

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.603/2018

CORAM: HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER (J)

Malha @ Kari Beshra, aged about 42 years, D/o. Late Mahanti Kisku, residing at Vill-San-Khirapada, P.O.-Bad-Khirapada, PS-Baisingha, Mayurbhanj.

.....Applicant

VERSUS

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Khurda-751023.
2. Divisional Railway Manager, E.Co. Rly., Khurda Road Division, At/Po-Jatni, Dist. Khurda-751023
3. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po-Jatni, Dist-Khurda-751023

.....Respondents.

For the applicant : Mr. P.K. Chand

For the respondents: Mr. S.K. Nayak-1

Heard & reserved on : 18.03.2021 Order on : 12.04.2021.

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This Original Application has been filed by the applicant the following relief(s):-

“It is humbly prayed that the Hon’ble Tribunal may be pleased to allow this application by directing the Respondents to pay all settlement dues of Late Mahanty Kisku to the applicant and also family pension/arrear family pension accrued to her mother-Kenti Kisku from 20.04.1995 to till her mother’s death i.e., 23.01.2017 along with 18% interest on the above dues.

And further be pleased to pass and other order(s) as deem fit and proper in the fact of the case.

And for such act of kindness, the applicant shall as in duty bound, ever prayer.”

2. The father of the applicant was working under the respondents department as Gangman died on 20.04.1995. His widow died on 23.01.2017.

Departmental proceeding was initiated against him and punishment of removal from Railway service vide order dated 16.08.2002 (Annexure-R/4) was issued.

3. It is submitted that the applicant has prayed for payment of all settlement dues of the deceased Government employee to the applicant and also family pension/ arrear family pension accrued to her mother from 20.04.1995 till 23.01.2017 along with 18% interest and other retiral dues which was due in favour of her deceased father and also prayed for arrear pension granted in her favour and in favour of her deceased mother who was entitled for the same.

4. The respondents in their counter inter alia averred that after removal from service vide Annexure-R/4, necessary office order dated 15.06.2002 (Annexure-R/6) was issued by the respondents department. That as per Rule-40 of Railway Services (Pension) Rules, 1993 in case of Dismissal or Removal of a Railway Servant from service or post shall lead to forfeiture of his past service. Hence, Sri Mohanty Kisku is not entitled for Pension and Gratuity and in view of the above fact and circumstances of the case the instant O.A. deserves no merit and liable to be dismissed.

5. Parties have filed written notes of submissions and citations.

6. Ld. Counsel for the applicant has relied upon some citations including the following:-

1. O.M. No.11012/7/99-Estt(A) dated 20.10.1999
2. RBE No.115/2000.
3. Swamy's –CCS (CCA) Rules 24. Death while under suspension”

7. Ld. Counsel for the respondents have relied upon some citations including the following:-

1. Hon'ble Apex Court in case of UOI Vs. Tarsem Singh
2. Railway Services Pension Manual

8. Heard Ld. Counsel for both sides and have carefully gone through from the pleadings and materials on record.

9. The fact that the departmental proceeding was initiated against her deceased father was not known to the applicant and she came to know about it only after filing of counter by the respondents. It is submitted that there is no material to show that the family members of the applicant were aware about the departmental proceeding against her father.

10. In fact the departmental proceeding was initiated after the death of the father of the applicant and the punishment of removal was imposed on him since the stand of the respondents was that the respondents department was not aware about his death at that time and no intimation regarding the death of her father was also given to the respondent department. Whatever be the position, the departmental proceeding cannot be initiated after the death of the employee. The initiation of departmental proceeding and the punishment imposed after the death of her father was not known to the applicant and therefore, she was at liberty to proceed with this matter in accordance with law. As the said punishment of removal stands on the way for granting relief, and relief can be considered only after the said legal aspect is raised and decided in accordance with law.

11. Therefore, the O.A. is disposed of with liberty to the applicant to take steps in accordance with law so far as the initiation of departmental proceeding and the punishment imposed on her deceased father are concerned. Respondents department should also examine this fact in accordance with law. In view of the above, the O.A. is disposed accordingly. No costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)