

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.171 OF 1998.

Cuttack, this the 19th day of August, 1999.

Smt. Kanakalata Kar. Applicant.

-versus-

Union of India & Others. Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO.

(G. NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN 8.99

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 171 OF 1998.

Cuttack, this the 11th day of August, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.)

....

Smt. Kanakalata Kar,
W/o. Sri Gopabandhu Kar,
Ex-Material Checker,
South Eastern Railway Waltair,
Resident of Village-Balisahi (Machhuati),
Po/Ps. Salipur, Dist. Cuttack., Orissa. Applicant.

By legal practitioner: Mr. SUSHIL KUMAR PATNAIK, Advocate.

- Versus -

1. Union of India represented through
General Manager, South Eastern Railway,
Garden Reach, Calcutta.
2. Divisional Railway Manager (P),
South Eastern Railway, Waltair (AP),
3. Chief Personnel Officer (M&EL),
South Eastern Railways,
Garden Reach, Calcutta-43. ... Respondents.

By legal Practitioner : MR. D.N. MISHRA, Standing Counsel
(Railways).

0=0=0=0=0=0=0

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

S. Som
In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, applicant has prayed for a direction to Respondents to grant pension and all other service benefits to her husband and to pay the same to her. She has also prayed for arrear leave salary, gratuity and other pensionary benefits and invalid pension. The third prayer

4
//2//

is that the observation contained in the letter dated 14-7-1997, at Annexure-7, with regard to discharge of the husband of the applicant should be quashed.

2. Applicant's case is that she is the wife of Gopabandhu Kar, who was serving under the South Eastern Railway, Waltair as a Material Checker. He went mad in the year 1970. Applicant came to know subsequently that her husband was admitted in the SE Rly. Hospital, Waltair from 4.10.1970 to 12.10.1970 for brain disorder. He was discharged from Railway Hospital for further treatment on 12.10.1970. Thereafter, his whereabouts was not known and the authorities also did not take any step to find out the whereabouts of the husband of applicant. An Advertisement was published by the applicant and her family members regarding the fact that her husband Gopabandhu Kar had turned mad. Subsequently, Gopabandhu Kar was located in the village wandering like a lunatic. It is further stated that the Judicial Magistrate, First Class, while delivering his judgment dated 26-4-1977 in ³³ Trial Case No. 135 of 1976 in ICC Case No. 96 of 1976, observed that Gopabandhu Kar is a semi-mad person. Applicant made several representations to the Railway Authorities to get the legitimate dues of her husband and to provide a job to her son but these representations were not considered. In response to one of her representations, the DRM, SE Rly, Waltair specially deputed one Welfare Inspector to Salipur on 16.12.88 for a fact finding verification in the matter. It is stated that the welfare Inspector witnessed Gopabandhu Kar roaming naked in village street like a mad

S. Som

12

//3//

person. This was also corroborated by other persons and officials of the locality like Sub-Registrar, Sarapanch Chendradeipur GP, Medical Officer etc. It is further stated that the learned District Judge Cuttack in his order dated 14.11.1991 in the Misc. Case No. 67 of 1991 (Lunacy) on the basis of an application under section 71 of the Indian Lunacy Act observed Gopabandhu Kar to be a lunatic, and declared the applicant as the guardian/manager of her husband and she was declared to be entitled to receive all benefits on his behalf. Copy of this order of the learned District Judge, Cuttack, is at Annexure-3. Applicant has further stated that she has submitted all required documents and materials for grant of legitimate dues of her husband but without any result. The Divisional Railway Manager, South Eastern Railway, Waltair, in their letter dated 13.8.1990, at Annexure-2, addressed to applicant, advised her to submit a certificate from the Judicial Magistrate stating that she is the only authorised member to look after the estate of Gopabandhu Kar, lunatic husband of applicant. It is further stated that one Y. S. Murty, Personnel Inspector, Waltair, contacted the applicant in her village on 15.4.1997 for obtaining her signature on certain documents on the plea of payment of contributory fund but nothing was mentioned about the payment of pension to applicant. Applicant's representation dated 15.4.1997 is at Annexure-5. It is stated that ultimately, the Office of

J. S. Murty

13
//4//

the DRM, Waltair, in their letter dated 14.7.1997 informed applicant that they have decided to discharge Gopabandhu Kar from service w.e.f. 1974. In the context of the above facts, applicant has come up, in this original Application, with the prayers referred to earlier.

3. In this case, inspite of passage of more than one year and a very large number of adjournments, counter has not been filed. In view of this, the matter was fixed to 26-5-1999 for peremptory hearing even in the absence of counter. On 26-5-99, learned Standing Counsel for the Railways, Mr. D. N. Mishra, appearing for the Respondents, submitted that counter has been sent for verification but his request for granting further time to file counter was rejected. Even thereafter, no counter has been filed.

4. We have heard the matter on 26.5.99 in the absence of counter. We have to necessarily go by the averments made by applicant in her petition as also the facts as revealed from the Annexures filed by applicant.

5. We have heard Mr. Sushil Kumar Patnaik, learned counsel for applicant and Mr. D. N. Mishra, learned Standing Counsel appearing for Respondents and have also perused the records.

S. S. M.

14

// 5 //

6. Learned counsel for applicant has also filed Manual of Railway pension Rules, 1950 which contains the earlier pension Rules prior to coming into force of the recent Pension Rules of 1993. This has also been taken note of.

7. At Annexure-6 of the petition, is a letter from DRM, Waltair addressed to the Chief Personnel Officer, Gardenreach, Calcutta a copy of which has been sent to applicant at her village address. This letter has been attested by learned counsel for applicant. From this, it appears that applicant's husband was in Railway service from 27.10.1950 to 4.4.1974. In this letter, a proposal has been made by DRM, Waltair to CPO, Garden Reach, Calcutta that the settlement case of applicant's husband should be processed and this should be settled by treating his service in Railway from 27.10.1950 to 4-4-1974 plus leave, if any at his credit during the material time. The period subsequent to 1974 should not be taken into account as it was not qualifying service for all purposes. It is also stated that the official should be taken to have been discharged from service w.e.f. the date of his unauthorised absence on 21.4.74, and the order dated 4.11.1996 has also been quoted in this connection. From this letter, it appears that applicant's husband joined the service of Railways on 27.10.1950. presuming that his age was at least 18 years, at that time, i.e. on 27.10.1950, applicant's husband would have reached the age of superannuation in 1990. In case he was older than 18 on 27.10.1950, then his date of superannuation would be

J. Som.

J. Som.

15

//6//

even earlier than 1990. As earlier noted, Respondents in this case, have not filed counter, inspite of giving them adequate opportunity. From the letter at Annexure-6, it appears that there is a proposal to discharge the applicant's husband from service w.e.f. 21.4.1974 because of his unauthorised absence from his duties. As earlier noted, some order dated 4.11.96 has also been quoted in this annexure. It is clear to us that if applicant's husband had reached the age of superannuation in the year 1990 or even earlier, after he has reached the age of superannuation, he could not have been discharged from service with a back date. In view of this, it must be held that applicant's husband continued in service till he reached the age of superannuation. During this period, he had worked from 27.10.1950 to 4.4.1974. This period alongwith leave, if any, atleast to his credit, which should have been sanctioned to him and are now to be sanctioned, would count towards his pensionable service. As applicant's husband has put in more than the minimum requirement of ten years in pensionable service, he should be entitled to pension by taking into account of his period of service and leave to be sanctioned to him as indicated by us above.

J. V. M.

8. In view of the above, the prayer of applicant to sanction pension of her husband is disposed of with a direction to Respondents to sanction pension of the

116
1/74/

applicant's husband from the date of his superannuation in terms of our observations and directions made above within a period of 120 days from the date of receipt of a copy of this order, ^{the amount} and should be paid to the applicant within a period of thirty days thereafter.

9. The other prayer of applicant is for payment of gratuity and leave salary. Gratuity should be paid within a period of 120 days from the date of receipt of a copy of this order. In the absence of counter, we are unable to take a view, with regard to the leave if any is at all due. Moreso, leave is to be sanctioned covering part of the period during which applicant was absent to enable that period to count towards his pensionable service. However, if any leave will be due at the credit of applicant on the date of his superannuation when he reaches the age of superannuation, then the cash equivalent thereof, should be paid to him, within a period of 120 days from the date of receipt of a copy of this order.

10. Applicant has submitted in her petition that her husband is mad and the learned District Judge, Cuttack has declared her as the guardian/manager and has declared that she is entitled to receive the settlement dues on behalf of her husband. In consideration of the above, we direct that pension and other dues of her husband Gopabandhu Kar should be paid to applicant in terms of the order of the learned District Judge, Cuttack.

11. The petitioner has also prayed ^{for} ~~that~~ invalidation pension to her husband. As in this case, husband of the applicant has not been declared invalid and has not been

retired on the ground of invalidation, he should not be entitled to invalidation pension. This prayer is held to be without any merit and is rejected.

12. Before parting with this case, we must observe that the dues to be paid to applicant's husband through applicant are pending for a very long time. Part of this may be due to apathy of the Department which is borne out by the fact that no counter has been filed in this case but it is also apparently due to the fact that applicant is an old lady residing in a remote village far away from the office where the applicant's husband was working. In consideration of this, we direct the Respondents to depute a welfare Inspector to the applicant's house to get the necessary documentation done by her. We note that according to applicant herself, in past, two such officers were deputed to her village but no benefit seem to have been flown from the visits. In view of this, Respondents should send a welfare Inspector to the village of applicant for completing all the documentation necessary to enable the Respondents to make payment in terms of the direction given above.

13. In the result the original Application is allowed but no costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 8.99

KNM/CM.