

10


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO.153 OF 2000.
Cuttack, this the 9th day of April, 2002.

Smt.Sukanti Sing & anothers. Applicants.
-Versus-
Union of India and 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


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

9/4/2002

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 153 OF 2000.
Cuttack, this the 9th day of April, 2002.

C O R A M:

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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1. Mst. Sukanti Singh,
Aged about 42 years,
W/o. Late Baidhar Sing.
2. Kumari Sushila Sing,
Aged about 17 years,
D/o. Late Baidhar Sing.
3. Kumari Puspallata Sing,
Aged about 12 years,
D/o. Late Baidhar Sing.
4. Yogendra Sing,
Aged about 10 years,
S/o. Late Baidhar Sing.

Nos. 2, 3 and 4 being minors represented
through mother-guardian Mat. Sukanti Sing,
W/o. Late Baidhar Sing; All Residents of
Village/PO: Ajodhya, PS: /Tahasil-Nilagiri,
District-Balasore.

.... APPLICANTS.

By legal practitioner: M/s. Ajit Hota, A.N. Upadhyaya, Advocates.

- Versus -

1. General Manager, South Eastern Railway,
Garden Reach, Calcutta (West Bengal),.
2. Divisional Railway Manager (Mech.),
South Eastern Railways,
At/PO: Khurda Road,
Dist: Khurda.
3. Senior Divisional Personal Officer (Bills),
(Mech.), S. E. Railway, At/PO: Khurda Road,
Dist: Khurda.

.... RESPONDENTS.

By legal practitioner: Mr. R. C. Rath, Additional Standing Counsel
(Railways).

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Applicant No.1's husband (a Member of the scheduled Tribe, having been born on 04-01-1952) joined the services of the Railways on 04-04-1976 . After serving till 24-11-1984, he received a promotion as Fireman Gr.II and posted at Bhadrak in which post he continued till 27-07-1987. From 28-7-1987, he came to be posted as Fireman Gr.II in Khurda Road Division. While continuing in service, as Fireman Gr.II, he faced a Departmental Proceedings for unauthorised absence and ultimately, he faced a removal from service w.e.f. 06-04-1991, vide an order, under Annexure-R/1, dated 22/26-03-1991. Applicant No.1's husband breathed his last on 08-09-1995 .Whereafter, Applicants raised claims for pensionary benefits and an employment on compassionate grounds. The said prayer of the Applicants was turned down on the plea that the Applicant No.1's husband faced removal from service in 1991. Apparently, Applicants did not know that the husband of the Applicant No.1 faced a removal order from the Railways and, therefore, she made representation and placed materials before the Respondents to get pensionary benefits etc. In fact, Provident Fund dues of the husband of the Applicant, which was not paid to him from 1991, was released in favour of the Applicant No.1 only in the year 2000 as is seen at Annexure-R/3, dated 6-7-2000. It is the case of the Applicant No.1 that her husband became mentally sick for sometime and apparently during the said period he did not attend his duty/office.

It is further submitted by the learned counsel for the Applicant that there is no iota of evidence that the husband of the Applicant No.1 has been removed from service. Further more, it is submitted by the learned Counsel for the Applicant, during the course of hearing that conceding for a moment that the husband of the Applicant No.1 has been removed from service, due to his long unauthorised absence from duty, the same is not sustainable in the eye of law, in view of the fact that the punishment is harsh and disproportionate. In the said premises, learned counsel for the Applicant prays for a direction to the Respondents to pay the family pension/pensionary dues of her late husband for the sustenance of the family.

2. Respondents have filed their counter wherein they have denied the claims of the petitioners. It has been submitted inter alia that since the husband of the Applicant No.1 has been removed from service due to his unauthorised absence, in order dated 22/26-3-2001, ^{(Annexure-R/1),} the family is not entitled to get any pensionary dues as per the Rules. Further more it has been stated by the learned Additional Standing Counsel appearing for the Respondents that during the enquiry adequate opportunity has been afforded to the delinquent Govt. servant to defend his case and a copy of the enquiry report has been sent to him but he did not prefer to submit any representation, nor any appeal has been preferred by him after the order of removal in Annexure-R/2.

22

3. On the request made by the learned Counsel for the Applicants, in order to find that as to whether adequate opportunity has been given to the husband of the Applicant No.1, as to whether order of termination/removal has been passed, and as to whether the Provident Fund dues were released in favour of the Applicant No.1, for all the times between 1991 to July, 2000, the Respondents were directed in order dated 1-4-2002 for production of the proceedings file pertaining to the deceased Government Servant. ^{On Today} (09-04-2002) when the matter was taken up for hearing and final disposal, it has been submitted by Mr. Rath, learned Additional Standing Counsel appearing for the Railways that the records of 1991 pertaining to the disciplinary proceedings against the husband of the Applicant No.1 having been destroyed, he is not in a position to cause production of the records. Even far less to speak, a copy of the service book has not been produced in order to ^{verify} ascertain the averments made by the both sides. In this view of the matter, I have heard Mr. Neta, learned counsel for the Applicant and Mr. Rath, learned Additional Standing Counsel appearing for the Respondents/Railways and perused the records.

4. The next question for consideration now as to whether on the face of the order dated 22-26/03/2001, the Applicants are entitled to get family pension/pensionary dues of late Baidhar Sing, the deceased Railway Servant. On a bare reading of the letter/order dated 22-26/3/2001 at Annexure-R/1, it provides as follows:

"REMOVAL FROM SERVICE NOTICE

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Therefore, I have decided that you are not a fit person to be continued any further service in the Railway and you should be removed from service with effect from 6-4-1991 as a measure of penalty".

From Annexure-R/2, dated 27-1-1997, it is revealed that while ordering vacation from the quarters, the Respondents have taken the reference of the letter at Annexure-R/1 with regard to removal from service.

It is therefore, evident from the record that ~~there is~~ no order of removal has been passed after ^{issuance of} the order at Annexure-R/1, which is the notice (of removal from service) in the eye of law. As such, question of filing appeal after the order of removal does not arise; since in this instant case, admittedly, there is no record that order of removal from service has been passed. Had the records been produced before the Court, it could have been revealed ^{as to} ~~that~~ whether such order of removal has been passed in favour of the delinquent Government servant. Since, the records, as called for in order dated 1.4.2002, has not been produced on the ground that it has been destroyed, nor the service book of the deceased Railway servant or any scratch of paper showing that he has been removed after the order at Annexure-R/1, dated 22/26-3-1991, ~~As such~~ it cannot be said that the deceased Railway servant had ^{really} ~~been~~ removed from service. Apart from the above, it is also revealed that the ground on which, such a step has been allegedly taken is disproportionate to the

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gravity of offence. This view stands fortified in view of the settled law of the Hon'ble Apex Court in the case of STATE OF PUNJAB VRS. AMAR SINGH HARIKA reported in AIR 1966 SC 1313 which runs thus:

"The mere passing of an order of dismissal is not effective unless it is published and communicated to the officer concerned. An order of dismissal passed by an appropriate authority and kept in its file without communicating it to the officer concerned or otherwise publishing it does not take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published."

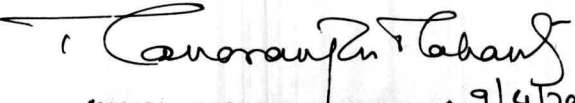
5. Further more it would be evident that the notice at Annexure-B/1, dated 22/26-3-1991 has been issued from the Office of the DRM(Mech.), Khurda Road. But while forwarding the representation of the widow of the deceased Railway servant for grant of pensionary benefits, to the Sr.DPO(bills)/Mech., South Eastern Railway, Khurda Road, the Divl. Railway Manager (Mech.) did not whisper a single word with regard to the removal of the deceased Railway Servant, which goes to show that in fact there is no order of removal from service has been passed.

6. In view of the elaborate discussions made above, since there is no order of removal has been passed removing the deceased Govt. servant from service, ^{the fact that the same carried a} apart from disproportionate punishment, I am of the considered opinion that the Applicants are entitled to get all pensionary dues/family pension of late Baidhar Sing w.e.f. the date of his death. It is, therefore, directed to the Respondents to send a Welfare Inspector to the place of Applicant No.1 to complete/obtain all the

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required information/formalities for grant of pensionary dues/family pension to the Applicant No.1 within a period of 30 (thirty) days from the date of receipt of a copy of this order. Upon receipt/complete all the formalities, the Respondents are further directed to pay all the arrear pensionary/family pension dues to the Applicant No.1 within a period of 60 (sixty) days therefrom.

7. In the result, therefore, with the observations and directions made above, the Original Application is allowed. No costs.


(MANORANJAN MOHANTY) 9/4/2002
MEMBER (JUDICIAL)