

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 20th day of April 2005.

Original Application no. 1279 of 2001.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Smt. Bimla Devi.
W/o Late Ram Sajiwan,
R/o Rye Pass Road Ihumai
District Allahabad.

.....Applicant

By Adv. Sri S K Pandey

VERSUS

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The D.R.M.,
Northern Railway,
ALLAHABAD.

...Respondents

By Adv : Sri A.K. Gaur

ORDER

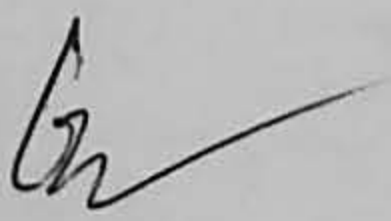
Through this petition the applicant has sought for a direction to the respondents to pay the salary and allowance in respect of railway servant late Ram Sajiwan a confirmed Railway Electric Signal Maintainer for the period 1973 to 1981, all the death benefits including pension, P.F., Gratuity, Group Insurance, Bonus plus compensation of Rs 10 lakhs.

2. Capsulated facts of the case:



(a) Shri Ram Sajivan, husband of the applicant herein was inducted in the Railways as Electric Signal Maintainer in 1966 and in 70, he did not attend the office from 4th Feb. 1970 till 25th July 70, whereafter, when he reported he was informed that about his resuming duty, he would be informed after receiving instructions from the DPO Allahabad. Subsequently, the individual filed a civil suit 32/73 in the III Addl. Munsif Magistrate Court, Allahabad, who had decreed the same ex parte. According to the applicant, in December 73 Shri Ram Sajivan addressed a letter to the DRM, Allahabad, enclosing a certified copy of the decree and requested that he be taken on duty (which, of course, the respondents deny). Shri Ram Sajivan expired on 8th July, 1981.

(b) The applicant had in 1992 filed OA 450/92 praying for a direction to respondents to pay the terminal dues of late Shri Ram Sajivan as mentioned above and compassionate appointment for son. The Tribunal in its order dated 17-05-2000 directed the respondents to decide the representation of the petitioner within three months. The respondents on consideration of the representation, issued a cheque for Rs 10,098.52 to the applicant being the arrears of pay and allowances of late Ram Sajivan. It is against this order that the applicant has moved the application on various grounds as contained in para 5 of the O.A.



3. The respondents who have contended that there are no other dues due to the late employee and that Shri Ram Sajivan had not taken any steps to have the decree executed contested the OA. There is therefore, no question of either treating the individual as on duty till 1981 nor to pay any other terminal dues save that already made available as contained above. Vide para 7 of the counter, the respondents have also raised the question of limitation.

4. The applicant, reiterating that contained in the OA, filed rejoinder.

5. The case was heard at length and documents perused. In addition, authorities were asked to be cited by the parties. The counsel for the applicant had filed the same.

6. The following are the authorities cited from the side of the applicant:-

- (a) (1989) 9 ATC 158 - G Krishnamurthi vs UOI and Others.
- (b) (1992) 20 ATC 348 - Keshavan Nair vs SDO Telegraphs
- (c) 2003(1) SCC 184 - SK Mastan Bee vs GM SCR
- (d) 2002 E.S.E. (Del HC) 33 - Harnandi vs UOI
- (e) (1998) 8 SCC 194 - Basudeo vs Sido Kanhu University & Ors
- (f) 2000 (1) ESC 402 (All) - Narendra Singh Yadav vs St. of UP & Ors
- (g) AIR 1984 SC 1560 - Deokinandan Prasad vs St. of Bihar & Ors.

7. In the case of G. Krishnamurthy (supra) it was held that "even in the case of abandonment of service the employer is bound to give notice to the employee calling upon him to resume his duty and also to hold an inquiry before terminating his service on that ground. The files made available

8. I have given the anxious consideration to the entire facts of the case. The husband of the applicant, admittedly served till

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3rd February, 1970 and thereafter, he did not attend the office. Though he had the ex parte decree in his favour, he had not taken steps to have the same executed. The respondents, in the wake of the order dated 17-05-2000, had worked out the dues payable to the husband of the applicant towards pay and allowances which according to them came to Rs 10,098.52 which was already received by the applicant. However, according to the applicant her husband should be treated to be in service till his end and the consequential benefits should be paid to her. This claim is legally unacceptable. It was for the husband of the applicant to have the decree executed which for reasons only known to the deceased he failed to do. It was after a lapse of a decade plus that the applicant came to the Tribunal for the relief and a direction was issued to decide the representation. It was after such a direction, dues as per calculation of the respondents were paid to the applicant. No vested right could have arisen to the applicant for making such a claim at this belated stage. The Administrative Tribunal Act is specific over the point of limitation. The Hon'ble Supreme court has clearly held in the case of **State of Orissa v. Chandra Sekhar Mishra**, (2002) 10 SCC 583, at page 583 :

"4. In our opinion, there were two fundamental errors in that relief being granted to the respondent. Firstly, the services of the respondent were terminated with effect from 31-1-1978 and the respondent did not approach the Tribunal within the period of limitation provided by the statute. On this ground alone, the Tribunal should not have entertained the appeal. Secondly, the respondent was appointed on 1-2-1972 on contract basis for a period of three years. This period of contract was extended up to 31-1-1978. When the respondent was only a contractual employee, there could be no question of his being granted the relief of being directed to be appointed as a regular employee. (Emphasis supplied)."




9. While the above is the observations of the Hon'ble Supreme Court, in the case reported 2003(1) SCC 184 – SK Mastan Bee vs GM SCR, the Apex court has been considerate and held, "in the circumstances of this case the delay in approaching the railway authorities cannot be considered to be fatal for the maintainability of the writ petition..... the appellant is illiterate, who at that time did not know her legal right and had no access to any information as to her right to family pension and to enforce her such right." The Apex court has held that the appellant is entitled to family pension not from 1992 but right from the date of demise of her husband, i.e. 1969.

10. If the benefit of the judgment of the Apex Court in the case of S.K. Mastan (supra) be granted, the question of limitation does not come in the way of the applicant. It is now to be seen as to the extent of merit in the O.A. regarding her claim.

11. In the case reported in (1989) 9 ATC 158 - G Krishnamurthi vs UOI and Others, it had been held that even in the case of voluntary abandonment of service by the employee the authorities are supposed to issue necessary notice before termination of services.

12. In the case reported in (1992) 20 ATC 348 – Keshavan Nair vs SDO Telegraphs, it has been held that merely by the length of absence of an employee coupled with no other circumstances to infer relinquishment of his office, an abandonment cannot be presumed. The Tribunal cited the view



of the Principal Bench of the Tribunal that it is "consistently taking the view that in order to sustain a plea of abandonment of job the employer is bound to give a notice to the employee calling upon him to resume duty and failure on the part of the employee.

13. In the case of Harnandi vs UOI 2002 E.S.E. (Del HC) 33 the Hon'ble High Court of Delhi has held under the facts of that case that the husband of the petitioner to the writ petition is deemed to have died in harness, as no order of dismissal or removal or discharge had been passed by the authorities.

14. In the case of Basudeo vs Sido Kanhu University & Ors (1998) 8 SCC 194 the Apex Court had held that though there was an order of termination, if the said order is invalid for any plausible reason, the individual would be deemed to have died in harness.

15. In the case reported in 2000 (1) ESC 402 (All) – Narendra Singh Yadav vs St. of UP & Ors the Hon'ble High Court of Allahabad has held that in the absence of a valid termination order, the employee is deemed to have died in harness.

16. Considering the aforesaid decided cases, it could be discerned

- (a) in matter of limitation, there could be a lenient view in the case of illiterate litigants, who do not know about their legal rights. Case of Mastan Bee refers.
- (b) In the case of voluntary abandonment of the employee also, the employer should give necessary notice before passing any order of termination. In this



case, neither there was any notice nor any termination order.

- (c) If there be no valid termination order, and the individual is alive, he is entitled to reinstatement or re-engagement and if he is dead, it should be deemed that the individual had died in harness.

17. Telescoping the above in the case of the applicant in the present OA, as regards limitation, in this case also, the applicant being not that literate, limitation may not be insisted. Viewed from another angle, strictly speaking, the question of limitation may not arise inasmuch as the challenge is against an order dated 17-05-2001 (Annexure A-1) wherein the individual was paid only Rs 10,098.52 and the applicant's claim is for a larger amount. In other words, the aspect of some dues payable to the applicant having been accepted by the respondents, what is agitated is as to quantum. Hence, the objection as to limitation is necessarily to be rejected.

18. Admittedly there has been no order of termination. In fact, the husband of the applicant was stated to have presented himself with a copy of the decree he had obtained from the Court but he was not entertained. It was not known as to on what ground the employee could not proceed further with the execution of the decree. Be that as it may, there had been no valid termination order passed by the respondents. Hence, on the basis of the Apex court's judgment in the case of Basudeo Tiwari (Supra) the individual is deemed to have died in harness.

19. Now the question as to entitlement. It appears that the respondents in pursuance to the earlier order of the Tribunal calculated the extent of pay and allowances due to Late Shri Ram Sajivan and paid a sum of Rs 10,098.52. However, no details have been furnished. It is presumed that the amount

did not include the element of interest . Admittedly the amount paid is the amount payable as early as in 1970 and if interest is calculated from that date, till 2001 for 31 years, it would have multiples to minimum of five times. Hence, this amount has to be paid to the applicant.

20. If the applicant is deemed to have died in harness, his service has to be counted for pension purposes upto that period. The individual has served from 1966 and he expired in 1981. Thus, the period of service for terminal benefits could be construed as 15 years and whatever the benefit the individual would have been entitled towards gratuity etc., as terminal benefits, the same becomes payable to the applicant. This has to be worked out and paid to the applicant.

21. As regards back wages, it could be seen that even in the case where the individual was alive as in the case reported in (1992) 20 ATC 348 – Keshavan Nair vs SDO there was no order for payment of back wages. Hence, here also the applicant cannot claim any arrears of salary for the period of absence from duty.

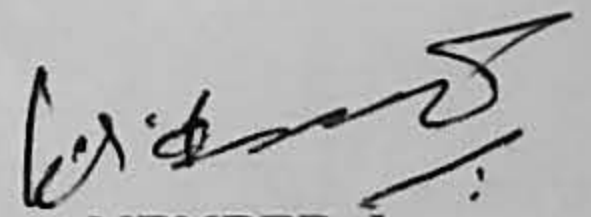
22. The applicant has claimed compensation of Rs 10 lacs. This is impermissible and hence this part of the relief is summarily rejected.

23. To sum up, the O.A. partly succeeds. The applicant is entitled to the following:-

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- (a) For the amount of salary upto 1970 (Rs 10,098.52) which was paid to the applicant vide Annexure A-1, the applicant is entitled to simple interest @ 12% per annum from February 1970 till the date of payment. The respondents are directed to calculate the same and pay the same to the applicant.
- (b) The respondent shall deem that the husband of the applicant was in service till the date of his demise i.e. 8th July, 1981 and taking into account his total service from the date of appointment till the afore said date, the respondents shall calculate the entitlement towards terminal benefit as admissible under the Rules in extant as of 8th July, 1981 and ~~pay~~ such amount as worked out on these lines shall be paid to the applicant.
- (c) As this is the second round of litigation and the respondents had driven the applicant to such a stage, applicant is entitled to cost of this litigation, which is quantified at Rs 3,000/-.

24. The amount due as per the above should be paid to the applicant within a period of four months from the date of communication of this order.


MEMBER-J

GIRISH/-