

15/7/21

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/01138/2018.

Date of order : This the 15th Day of July, 2021.

Hon'ble Mr. Tarun Shridhar, Administrative Member



Smt Buby Hela wife of Late Pappu Hela
Aged about 36 years, residing at her father's
House at No.13, B.T.Road, Post Office and
Police Station Cossipore, Kolkata-700 002.

.....Applicant

- Versus -

1. Union of India
Through the General Manager,
Eastern Railway, 17 N.S.Road,
Fairlee Place, Kolkata-700001.
2. The Chief Personnel Officer,
Eastern Railway, 17 N.S.Road,
Fairlee Place, Kolkata-700001.
3. The Divisional Railway Manager,
Howrah, Eastern Railway,
At Post Howrah, District Howrah-711101.
4. The Divisional Railway Manager,
(Medical), Howrah, Eastern Railway,
At Post Howrah, District Howrah-711101.
5. The Chief Medical Inspector, Gr. I,
Eastern Railway, Howrah Station,
At Post Howrah, District Howrah,
Pin 711101.
6. The Assistant Personnel Officer,
Howrah, Eastern Railway,
At Post Howrah, District Howrah-711101.

.....Respondents.

Advocate for the Applicant : Mr A.K. Gayen

Advocate for the Respondents : Mr A.K. Guha.

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ORDER**MR TARUN SHRIDHAR, MEMBER (A)**

Smt Buby Hela is the widow of one Pappu Hela who was employed as Safaiwala in the Eastern Railway. The applicant is aggrieved that she has not been awarded with family pension and other benefits to which she is legally entitled to. To this effect she seeks the following reliefs vide this O.A, which is reproduced below :

"a) Direction be made upon the respondents more particularly the respondents No.3 and 4 to grant the pensionary benefits including the family pension in favour of the applicant forthwith by setting aside and/or quashing the decision of the authority dated 19.04.2018;

b) Direction be made upon the respondents to calculate the pensionary benefits and also the family pension and disbursed the said retiral benefits, gratuity and other benefits as admissible in accordance with the rule in favour of the legal heirs of the deceased employee forthwith, including 9% accrued interest thereon;

c) Such further order or orders, direction or directions be made as to your Lordships may deem fit and proper."

2. The brief facts of the case are that Shri Pappu Hela was subjected to disciplinary proceeding while in service and the said proceeding resulted in the punishment of removal from service. Hence respondents, in accordance with the rules have not granted him either pension or the compassionate allowances.

3. I have heard the learned counsel for the parties at length and carefully examined the documents on record. The Ld. Counsel for the applicant vehemently argues that the respondents do not have any right under the Pension Rules to deny the pensionary benefits to the family of the deceased. He further contends that even the disciplinary proceedings are vitiated on account of non application of mind and non adherence to the statutory provisions of disciplinary rules. The respondents on the other hand pointed out that there is a specific bar in the provisions of disciplinary Rules

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for grant of pension or family pension once the employee has been removed from service.



4. Even a careful examination of the record does not throw any light as to whether the statutory and obligatory procedure for initiating disciplinary proceeding and enquiry was followed in the instant case. The respondents were given an opportunity to bring on record the concerned disciplinary proceeding file of the establishment through which the disciplinary proceeding against the husband of the applicant was initiated. I had perused the records time and again and observed vide the order dated 13.01.2021 that :

"(i) This record does not clarify whether the employee who was removed from service was duly served with a notice or the chargesheet.

(ii) This record also does not contain the findings of the Enquiry Officer in detail and the only document which holds the employee guilty is something called 'Punishment Notice'.

(iii) Further, the order passed by the Disciplinary Authority imposing penalty of removal from service is a pre-cyclostyled proforma wherein few words have been written in hand to pass this order; it does not by any stretch of imagination indicate an application of mind by the Disciplinary Authority nor any finding or evidence or any reference to the report of the Enquiry Officer. Perhaps, there may be some other record which has not been produced.

3. Ld. counsel for the respondents may obtain instruction/clarification on the above issues and furnish the same within a period of 2 weeks along with the written brief of arguments, in case he so desires."

Pursuant to this order the Ld. Counsel for the respondents has furnished the written notes of argument wherein the respondent have tried to justify that the order of removal from service is a pre-cyclostyled standard format of Railways, since there was no computerisation at that point of time. Ld. Counsel justifies this action and contends that this cannot be construed as indicative of non application of mind.

5. I am certainly not inclined to accept the arguments of the respondents because removal from service is the harshest punishment, an


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employee cannot be subjected to. It is expected that due and reasonable opportunity will be afforded to charged employee to present his defence and the final order by the disciplinary authority, especially when it entails the punishment of removal from service and denial of any future benefit to the employee or his family would be passed only after careful consideration of the facts and records, and on judicious application of mind. Issuing an order on a standard format which is pre printed is not only bad in law but also indicative of gross apathy and insensitivity of the concerned authorities. Further, the respondents have not been able to produce any documents against the late employee; no memo of charges, no enquiry report; no copy of the notice etc.

6. Therefore, I have no hesitation in quashing the order dated 19.04.2018 vide which Shri Pappu Hela, Safaiwala of Eastern Railway has been removed from service. Accordingly, his wife is held to be eligible for grant of family pension, gratuity, compassionate allowance and all other financial benefits which she is otherwise entitled to. As a logical corollary, the deceased employee Pappu Hela will be deemed to have been in continuous service irrespective of the order of removal from service till the date of his superannuation or death whichever was earlier.

7. With the above direction to the respondents specifically to respondent No.3, the O.A stands disposed of. It is further directed that the respondent No.3 shall finalise the claim and release the pensionary benefits to the applicant i.e. the widow of the deceased employee within a period of 8 weeks from the date of receipt of a certified copy of this order. No costs.


(TARUN SHRIDHAR)
MEMBER (A)