

(35)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 19th day of January 2011

Original Application No. 537 of 2002

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

1. Smt. Taiya Khatoon, W/o late Abdul Mazid
2. Sayed Miyan, S/o late Abdul Mazid

Both residents of 237, Sufitola, Nagar Naradari Schools, Old City, Bareilly.

... Applicants

By Adv : Sri Namit Srivastava

V E R S U S

1. The union of India, through its General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Manager (Railways), M.R., Moradabad Division, Moradabad.
3. The Divisional Operating Superintendent, Northern Railway, Moradabad.

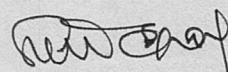
... Respondents

By Adv: Sri P. Mathur

O R D E R

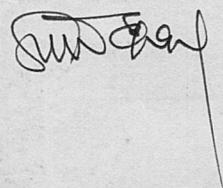
Delivered by Hon'ble Mr. Justice S.C. Sharma, Member (J)

Instant OA has been instituted for quashing the order dated 14.01.2002 passed by respondent No. 2 and further for direction to respondents to make the payments of arrears alongwith interest @ 18% pa. Further the prayer has also been made for giving direction to the respondents to consider the husband of the applicant as Guard Gr. 'A' and Guard Gr. 'C' upto 10.01.1971 and, thereafter, the difference of pay of Guard 'A' and Trains Clerk till the retirement and difference of mileage



allowance from 09.06.1950 till the date of retirement. Further relief have also been sought which are as a consequence of granting the pay of the applicant as Guard 'A' and Guard 'C'.

2. It has been alleged in the OA that the husband of the applicant No. 1 was an ex-servicemen and he was recruited in the reserved quota earmarked for ex-servicemen. The applicant was relieved from the military service in the year 1946. The husband of the applicant was selected for the post of Guard Gr. 'A' in the then O.T. Railways and then appointed as Guard Gr. 'A' on 02.02.1947. The appointment letter was issued on 02.10.1947 by the Railway Traffic Superintendent who was the appointing authority of Guard Gr. 'A'. But later, the husband of the applicant was unqualified for Guard's duty. Thereafter, he was engaged as Clerk as temporary measure until such time he qualified himself for Guard's duty. He was put to work as Guard 'A' for which he was duly selected by the Selection Board. Thereafter, the husband of the applicant worked on different posts. The applicant was also transferred mutually with Guard 'C' at Moradabad Division and he joined at Moradabad on 21.12.1959 and continued to work under Divisional Railway Manager, Moradabad till his retirement on 31.12.1990. An OA No. 992 of 1991 was filed by the husband of the applicant. In the screening committee the husband of the applicant was found fit for trains clerk which was offered to him but he denied to resume his duty as trains clerk and absented himself from duty. The applicant's husband submitted his reply of the charge sheet dated 26.06.1987. The punishment order was passed on 19.09.1990 and he was compulsorily retired from service as a matter of punishment order. The order of the compulsory retirement was challenged in OA No. 992 of 1991 and the Tribunal in its judgment quashed the order of compulsory



retirement. In the meantime the husband of the applicant expired and hence the applicant is entitled for the arrears etc.

3. The respondents have contested the case by filing reply. They denied the allegations made in the OA. It has also been alleged that the applicant's husband never worked as Guard Gr. 'B' and 'A' as he failed to qualify the test. The husband of the applicant joined at Moradabad division from Gonda on 21.12.1951 as Guard 'C' on mutual exchange. Hence it is wrong to allege that the applicant was appointed as Guard Gr. 'A' directly. The husband of the applicant was transferred from Izzatnagar to Gonda on 08.10.1949 in the capacity of clerk and not as Guard. A ~~refreshed~~ ^{is} Course ~~are~~ being conducted after expiry of every 05 years and those who do not pass the refresher course are to be given alternative jobs not involving trains duties as required under the rules as the duties of the Guard are of technical nature and involves public safety. The applicant's husband was sent for refresher course of Guard in the year 1959 and he ~~was~~ failed in the refresher course. The applicant never worked in the capacity of Guard 'A' and 'B' and hence he is not entitled for benefit of Guard 'A' and 'B'. The husband of the applicant was duly aware of this fact and he never made representation against this. The OA is liable ^{is} ~~allowed~~ to be dismissed.

4. We have heard Sri P. Mathur, advocate for the respondents and perused the entire facts of the case. Rejoinder Affidavit has also been filed on behalf of the applicant and certain facts were alleged and reiterated in the Rejoinder Affidavit. Learned counsel for the respondents taken us towards the relevant portion of the judgment which reads as under:-

".....The applicant preferred an appeal dated 1.9.71 for being given 4th chance, which was forwarded to General Manager, N. Rly. As a special case, he was allowed 4th chance at his own cost on 31.1.1972. The applicant was sent to attend Guard refresher course from 8.2.72 to 28.2.72, where he was declared failed as per result



declared on 6.4.72, copy of which has been annexed. The applicant joined duty as trains clerk, Bareilly on 18.2.72....."

5. On the basis of this observation of this Tribunal in the earlier OA learned counsel for the respondents argued that the husband of the applicant never worked on the post of Guard Gr. 'B' and 'A' and he is not entitled to draw pay and arrears of that post.

6. We have perused the judgment passed by this Tribunal in OA No. 992 of 1991 dated 03.04.2001. This judgment is ~~not~~ relevant for the matter ~~in~~ ^{under} controversy and which has been settled down in the earlier OA. But ~~is there~~ ^{is} this fact that the order of compulsory retirement of the husband of the applicant was quashed.

7. After quashing of the order of compulsory retirement the husband of the applicant is entitled for all the benefits up to the age of his superannuation from the date of his compulsory retirement. Learned counsel for the respondents in this connection argued that para 10 of the counter affidavit is relevant. He also attracted our attention to Annexure 1 to the OA, the order passed by the competent authority in which it has been averred that by the order of this Tribunal the respondents had already paid due amount to the applicant and the family pension has also been paid ^{to} ~~the~~ applicant and nothing is due.

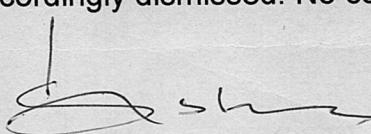
8. As none has responded on behalf of the applicant there appears no ~~to disbelieve~~ ^{is not true} reason that whatsoever has been argued by the learned counsel for the respondents. Nothing has been alleged for non-payment of the family pension. Moreover, the respondents have also alleged in the counter affidavit that family pension has also been granted to the applicant No. 1 within time as ordered by the Tribunal and revised PPO has also been issued. We have also decided that the husband of the applicant never

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Anil Kumar*

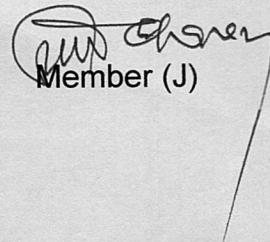
worked as Guard Gr. 'B' and 'A' and there is no observation of the Tribunal in the earlier OA. We have also decided that the finding recorded by the Tribunal in the earlier OA is binding and there appears no reason to upset that finding recorded by the Tribunal. We have also perused the other relevant circumstances of the case and in our opinion the husband of the applicant never worked in the capacity of Guard Gr. 'B' and 'A', he worked as trains clerk and the salary and arrears had already been paid to the husband of the applicant. It is also fact that nothing is due to the applicant, if treating the husband of the applicant as a trains clerk. Prayer ~~has~~
~~been~~ also made on behalf of the applicant for payment of arrears etc. The husband of the applicant worked as Guard Gr. 'B' and 'A' otherwise nothing has been alleged that ~~that~~ whatever was due to the husband of the applicant has not been paid by the respondents, if treating he worked in the capacity of trains clerk.

9. For the reasons mentioned above we are of the opinion that nothing is due for payment to the applicant as a consequent of compulsory retirement of the husband of the applicant after retirement on superannuation. We are also of the opinion that the husband of the applicant has never worked as Guard Gr. 'B' and 'A' and he is not entitled for the relief claimed in that capacity. The OA ~~merit~~ ~~is liable~~ ² lacks and is ~~allowed~~ to be dismissed.

10. The OA is accordingly dismissed. No cost.


 Member (A)

/pc/


 Member (J)