2020 contends that -

3(a). this Tribunal by order dated 21.09.2001 had allowed the O.A.2152/2000 filed by the applicant's mother directing the respondents for releasing retiral benefits to her but that order has not been complied till now, and employment on compassionate grounds to the applicant has not been granted by presuming his late father as dead. Therefore, this O.A. should be allowed for directing the respondents to provide the applicant

employment on compassionate grounds.

In their reply and during arguments of their counsel on 19.02.2020, the respondents contend that -

3(b). applicant's father late Shri Anil R. Patil had been removed from service on 24.11.1994 after conducting disciplinary proceedings and the applicant is not entitled for appointment on compassionate grounds;

3(c). the cause of action for the applicant arose at the time of removal from service of his father i.e. on 24.11.1994 but the present O.A. has been filed after almost 20 years and, therefore, on this ground it should be dismissed;

3(d). the claim of the applicant that his father was regular and punctual in attending to his duties is false. Late Shri Anil R. Patil used to regularly consume liquor and remain absent from duty most of the time and even the applicant's mother admitted in her statement before Police officers that her late husband was a regular drunkard and after receiving monthly salary he did not come home for 8-15 days. Thus late Shri Anil R. Patil was a habitual absentee and during his 12 years of service from 08.05.1982 till 24.11.1994, he remained absent for 1874 days i.e. for about 5 years. Therefore, disciplinary proceedings were

initiated against him and since he did not participate in the disciplinary proceedings, the inquiry had to be conducted exparte and based on the report of the Inquiry Officer, he was removed from service by order dated 24.11.1994;

3(e). the O.A.2152/2000 filed by the applicant's mother had been disposed of by the Tribunal by order dated 21.09.2001 directing the respondents to conduct full-fledge inquiry and if the late employee was not traceable, then to take action for grant of retiral benefits to her;

3(f). a Contempt Petition No.2007/2003 filed by his mother was also dismissed on 19.10.2004 observing that she was not entitled for any pensionary benefits. Thereafter a Writ Petition No.3045/2013 filed by the applicant's mother was also dismissed by the High Court on 17.06.2014 holding that she was not entitled to any retiral benefits but even then the respondents had paid certain amounts to her on 02.05.2014 and 23.05.2014 towards provident fund and national group insurance scheme for which she was not legally entitled. Since the order of the High Court has already finally decided the case against the applicant's mother, there is no cause of action for filing of this O.A.;

3(g). since the applicant's mother had already availed of the legal remedy for the same subject through O.A.2152/2002, the present applicant cannot seek the same remedy again through the present O.A. Therefore, this O.A. is liable to be dismissed;

3(h). in pursuance to the order of the Tribunal dated 21.09.2001 the respondents made series of correspondence with the Police authorities to trace late Shri Anil R. Patil by bringing it to the notice of the Police Commissioner, Nagpur and thereafter a report was received from Dy. Commissioner of Police, Nagpur dated 02.01.2004 reporting that the applicant's father was alive and he frequently visited his house. In statements of one Shri Motghare relative of the applicant and Shri Shinde (independent witness), it was categorically stated that the applicant's father had been always coming to the applicant's house.

3(i). the applicant or his mother have never challenged the order of removal from service of late Shri Anil R. Patil, who was working as Progress Man on adhoc basis against an ex-cadre post under Railway Electrification Organization i.e. on a project. Therefore, this O.A. should be dismissed.

4. Analysis and conclusions:

4(a). I have perused the O.A. memo filed by the applicant and its annexes, reply filed by the respondents. Have considered the arguments advanced by the applicant's and the respondents' counsels on 19.02.2020. Based thereon details of the case are analysed as follows.

4(b). As explained by the respondents in their reply (which has not been contradicted by the applicant in a rejoinder), the ex-employee i.e. late Shri Anil R. Patil had joined service with the respondents on 08.05.1982. However, from 24.06.1993, he disappeared and his whereabouts were not known. Because of his habitual absence from duty i.e. for 1874 days during his service of 12 and half years, after conducting disciplinary proceedings, he was removed from service by order dated 24.11.1994. This order of his removal was never challenged by him or his dependent family members.

4(c). In pursuance to the order dated 21.09.2001 of this Tribunal in O.A.2152/2000, on continuous persuasion with the Police authorities, it was reported by Dy. Commissioner of Police, Nagpur by letter dated 02.01.2004 that late Shri Anil R. Patil had been frequently visiting the house of the present applicant and he was alive. In view of

these facts, the claim of the applicant and his mother submitted earlier to the respondents that they should be released the retiral benefits and provided employment on compassionate grounds by treating late Shri Anil R. Patil as deemed absconding was also totally false and misleading.

4(d). In view of removal of late Shri Anil R. Patil from service by the respondents, as per the instructions of the respondents the present applicant and his mother are not entitled for any pensionary benefits and employment on compassionate grounds. Not only this, in the order of this Tribunal in C.P.No.2007/2003 dated 19.10.2004 and order of High Court dated 17.06.2014 in Writ Petition No.3045/2013 it has been clearly held that the applicant's mother Smt.Pushpa Anil Patil was not entitled for any pensionary benefits and even then certain amounts of provident fund and group insurance scheme have also been released to her by the respondents.

4(e). The contention of the respondents is also correct that the cause of action arose for the applicant for seeking employment on compassionate grounds after removal from service of his father by order dated 24.11.1994 and, therefore, the present O.A. filed on 28.05.2013 is barred by limitation and suffers from delay and laches.

4(f). A perusal of the order on O.A.No.2152/2000 filed by Smt.Pushpa Anil Patil also reveals that she had filed that O.A. seeking release of family pension and grant of compassionate appointment to dependents of late Shri Anil R. Patil and the present O.A. also seeks grant of appointment on compassionate grounds to the applicant. Since this relief had already been sought and rejected in the earlier O.A., in the present O.A. seeking the same relief is barred by principles of res-judicata. Hence the present O.A. is not maintainable.

4(g). In view of the above analysis of the case, the present O.A. has no merit, it is a wasteful litigation indulged in by the applicant and it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Dr. Bhagwan Saha,
Member (A).)

H.

JD
06/03/2020