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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2121/2004

New Delhi this the 1st day of March, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Mahadev Prasad Tyagi and Ors.

(By Advocate Shri K.N.R. Pillai)

...Applicants


VERSUS

Union of India through the Genl. Manager (NR) and Ors.

(By Advocate Shri R.L. Dhawan)

...Respondents

1. To be referred to the Reporters or not? Yes.
2. To be circulated to other Benches of the Tribunal or not? No.


**(Mrs. Meera Chhibber)
Member (J)**

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Hon'ble Mrs. Meera Chhibber, Member (J)

1. Mahadev Prasad Tyagi,
S/o late Shri Balwant Singh,
R/o B-19, Satyavati Colony,
Ashok Vihar Ph.III,
Delhi-110 052.
 2. Mayank Tyagi,
S/o Munish Kumar Tyagi,
Aged 14 years
Through Applicant No.1
 3. Kum. Priya Tyagi,
D/o Munish Kumar Tyagi,
Aged 13 years
Through Applicant No.1
-Applicants.

(By Advocate Shri K.N.R. Pillai)

Versus

1. Union of India, through
The General Manager,
Northern Railway,
Baroda House, New Delhi.
 2. The Divisional Railway Manager,
Muradabad Division Northern Railway,
Muradabad (U.P.)
- ... Respondents.

(By Advocate Shri R.L. Dhawan)

O R D E R (ORAL)

By this O.A. applicant has sought the following reliefs:

- (i) grant Hospital Leave to Shri Munish Kumar Tyagi from 23.11.92 to 14.3.96;
- (ii) Release his settlement dues including Invalid Pension, DCRG, Provident Fund, Insurance money etc. which became due on 14.3.1996, without making any cut;
- (iii) Grant family pension to the employee's 2 children from 12.9.2001 onwards;




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- (iv) Register the name of Mayank Tyagi, the son of the dead employee who was 11 years old at the time of his father's death, for Compassionate appointment on his attaining majority. Since priority for such appointment is reported to be on the basis of the date of registration, the registration in this case should be from 20.11.98, the date the grand father as his guardian submitted the application (Annexure A.VIII);
- (v) For the unconscionable delay in making any payment at all to the employee who suffered serious head injury on duty and was hospitalized and was in coma till 12.9.2001 when he died, the respondents should be liable to grant interest at 12% compounded annually as per the Presidential order at Annexure A.XV.
- (vi) Cost may also be awarded in favour of the applicants".

2. It is submitted by applicant No.1 that his son Shri Munish Kumar Tyagi, who was working as 2nd Fireman fell down from the locomotive, on 23.11.1992 while on duty and sustained serious head injury which is evident from Annexure A-III. Therefore, he was shifted to the Railway Divisional Hospital at Moradabad. From there, he was transferred to the Northern Railway, Central Hospital at New Delhi and from there, he was further referred to the RML Hospital where he was treated by the Neuro Surgeon ^{Dr. Ashok K. R.} and was in Coma. The patient was not responding to the treatment and was in the same condition. Therefore, he was discharged on 15.1.1993 and was taken by his father i.e. the applicant herein to his house in Subhash Nagar in Uttranchal where he was being treated by the Divisional Medical Officer, Northern Railway, Haridwar. On 20.8.1993, applicant No. 1 gave a representation to the General Manager, Northern Railway to at least give him the expenses of his son's treatment as no payment was being made by the Railways but no reply was given to him. Ultimately, the Medical Board constituted by the Northern Railway declared his son to be permanently unfit for service. Accordingly, he was invalidated vide certificate dated 30.1.1996 (page 30).

3. The DRM, Northern Railway, Moradabad issued notice dated 27.3.1996 referring to the Deputy Chief Medical Director, Hd.rs. Office letter dated



30.1.1996 wherein it was suggested that Shri Munish Kumar Tyagi having been declared unfit for any job in Railways should be invalidated/retired. Therefore, he may be asked to hand over charge of Railway Property at once and settlement papers be sent to the Settlement Section. He may also be asked to vacate the Railway quarter within one month, if any under his occupation, failing which it will be treated as unauthorized occupation and rent at outsider rates will be recovered from his settlement dues. One set of complementary pass shall also be forfeited for unauthorized occupation of every one month (page 31). The applicant herein on receiving copy of this notice immediately wrote back on 13.2.1998 informing the authorities that his son is in Coma for the last over many years and is living with him in his house at Subhash Nagar in Uttranchal. Therefore, neither his son nor grand children are living in Railway quarter. His wife had already died earlier. He does not know who is living in the Railway Quarter nor has anything to do with the said quarter. Therefore, he is not liable to pay any rent for occupation of Govt. quarter (page 32). Ultimately, applicant's son, namely, Shri Munish Kumar Tyagi died on 12.9.2001 when he was still in Coma leaving behind two minor children as his wife had already predeceased him.

4. It is submitted by the applicant that he got a guardian certificate for his grand children from the Court of Additional District Judge, Haridwar on 4.9.1998 under Section 7 of the Guardians and Wards Act whereby Shri Mahadev Prasad Tyagi (applicant) was declared to be the guardian of two minor children of Shri Mukesh Kumar Tyagi (page 40). After the death of his son, all settlement dues were to be paid to the applicant as Shri Mukesh Kumar Tyagi's children were still minor and he had already been declared their legal guardian, but to his utter surprise, the Department sent him a letter dated 7.7.2004 whereby he was informed that since Shri Mukesh Kumar Tyagi had worked for less than 10 years, no pension is payable, no leave encashment is due, only an amount of Rs.1346/- is payable on account of insurance and an amount of Rs.15903/- on account of

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DCRG. The total payable amount comes to Rs.17,249/- but he is liable to pay an amount of Rs.44,600/- on account of unauthorized occupation of the Railway quarter. Therefore, after deducting the amount of Rs.17,249/- from an amount of Rs.44,600/-, he would be liable to pay back Rs.27,351/- to the Railway Station Booking office. Hence, he may deposit the said amount and take the receipt thereof. In the note under this letter, it was mentioned that Railway Quarter No. T-49A was allotted to Shri Tyagi. Therefore, he has to pay normal rent @ Rs.42/- per month from April, 1993 to 7.4.1996 i.e. for 37 months which comes to Rs.1554/- and from 8.4.1996 to 18.5.1998 i.e. for 25 months and 11 days which at the rate of Rs.1490.56 comes to Rs.39,050/-.

5. It is this letter which has been challenged by the applicant. He has submitted that when applicant's son had admittedly met with an accident on 23.11.1992 by falling from an engine and had been in Coma since then, there is no justification whatsoever to say that a person in Coma was allotted the Railway quarter in April, 1993. In any case, after Shri Munish Kumar Tyagi was discharged from the hospital, he was taken by the father i.e. applicant to his house in Uttranchal which was to the full knowledge of the Department. Therefore, it is absolutely wrong to call upon the applicant to deposit the huge amount by way of damage rent after deducting the gratuity and insurance amount payable on the death of Shri Munish Kumar Tyagi.

6. He has further submitted that under Rule 55 of the Railway Services (Pension) Rules, 1993 (for short 'the Pension Rules'), the Department ought to have given at least invalid pension to Shri Munish Kumar Tyagi and after his death to the minor children of Shri Munish Kumar Tyagi since they were totally dependent on their father and have no other source of income. The small children cannot be looked after by the grand father throughout their life. He has also invited our attention to Rule 65 of the Rules wherein a provision is made for compassionate allowance even in a case where a person is dismissed or removed



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from service if the case is deserving of special consideration which shall not be exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension. He further relied on Rules 69 and 75 of these Rules.

7. As far as the intervening period is concerned, the applicant submitted that from the day his son fell down from Engine on 23.11.1992, no salary has been paid to him but only an amount of Rs.500/- was given from the staff benefit fund. But since his son was very much an employee of the Railways and was suffering due to the accident, the entire period should have been decided as hospital leave or special disability leave for accidental injury, as is permissible under Para 553 of IREC Vol. I. It is further submitted by the applicant that the name of the son of Shri Munish Kumar Tyagi should be registered for compassionate appointment as there is no one else to look after the minor children and he may also not be available to look after them as he himself is an old man.

8. Respondents have opposed this O.A. by submitting that Shri Munish Kumar Tyagi met with an accident on 22.11.1992 while he was not on duty. However, he remained under treatment and finally ^{was} declared medically unfit for any job on the Railways on 7.1.1996 and was retired from Railway service on invalidation vide notice dated 27.3.1996. The entire period of absence from duty in case of late Shri Munish Kumar Tyagi has been regularized by giving the benefit of different kinds of leave due to him and the competent authority has decided to treat the entire period as duty but even then the family is not entitled to family pension as his service from 5.6.1988 to 7.4.1996 works out to be 7 years, 9 months and 22 days and he had remained absent unauthorisedly for 10 days during the period 10.9.1991 to 4.10.1992 in different spells. Therefore, the said 10 days cannot count as qualifying service for pensionary benefits. Under the Rules, pension becomes admissible after completing 10 years qualifying service which condition has not been fulfilled in the case of Munish Kumar Tyagi. They are,



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therefore, not entitled to any pension. They have stated that Munish Kumar Tyagi was entitled to get Rs.1346/- on account of GIS and Rs.15903/- on account of DCRG but Shri Munish Kumar Tyagi had not deposited the rent from April, 1993 to 7.4.1996 for 37 months @ Rs.42/- p.m. So Rs.1554/- has been deducted for the above period from his pensionary benefits. Moreover, applicant had been on unauthorized occupation of the Railway quarter from 8.4.1996 to 18.5.1998 for 25 months and 11 days. Therefore, penal rent for Rs.37,810.50 and electricity bill for Rs.5,176/- was also due towards the said payments from late Shri Munish Kumar Tyagi. Accordingly, Show Cause Notice was sent to Munish Kumar Tyagi's father since he is the legal guardian of the deceased employee in terms of Rule 15 of the Rules. They have further submitted that children of deceased shall become major on 3.5.2008 and 20.5.2009 as is evident from a certificate annexed. So the case of their appointment shall be considered on their becoming major as per Rules, if they apply within the period. They have thus submitted that there is no illegality committed by the respondents. The O.A. may, therefore, be dismissed.

9. Applicant in his rejoinder has reiterated that his son was very much on duty and the Department is only trying to cover up the gross negligence of the Railway Officials by making a wrong statement that the son was not on duty. It is unfortunate that knowing fully well that Shri Munish Kumar Tyagi had left behind two minor children, respondents are not forthcoming to their help at all. He has explained that Shri Munish Kumar Tyagi was on his rest day on 21.11.1992. After that the next day he reported to his immediate superior the Shedman, Hardwar, who sent him on duty to the Loco Foreman, Laksar. The Loco Foreman and most of the other staff at Laksar Junction had rushed to Chandok Railway Station, 24 kilometer away from Laksar, where Train No. 3010 Dn had met with an accident that day requiring all available staff to attend emergency duty on the accident site. It was while working on the locomotive from Laksar to Chandok that he fell down from the engine and sustained severe head injury which landed him in Coma till



his death on 12.9.2001. The movement of the Fireman from Hardwar to Laksar and on to Chandok, was on duty. He has further stated that even though respondents have stated that they have treated the entire period as duty and regularized the intervening period as leave due to him but till date he has not been paid a single penny. At least, the small children should have been given the family pension since he was invalidated from service. He has also stated that the DCRG has not been properly calculated and even the Department knew fully well that the children had been taken by the grand father after the death of the mother and they should be asked from whom they took the possession of the quarter ultimately. He has thus submitted that full settlement dues should be paid to him and the children should also be given the invalid pension, etc. etc.

10. I have heard both the counsel and perused the pleadings. Though it is a disputed fact whether applicant was on duty on 23.11.1992 but it is not denied by the respondents that applicant was working as second Fireman and fell down from the locomotive when he had the head injury resulting in Coma. It is also not denied by the respondents that after the accident on 23.11.1992, the said employee was transferred from one Railway hospital to the other Railway hospital and ultimately in RML Hospital and all the time he continued to be in coma till 12.9.2001 i.e. for about 9 years when he ultimately died leaving behind two minor children who were aged 2 and 1 years on the date when the deceased employee had met with an accident. This is indeed a very hard case but the way the respondents have dealt with this case shows that officers have not shown any compassion or consideration for the peculiar circumstances of the case in which senior officers ought to have come forth to help the deceased employee or his small children who ^{were 12} ~~had~~ ^{with 12} faced such an unfortunate incident in their life. It is submitted by the applicant who is the father of deceased employee that after his son was discharged from Hospital, he took him to Uttranchal at his native place along with the small children and even the department had addressed their letters



to the applicant at his address of Uttranchal (Page 23). In these circumstances, it is not known how respondents have stated that the deceased employee had not given the rent from April, 1993 to 18.5.1998 and from whom the possession of said quarter was taken by them in 1998. Since applicant's son Shri Munish Kumar Tyagi had been in Coma since 23.11.1992, respondents had to explain how did they hand over the possession of quarter to a person, who was in Coma in April, 1993 as that is the starting point from which the respondents state the rent had not been paid by the deceased employee. If only some officer had applied his mind to these facts, probably there would not have been any need for the father of the applicant to knock the doors of this court. Applicant had intimated the officers by his letter dated 13.2.1998 (page 34), that his son is in Coma since 1992 and he along with his children are living with him at Uttranchal. Even the son is not in occupation of the Railway quarter as alleged by the Department. Therefore, he is not liable to pay any amount on that score.

11. I had asked the counsel for respondents to explain as to how the respondents have claimed that the rent of the quarter was payable from April, 1993 but he was not in a position to explain. In fact, perusal of the reply given by the respondents also does not throw light on this aspect as to when the quarter was said to have been allotted to Shri Munish Kumar Tyagi. They have only stated that Shri Munish Kumar Tyagi had not deposited the rent from April, 1993 to 7.4.1996. Therefore, it has to be taken that the starting point of allotment of the alleged quarter said to have been allotted to Shri Munish Kumar Tyagi was in April, 1993. Since it is not disputed that Shri Munish Kumar Tyagi was in Coma since November, 1992, naturally he could not have taken possession of any Railway quarter as he was taken by his father while the employee was in Coma to his native place at Uttranchal. Therefore, the recovery said to have been made from the respondents from the settlement dues of Shri Munish Kumar Tyagi to the extent of Rs.44,600/- is absolutely unjustified and the said action of the



respondents cannot be sustained in law in view of the facts as explained above. Therefore, the letter dated 7.7.2004 on page 24 is quashed to the extent whereby the respondents have ^{shown} ~~made~~ a recovery of Rs.44,600/- against the deceased employee Shri Munish Kumar Tyagi.

12. Coming to the second point regarding invalid pension, respondents have stated that since the applicant had put in only 7 years 9 months and 22 days even after adding the period of his sickness, he would not be entitled to any pension. That would be normal pension in case where a person retires but in the present facts of the case, we are faced with the situation where applicant had fallen down from locomotive, sustained head injuries and was in Coma right from 23.11.1992 till 12.9.2001 when he died. It is also not disputed that he was retired after Medical Board had given a certificate that he is no longer fit for Railway service. In these circumstances, Rule 55 of the Pension Rules becomes relevant which for ready reference reads as under:

"Invalid Pension. – (1) Invalid pension may be granted to a railway servant who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) A railway servant applying for an invalid pension shall submit a medical certificate, from a duly constituted medical authority of his permanent incapacity for service due to bodily or mental infirmity.

(3) Where the medical authority referred to in sub-rule (2) has declared a railway servant fit for further service of less laborious character than that which he had been doing he should, provided he is willing to be so employed, be employed on a lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) A railway servant may, if he considers that he is not in a fit state of health to discharge his duties, apply to the appropriate authority for retirement on invalid gratuity or pension"

In this rule all that is required is that if Railway servant retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service, he may be granted invalid pension. Therefore, it is not as if respondents could not have granted invalid pension to the applicant because

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admittedly he was retired after he was declared unfit by the Medical Board as he had become unfit for service permanently. The respondents could have said that it is only when the Railway servant applies for invalid pension as per sub-rule (2) that they could have given the said invalid pension but in this case we have to keep it in mind that the deceased employee was in Coma from November, 1992. Therefore, he could not have made any request on his own to the authorities but that does not mean that the benefit of said rule could not have been given to the applicant. After all, rules are made to achieve the ends of justice and not to defeat the purpose for which they have been made. Therefore, respondents could not have taken it in its literal meaning and could have granted the invalid pension on their own, ^{also} taking into account the peculiar facts of this case but unfortunately nobody has paid attention to Rule 55 of the Pension Rules. In fact, at the time of arguments, counsel for the respondents submitted that there is nothing known as invalid pension ^{in Railway B} which is not the correct position in view of specific Rule 55 of the Pension Rules. Even otherwise, it is seen that there is also a provision for Compassionate allowance under Rule 65 where even a Railway servant, who is dismissed or removed from service, forfeits his pension and gratuity, yet it is open to the competent authority to sanction a compassionate allowance if the case is deserving of special consideration. The said compassionate allowance is not to exceed two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension. Here again, the respondents could have said that since applicant was neither dismissed nor removed from service, therefore, the rule would not be applicable but then we have to see the intent of the author of the rules which saw to it that there could be situations or deserving circumstances wherein the competent authority could grant compassionate allowance. Therefore, once again we would say at the cost of repetition that it is not as if the respondents could not have done anything in this hard case looking at the fact that two small

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children of aged two and 1 years were left behind after the death of their father when they had already lost their mother also. So, nothing could be more deserving than the facts of this case. Therefore, it calls for compassion. We would also like to refer to Rule 107 where power to relax has been given in Chapter XII and it is stated that where the pension sanctioning authority is satisfied that the operation of any of these rules causes undue hardship in any particular case, that authority may for reasons to be recorded in writing approach the Ministry of Railways (Railway Board) for dispensing with or relaxing the requirement of that rule to such extent and subject to such exception and conditions as it may consider necessary for dealing with the case in a just and equitable manner. The Ministry of Railways shall examine each such case and arrange to communicate the sanction of the President to the proposed dispensation or relaxation as it may consider necessary keeping in view the merits of each case and keeping in view of any other statutory provisions. In view of the above provisions which have just been referred to, I am sure that respondents would apply their mind to these provisions and keeping in view the facts of the present case would consider the case of Shri Munish Kumar Tyagi either for grant of invalid pension and after his death for his children, who are still minor or grant him some compassionate allowance so that the small children can be taken care of till they attain their majority. Accordingly, the matter may be placed before the competent authority for passing appropriate orders within a period of three months from the date of receipt of copy of this order under intimation to the applicant. In case invalid pension ^{compassionate allowance} is granted from 27.3.1996, the arrears thereof should be calculated and paid to the applicant as he has already been declared to be the legal guardian of minor children of Shri M.K. Tyagi and after the death of Shri Munish Kumar Tyagi, the pension payable to the small children should be either deposited in their bank account or paid through their legal guardian within a reasonable period but not beyond three months thereafter.

13. As far as the claim of applicant for hospital leave is concerned, since it is a disputed fact whether Shri Munish Kumar Tyagi was on duty on 23.11.1992 or not when he met with the accident, we can only say this that some senior officer should examine the official records to find out whether Shri Munish Kumar Tyagi was on duty on that particular day or not and then pass appropriate orders in accordance with rules for treating the said period. However, respondents have already stated in their counter affidavit that the entire period from 23.11.1992 to 7.4.1996 has been treated as period on duty and he has been granted leave of the kind due but no details have been given as to for which period which leave has been granted nor it has been explained by the respondents in their counter that if the period has been decided as leave then why no amount has been paid to the applicant on account of that admissible leave in law. Since no details have been put before me on this account, no positive directions can be given at this stage but respondents are directed to inform the applicant the break up of the period as to how the period has been regularized and which period has been treated of which leave of the kind due so that if any amount is payable on this account, it shall also be paid to the applicant along with due and drawn statement within a period of three months from the date of receipt of a copy of this order and they should explain if for some period the pay is not payable the reason why it is not payable.

14. As far as compassionate appointment for the son of Shri Munish Kumar Tyagi is concerned, respondents have already stated in Para 1 (iii) that the children of the deceased shall become major on 03.05.2008 and 20.5.2009 so that the case of their appointment shall be considered on their becoming major as per rules if they apply within the prescribed period. In this case since applicant had already requested the authorities to register the name of Mayank Tyagi for compassionate appointment after he attains majority and respondents have already given assurance that they would consider the case on their attaining majority, if they apply, no further direction need be issued on this aspect. It would

be open to the children to give their application for compassionate appointment as soon as they attain majority. I am sure, respondents would consider their application sympathetically keeping in view the peculiar facts of this case.

15. Since I have already held the recovery of Rs.44,600/- to be not sustainable in law, respondents shall at least release the admitted dues of Rs.17,249/- on account of DCRG and insurance along with interest at the prevalent rate to the applicant within a period of three months from the date of receipt of a copy of this order.

16. In view of the above discussion and directions as given in Paras 10 to 15, this O.A. is disposed of. No order as to costs.

(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'