

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A 63 of 1993

Date of Decision : 26.03.2001

Mrs. Ritaben B. Sharma : Petitioner (s)

Mr. K. K. Shah : Advocate for the petitioner [s]

Versus

Union of India & Ors. : Respondent(s)

Mr. R. M. Vin : Advocate for the respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHVI : MEMBER (J)

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Ritaben B. Sharma,
W/o. Late Shri. B. N. Sharma,
Address for service of notice :
Natural History Museum,
Opp : Balvatika Compound,
Kankaria, Ahmedabad.

- Applicant -

Advocate : Mr. K. K. Shah

Versus

1. Union of India, Notice to be served through The General Manager, Head Quarter Office, W. Rly., Church gate, Bombay.
2. The Divisional Railway Manager, Divisional Office, W. Rly., Bhavnagar.

- Respondents -

Advocate : Mr. R. M. Vin

**JUDGMENT In
O.A 63 of 93**

Date : 26 /03/2001

Per Hon'ble Shri. A.S. Sanghvi : Member (J).

Heard Mr. K. K. Shah for the applicant and Mr. R. M. Vin for the respondents. This O.A is moved by the widow of Mr. B. N. Sharma who was working as a Grade 'A' driver and was posted as a Safety Counsellor, Bhavnagar Para. According to the applicant prior to his death her husband had requested to repatriate him to his original post of special grade 'A' driver from the ex cadre post of Safety Counsellor but the Divisional Railway Manager, Bhavnagar Para had asked her husband to submit an affidavit for repatriation by a letter dated 29.6.90. Her husband had replied to that letter on 19th December, 1990 but the respondents had failed to take any

action on his request of repatriation and in the meanwhile he died on dated 3.4.91 due to heart attack. According to the applicant had he been repatriated as a special grade 'A' driver, he would have got the benefit of 55 % running allowance and since he was not repatriated she has incurred monetary loss of Rs.25,000/- and in pension also. According to the applicant her husband ought to have been treated as retired special grade 'A' driver and not as Safety Counsellor and on that basis his pension as well as family pension ought to have been fixed. The action of the respondents in not repatriating to his parent cadre was clearly illegal, unjustified and improper. As the post of the Loco Inspector and Safety Counsellor was of a fixed tenure of four years and her husband had already completed four years there, the applicant has prayed that respondent be directed to consider her husband as special grade 'A' driver on completion of four years on the post of Safety Counsellor and she may be paid the difference of pay, running allowance and other consequential benefits and to re-fix the pensionary benefits.

2. The respondents in their reply have contended that no cause of action survives for the applicant to file such an O.A and that the theory of monetary loss alleged is purely hypothetical as the running allowance is admissible only when the employee works as a driver and not on a notional basis. It is also contended by them that the O.A is barred by limitation as the main challenge is to the request of repatriation made on dated 29.6.1990 being not granted by the respondents. They have further contended that Mr. Sharma was promoted on a post of Safety Counsellor vide order dated 12.12.83

and there is no dispute that it is a tenure post in Mechanical Department. This is being a promotional post for a driver, he was promoted after due selection and he could have been repatriated not as a driver but as LI/PCR/LF (R) as per the Headquarter directions dated 24.4.89. Since Mr. Sharma has applied for voluntary reversion from the post of Safety Counsellor to Driver Grade 'A' vide his application dated 16.2.90, he was asked to file an affidavit in this regard as per the existed procedure in Railway Administration. The post of the Safety Counsellor carried the scale of Rs.2000-3200/- while that of the driver grade 'A' carried the scale of Rs.1640-2900/-. They have also stated that while his application for reversion was under consideration, he had suddenly expired and therefore he could not be reverted. Since he had died, he could not be notionally reverted also. Under the circumstances, he cannot be treated as driver 'A' automatically and the relief as prayed for by the applicant in this O.A cannot be granted. They have prayed that the O.A be dismissed with costs.

3. We have heard the learned advocates of both the parties and have carefully gone through the pleadings and the documents produced on record.

4. It is an undisputed position that the husband of the applicant was working as special grade 'A' driver and was subsequently promoted to the post of Safety Counsellor and while serving as a Safety Counsellor, he had died on dated 3.4.91. The reply of the respondents reveals that the husband of the applicant was

promoted as a Safety Counsellor on dated 12.12.83 and that since 12.12.83 he was working as a Safety Counsellor. The applicant has come with a case that her husband had applied for repatriation as the post of Safety Counsellor was ex cadre post and that the respondents instead of repatriating him had asked him to file an affidavit and before he could file the affidavit he had expired. The respondents have contended that since applicant was promoted to the post of Safety Counsellor carrying a scale of Rs.2000-3200, he could have been repatriated only as LI/PCR/LF and not as a driver 'A' grade which was carrying the scale of Rs.1640-2900/-. Since the applicant's husband was asking for the post of driver 'A' grade, posting him as a driver grade 'A' would have meant reverting him to that post and therefore he was asked to submit his affidavit stating that he was willing to be reverted. According to the respondents this was done in view of the administrative procedure and in view of the Board's instructions. The husband of the applicant instead of submitting the affidavit, as demanded by the respondents, had entered into the correspondence with the respondents and before any decision could be taken on his request for reversion, he had died on dated 3.4.91. Under the circumstances, it cannot be said that due to the negligence of the respondents he could not be reverted back to the post of driver grade 'A'. When the applicant's husband was not reverted to the post of driver grade 'A', obviously he was not entitled to claim any running allowance also.

5. The averments of the applicant that if her husband had been allowed to work as driver 'A' grade as per his request, he would have drawn the running allowance and thereby benefited at the time of

retirement is clearly misplaced. The running allowance would have been allowed to the husband of the applicant only when he was posted as a driver and worked as a driver. When the husband of the applicant had not shown willingness to file an affidavit asking for the reversion to the grade of driver 'A', it cannot be concluded that he was ready and willing to be reverted to the post of driver grade 'A'. As it transpires from his request made on dated 16.2.90 Annexure A/4, Mr. B. N. Sharma the husband of the applicant had not sought any reversion to the grade of driver 'A' but had only made a request to transfer him back to his original post of lien cadre of driver grade 'A' i.e. driver Mail Express at BVP whenever vacancy occurs. Since he had not requested for reversion it was pointed out to him by the DRM BVP vide letter dated 29.6.90 Annexure A/1 that he should file an affidavit for voluntary reversion from the post of Safety Counsellor carrying the scale of Rs.2000-3200/- to the post of Driver [Mail/ Express] scale of Rs.1640-2900/-. It was also advised to him that this may be treated as most urgent. However, for the reasons best known to him, Mr. Sharma had failed to submit the affidavit as requested by the DRM, Bhavnagar and died on dated 3.4.91. Under the circumstances, it cannot be said that Mr. Sharma was ready and willing to accept reversion to the post of driver and hence it cannot be concluded that had he been reverted to the post of driver, he would have received 55 % of running allowance and the family would not have suffered the monetary loss of Rs.25,000/-. It is sought to be argued that Safety Counsellor was a tenure post and at the end of the tenure of four years, Mr. Sharma ought to have been sent back to his parent cadre and

because of the respondents not repatriating him to the parent cadre, the family had to suffer monetary loss. The argument has no logic and is merely based on hypothesis. The fact reveals that if the applicant had been repatriated, he would have been posted as a Loco Inspector or some other post in the scale of Rs.2000-3200/- and not as a driver 'A' grade. Since the applicant's husband wanted to be posted as a driver 'A' grade, it would have amounted to a request for reversion and for such a reversion, the administration wanted to be sure that the same was voluntarily made. There was nothing wrong in the administration asking the husband of the applicant to submit an affidavit for being reverted to the post of the driver 'A' grade. This could have been done by the administration by way of extra caution so that in future no technical objections arise. However, the husband of the applicant had not thought it fit to comply with the directions and has till his death, not submitted an affidavit. The Railway Administration therefore could not take any decision on the question of his reversion and for the same they could not be blamed also. Under the circumstances, the fact remains that the applicant's husband was never reverted as a driver 'A' grade special and therefore was not entitled to the allowance available to that post. In fact since the husband of the applicant was drawing higher scale then that of the driver 'A' grade, the family pension fixed must be at the higher level then that of the driver 'A' grade. He would have got the running allowance only when he worked as a driver and since he had not worked as driver, even if reverted, he would not have got the same. Under the circumstances, we do not find any justification in the hypothetical

questions raised regarding the monetary loss to the family of the applicant. No question arises of giving any direction to the respondents to consider the husband of the applicant as a special grade 'A' driver as he was never reverted as a special grade 'A' driver.

6. The O.A is therefore devoid of any merit and the same is rejected with no order as to costs.

G.C. Srivastava
(G.C. Srivastava)
Member (A)

A.S. Sanghvi
(A.S. Sanghvi)
Member (J)

Mb

FORM NO. 21

(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

OA/TA/RA/GP/M/PT 631 93 of 2000

12. 13. Sharmi APPLECTANT (S)

VERSUS

APPLICANT(S)

4-A-1. 2 RESPONDENT(S)

INDEX SHEET

Certified that the file is complete in all respects.

Signature of S.O. (J)


Signature of Deal. Hand.