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Original Application No. 533 of 2004

Order dated: 03.07.2006

Shri B.B.Mishra, Hon'ble Member (A):

The

Applicant who is widow of late Bharat Behera Ex-FMI. Loco/B.H.C. challenges the impugned order of denial of compassionate allowance of 2/3rd of pension and gratuity, as passed by Sr. Divisional Mechanical Engineer Khurda Road Division, East coast Railways.

The brief fact of the case is that Applicant's husband late Bharat Behera was initially appointed on 24.03.1965 and was working as Fireman-I Loco/B.H.C. He had rendered 21 years of continuous service without coming to any adverse notice. While the Applicant's husband was working as such, he suffered from serious mental derailment on 26.11.1985 and absconded from duty; for which he was not in a position to keep his office posted about a cause of absence. And due to prolonged absence from duty, the railway authorities started departmental proceeding against him and he was removed from service by the competent authority with effect from

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21.05.1989. The Applicant's husband expired on 02.12.1999.

Thereafter, an application was submitted along with death and legal heir certificates for sanction of pension and gratuity in her favour which was received by office on 27.03.2000. After considering the representation, Respondent No.2 sanctioned 2/3rd pension and gratuity vide order no. Mech/Misc/US/940. On receipt of a copy of the order, Respondent No.3 (Divisional Railway Manager (P), East Coast Railways, Khurda Road) allowed the same. But, no payment was made to her. Whereas, on 28.07.2003, Respondent No.2 issued a letter which reads as follows:

"Based on your above appeal, a compassionate allowance of 2/3rd of pension and gratuity was sanctioned by Sr. divisional Mechanical Engineer, Khurda Road. However, as per Para-65 of Railway Service Pension Rule-1993, you are not entitled to get the above mentioned compassionate allowance since your husband was removed from service as a disciplinary measure and he himself did not submit any appeal against the punishment.

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Under these circumstances, this office letter indicated at reference (2) above is treated as cancelled."

The Applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 giving the following grounds for relief:

- (i) that the decision is wrong and illegal as the Applicant's husband was suffering from mental illness.
- (ii) That compassionate allowance not exceeding 2/3rd of the pension and gratuity can be allowed under Rule 65 of Railway Service Pension Rule 1993.

She has prayed the Tribunal to quash the order of denial of pensionary benefit (Annexure-6) and direct the Respondent to allow the family pension and gratuity in favour of her.

Respondent in his Counter maintains that due to prolonged absence (since 26.11.1985 for three and a half years) without intimation, Applicant's husband attracted major penalty proceeding which resulted in his removal from service on 21.05.1989. Late Behera, who received

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punishment order did not submit any appeal against the same. Only after 10 years his widow Smt. Uttam Behera submitted an appeal praying for pension and job to her son by cancelling the removal order. The Sr. Divisional Mechanical Engineer after considering the facts and circumstances and by referring to Para 65 of Railway Service Pension Rules, 1993 ordered compassionate allowance not exceeding $2/3^{\text{rd}}$ of the pension and gratuity. The same order was issued to the Applicant on 27.04.2000 and a copy was marked to Personnel Branch for implementation. The Personnel Branch studied the order and observed that pension Rule 1993 Para-65 is silent on sanction of compassionate allowance to the family of a person who has been removed from service on disciplinary measure. The Additional Railway Divisional Manager after going through the observations issued a rectification order and the Applicant was denied $2/3^{\text{rd}}$ pension and gratuity as compassionate pension. Rule 65 of the Railway Service Pension Rule lays down as follows:

“ A Railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:-

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Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension."

This speaks about the admissibility of compassionate allowance to the employee but is silent on extending the facility to the family.

It is true that this Rule is silent about the family members. Since, the rule says only about the employee and the question of family member arises only after the demise of the employee, this particular case falls into that category. It is peculiar in the sense that the employee expired before compassionate pension under Rule 65 was applied for. Had he applied when alive he would have perhaps been considered and extended the benefit under Rule 65 and, therefore, his death should not stand as a bar before the Respondents for extending the benefits which would have been permissible to him.

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This being the case, the Applicant has a claim for compassionate allowance, which the Respondents should consider and allow as per the procedure.

With the above observation and direction, this O.A. is accordingly allowed.



MEMBER (ADMN.)



CHAIRMAN