

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

T.A.No: 1888 of 1987  
In  
W.P. No: 15591 of 1985

Smt. Shamshun Nisha

..... Applicants.

Versus

Union of India & others.

..... Respondents

Hon'ble Mr. A.K.Sinha, Member-J

*Corrected on 7/1/93 up*

This <sup>but</sup> review petition received on transfer from Allahabad High Court under Section 29 of the Administrative Tribunal's Act. The applicant Smt. Shamshun Nisha, widow of late Shri Abdul Jabbar Siddiqui, an ex-employee of the Railways who is said to have died on 4.12.1970 after prolong illness and completing about 27 years of service leaving behind his widow, the applicant, and her 4 minor sons besides 2 minor daughters; prays for issue of writ of mandamus on the respondents with a direction to them to

- 1/ give her family pension and other emoluments on account of the services rendered by her late husband.
- 2/ to direct the respondents to give employment to her elder son Mohd. Khubaid who has since attained majority and qualified on compassionate grounds besides costs.

2. Undisputedly the husband of the applicant late Abdul Jabbar Siddiqui was employed with the then East Indian Railways as a senior Clerk in the Divisional office of the Superintendent Allahabad in the year, 1943, but, subsequently on creation of Indian Railways the services of the said employee was converted in the Indian Railway

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services and he was posted in the Divisional Railway Manager's office as Senior Clerk in the Pay Bill section at Allahabad. After completing 27 years of his service late Abdul Jabbar Siddiqui died after a prolong illness on 24.12.1970 leaving the applicant as his widow and his minor children stated above.

3. In the year, 1977, the eldest son of the applicant Mohd. Khubaid became major and she moved a petition before the Railway Administration (vide Annexure A-1) with a prayer to give her son employment on compassionate ground and also prayed for payment of Post Retirement Benefits due to her deceased husband. In response to the said application of the petitioner, the petitioner received a letter dated 6.10.1981 from the respondents (vide Annexure A-2) to furnish the service certificate of her deceased husband and in reply thereof she submitted the aforesaid particulars of her husband vide Annexure A-3 issued on 11.6.1967.

4. It was further stated that in-stead of giving a sympathetic consideration and giving employment to her son the applicant received a letter dated 12.5.1982 (vide Annexure A-4), whereby she was informed that her husband late Abdul Jabbar Siddiqui was treated as a 'deemed to have resigned on 14.1.1967' due to continuous absence of 5 years from duty and died on 24.12.1970 and therefore his case does not come under the purview of

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compassionate grounds. The applicant on receipt of the said letter from the Railway Administration vide Annexure-5 dated 12.5.1982 replied to the Railway Administration under the signature of her son Mohd. Khubaid that the husband of the applicant had become invalid while in service and consequently died in 1970 infact he did not resigned but he had been retired. He suffered from paralysis and died in service. On these grounds it was prayed that her son Mohd. Kubbaid who is become major and graduate should be given appointment on compassionate ground.

5. It was further stated that the Husband of the applicant suffered from paralysis and for his treatment he was admitted in the Railway Hospital and as such it could not be said that he was absent without information to the department and that it was a 'deemed resignation'. In this connection the applicant has filed Annexure A-6 dated 18.7.1986 which would show that the husband of the applicant was under the treatment of the Railway Doctor and the Railway Doctor certificate bearing No. 292454 dated 17.1.1966 is mentioned therein and it further shows that he was discharged from the hospital last on 29.10.1965 because the applicants husband did not attained for treatment.

6. On the basis of these material facts it has been submitted that the husband of the applicant was in continuous treatment atleast till 29.10.1965 under the treatment of Railway

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Doctor himself and as such on 14.1.1967 it could not be said that he retired on the condition of 'deemed resignation' after expiry of 5 years of continuous absence from service.

7. On these grounds the applicant has prayed for the above reliefs.

8. It may however be mentioned that this writ petition was filed in the High Court on 28.10.85 and notices were issued and one month time was granted to file Counter Affidavit by the respondents thereafter on transfer this writ petition was received before this Tribunal and the respondents were given sufficient time to file Counter Affidavit/written statement and as a matter of fact the Railway Advocate was also given notice to file the Counter Affidavit and sufficient time was allowed since 1990 but, no Counter Affidavit was filed in this case repudiating the claim of the applicant. The order sheet dated 18.1.1993 would show that the learned counsel for the respondent was given last opportunity to file Counter Affidavit if any, but, it was not filed and ultimately the argument was heard without the Counter Affidavit having been filed by the respondents.

9. The learned counsel for the applicant submitted that the service certificate Annexure A-3 of the husband of the applicant would show that late Abdul Jabbar Siddiqui was appointed on 5.7.1943 and remained in service up to

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14.1.1967 which prima facie shows that the applicant remained in continuous service under the respondents for about 24 years. Annexure A-4 is the reply dated 12.5.1982 sent to the applicant under the signature of D.R.M. Allahabad intimating that late Shri Abdul Jabbar was treated as deemed to have resign on 14.1.1967 due to continuous absence of 5 years from duty and died on 24.12.1970 and therefore his case did not come within the purview of compassionate ground.

10. The learned counsel for the applicant submitted that;

Where a Railway servant does not resume duty after remaining on leave for a continuous period of five years, or where a Railway servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which, together with the period of leave granted to him, exceeds five years, he shall, unless the President, in view of the exceptional circumstances of the case, otherwise determines, be removed from service after following the procedure laid down in the Discipline and Appeal Rules for Railway servants.

11. It has been submitted that no such procedure was adopted by the Railway Administration to show that the applicant's husband remained in continuous absence for more than five years and notices were issued to him and after the proceeding of enquiry etc. the order of deemed resignation was passed.

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12. The Railway Administration has not done any regard as to under what circumstances the applicant's husband was stated to have deemed to have resigned. Annexure-6 dated 18.7.66 is a letter from the Divisional Superintendent's office which shows that under medical certificate No. 292454 dated 17.1.1966 the applicant's husband was under treatment in Railway medical hospital and he was discharged w.e.f. 29.10.1965 on account of not attending the hospital for treatment. From these averments of facts which are uncontroverted, this much is quite clear that the husband of the applicant was in active service up to 1967 and he was undergoing medical treatment in the Railway hospital from where he was discharged on 29.10.1965 and as such the contention of the Railway counsel is that the applicant's husband's whereabouts were not known to the Railway Administration and that due to his continuous absence for more than 5 years he was deemed to have resigned from service and so he was not entitled to pensionary benefits, does not find any support from the facts and circumstances of this case.

13. Family pension Rules were first prescribed in the Railway Administration in the year, 1957 when the Pension Scheme was introduced on the Railways, these Rules were superseded by another state of Family Pension Rules from 1st January, 1964, but the staff who were governed by pension Rules prior to this state will continued to be

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governed under these Rules if they have opted on or before 30.6.1964 to retain their existing family pension benefits. It is also well known that family pension is admissible to the nominated members of the employee's family provided the employee as died after 20 years of qualifying service. In the instant case from the service certificate Annexure -3 issued by the Railway Administration in respect of the husband of the applicant it is obviously clear that the applicant ~~entered~~<sup>was</sup> the service on 5.7.1943 and remained in the service up to 14.1.1967 which shows that for about 24 years the applicants husband remained in service. It is further clear and admitted fact that the husband of the applicant was under medical treatment in the Railway hospital vide Annexure A-6 dated 18.7.1966 which would show that he was discharged from hospital w.e.f. 29.10.1965, therefore in the background of these facts, it is too idle to contend that the whereabouts of the applicant's husband for more than five years was not known to the Railway Administration and, therefore, he was deemed to have resigned from service cannot ~~be~~<sup>get</sup> any support from any documents produced before this Court.

14. Therefore, considering the facts and circumstances and for the reasons stated above I am <sup>quite</sup> clear in my mind that the husband of the applicant who had completed 24 years of qualifying service was entitled to the pensionary benefits and after his death the widow of the applicant was entitled to the family pension.

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15. In that view of the matter, the respondents are directed to give all benefits on account of services rendered by the applicant's husband and to pay her family pension and other emoluments which are admissible to her after fixing the pension of the applicant's husband with consequential benefits within a period of three months from the receipt of this order.

16. So far the another relief claimed by the applicant is regarding the appointment of her eldest son Shri Mohd. Khubaid on compassionate ground. Mr. Khubaid has not been impleaded as a party in this writ application. He has sworn an affidavit regarding the contents of the writ petition and he has stated his age to be 32 years and the affidavit was sworn on 29.10.1985. Obviously therefore in the year, 1977 he was aged about 24 years therefore factually what is stated in paragraph 4 that in the year 1977 the applicant's son became major appears to be incorrect. Admittedly the husband of the deceased died in the year, 1970 and at that time the applicant's son must have been aged about 17-18 years and since that time he never made any application before the Railway Administration for appointment on compassionate ground until on 24.4.1982 when he had already attained the age of about 21 years. Therefore considering these material facts, I do not find any merit in the prayer of the applicant for appointment of her son on compassionate ground. The son has already become more than 32 years and he is a graduate

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and by this time he must have been settled down in life, so, in that view of the matter no case for appointment on compassionate ground has been made out and the application for appointment on compassionate ground is prima facie barred by limitation because it is already delayed more than a decade and therefore the applicant is not entitled as regards relief for appointment of her son on compassionate ground. The prayer of the applicant is rejected.

17. On a consideration therefore, the facts and circumstances of this case and the submissions of the learned counsels of the parties, the prayer of the applicant is allowed in part and in the circumstances there will be no order as to cost.

Ashok Kumar Sinha  
Member-J

Allahabad Dated:

(jw) 13.4.93