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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO.251 OF 2002
Cuttack this the 19th day of April 2005

Urmila Moharana ... Applicant(s)

- VERSUS -

Union of India & Ors. Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Lohani
19/04/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Abu
(B.N. SOM)
VICE-CHAIRMAN

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CUTTACK BENCH : CUTTACK

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Cuttack this the 19th day of April 2005

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

...

Urmila Moharana, aged about 46 years,
S/o. late Nityananda Moharana,
At: Charigaon, PO-Indupur, PS/Dist-
Kendrapara, Orissa

...

Applicant

By the Advocates

Mr.Susant Kr.Pradhan-2

- VERSUS -

1. Union of India represented through the General Manager, Eastern Railway, West Bengal, Fairley Place, Kolkata-700 001
2. Divisional Manager, Eastern Railway, Sealdah, At/PO/PS/Dist-Sealdah, West Bengal
3. Senior Divisional Mechanical Engineer (C & W) Eastern Railway, Sealdah, At/PO/PS/Dist-Sealdah, West Bengal

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Respondents

By the Advocates

Mr.D.N.Mishra
Mr.R.C.Rath
Mr.B.Pal

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: This Original Application has been filed by Smt.Urmila Moharana, W/o. late Nityananda Moharana, a railway servant, who was working as Khalasi Helper bearing T. No.771 under the Eastern Railway at Chitpur, challenging the inaction of the Respondents in providing her family pension and other consequential retiral benefits including compassionate appointment in favour of her son, her husband having passed away while in service.

2. The facts of the in short are as follows :

The husband of the applicant, while working as Khalasi Helper at Chitapur, Kolkata under Eastern Railway proceeded on leave from the month of November, 1989, being seriously ill, for which he had submitted a proper application to the authority. As there was no one at Chitapur to look after him, he moved to his village at Charigaon, Kendrapara, where he received treatment for his ailment. The condition of his health deteriorated gradually and he breathed his last on 14.4.1994. It has been submitted that the applicant's husband had received a letter No. EB/US/CS/12/92 containing a memo of charges initiating disciplinary proceeding against him on 25.6.1993, but he was not fit enough either physically or mentally to submit his written statement. However, the applicant had no knowledge about the initiation of the said disciplinary proceeding. She came to know about the disciplinary proceeding when she came to her lawyer to move this Tribunal through this O.A. The grievance of the applicant is that although her husband had rendered 18 years of service under the Respondents' organisation, the family has not been given retiral dues after the death of her husband nor her son has been provided with a compassionate appointment under the Rehabilitation Assistance Scheme. It is in this background the applicant made a representation dated 21.9.1994 to the Senior D.M.E. (C&W), Eastern Railway, Sialdah to grant family pension in her favour consequent upon the death of her husband on 14.4.1994. Thereafter, on 18.3.1999

she again approached the same authority (Annexure-4), followed by another reminder on 7.1.2002 (with copy to the General Manager), but without any effect. She has, in the circumstances, come up in this Original Application for redressal of her grievance.

3. The Respondents by filing a detailed counter have contested the O.A. stating that as per the Pension Rules, the applicant is not entitled to family pension or compassionate appointment in favour of her adopted son, since her husband late Nityananda Moharana was removed from service before his death in consequence of a departmental proceeding. However, the Respondents have disclosed that as per the Tribunal's order dated 11. 02. 2003, they have disbursed the admissible dues in respect of ^{Group} Gaur Insurance Scheme (Rs. 1059/-) and Provident Fund (Rs. 4619/-) in favour of the applicant through Cheque on 6.3.2003. The Respondents have also taken the stand that the O.A. is not maintainable under Section 10 of the A.T.A.CT, 1985, as multiferous claims have been made therein. The Respondents have also contested the genuineness of the representations stated to have been submitted by the applicant on 21.9.1994, 18.3.1999 and 07.1.2002 and have submitted that those have been planted to mislead the Tribunal with a view to gaining undue sympathy.

4. We have heard Shri R.C.Rath, learned Standing

Counsel for the Respondents in extenso. However, no one was present on behalf of the applicant nor the applicant in person did appear when the matter was called. We have ~~.....~~ perused the records placed before us, including the Service Book in respect of the late railway servant.

5. We have before us a case of hardship, ~~.....~~ crying for legal solution to save a widow from poverty and penury. It is the case of the applicant that her husband having fallen sick continuously from 1989 passed away on 14.4.1994. More tragic is that just two months before his death, by order dated 21.2.1994, the Respondents-Department removed her husband from service, as a result of which when the death took place two months thereafter, the deceased family did not get the full benefit of group insurance scheme. Since the deceased railway servant was removed from service under the normal rules, his family was not granted any family pension. The Respondents have also stated in their counter that as per Railway pension rules, the family of the railway servant was not entitled to pension or leave salary. The applicant has candidly submitted that she could not understand the implication of the charge memo received by her husband on 25.6.1993 and that she was not aware of the final order of removal from service and that she had been submitting representations to the authorities in the Department to sanction her family pension, in response to which she had also received no response. The Respondents, on their part, have denied that the applicant had ever submitted representation and have gone to the

of extent/doubting the genuineness of the copies of the representations submitted by the applicant with this O.A.

The applicant, by filing a rejoinder has pointed out that in the Memo of charges and in the order of removal although it was mentioned that the applicant's husband had been placed under suspension, but no suspension order ever appeared to have been received by her husband nor was he paid any subsistence allowance till the date of alleged removal from service. It has also been pointed out that there has been no disclosure in the counter if her husband was placed under suspension and if so, what was the order Number and date of communication of the said order to the applicant's husband. The applicant has also taken the position in the rejoinder that although the order of removal from service contained in Annexure-R/3 was never issued and served on her husband and if at all such an order, as alleged, was ever passed, the same was never communicated to her husband and the same has now been produced to frustrate her claim. It has been further disclosed in the rejoinder that because of financial constraints, the applicant's husband remained under the treatment of the local medical practitioner, which was available free of cost. However, at the late stage it was detected that he was suffering from cancer when he was taken to the S.C.B. Medical College and Hospital, Cuttack and was discharged 5/6 days before his death with the advice to go on chemotherapy. But due to financial constraints, he could not be put to chemotherapy and

ultimately he passed away on 14.4.1994. Copies of the medical certificates have been annexed.

Considering the averments made in the rejoinder, perusing the memo of charges issued and the order of removal, it appears that the husband of the applicant, by no stretch of imagination, could be said to have been placed under suspension. Nowhere in the order of removal at Annexure-R/3, it has been mentioned that the husband of the applicant was placed under suspension.

We have also referred to the charge memo at Annexure-2. There also no where it is mentioned that late Moharana was under suspension and here is the tragedy of the whole case, as referred to earlier, a case of extreme hardship. The hapless widow had to depend on others for placing her case before the authorities/ Tribunal seeking justice. Unfortunately, instead of coming with the truth and with clean hands, the rejoinder has been prepared in a mindless manner bringing allegation, which is without basis. We, therefore, propose to ignore the rejoinder and dwell ourselves through the records placed before us.

The applicant's case is that she is in ~~utter~~ financial distress, because of long stretch of medical treatment of her husband, who died, at the end, of cancer. She has adduced evidence in support of her treatment that her husband was suffering from various ailments although no certificate she has submitted from the hospital to the effect that at the end the railway servant died of cancer. But that should not stand in the

way for understanding her plight that her husband died after long years of illness and it would be an act of mindlessness if her financial miseries are not understood. The railway servant was removed from service for his absence. By that time, he had rendered over 20 years of service and had acquired a right to pension. The law has been settled by the Hon'ble Supreme Court in the case of Union of India vs. Lt. Col. P.S. Bhargava (reported in AIR 1997 SC 565) that after completing 10 years of service, a Govt. servant acquires the right to pension. It has also been held by the Apex Court that the punishment of removal from service for absence is a capital punishment and it should not normally be awarded, as absence does not constitute misconduct. Consequently, the Courts/Tribunals have been holding the punishment of removal from service on account of absence of duty as shockingly disproportionate to the gravity of the offence. In this case, it has not been controverted by the Respondents that the applicant was suffering from various ailments. This fact having been certified by the medical authorities, the applicant's husband did not deserve the punishment of removal from service. It would appear that the disciplinary authority had acted in a mechanical manner and threw him ^{out} as a bad egg. As the applicant's husband had served more than 20 years and had acquired the right to pension, there is no reason why the benefit of the pension scheme should not be applied in this case.

Rule - 65 of Railway Services (Pension) Rules, 1993.

provides for taking care of such eventualities, which runs thus :

"65. Compassionate allowance - (1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity :

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".

(2) A compassionate allowance sanctioned under the proviso to sub-rule(1) shall not be less than three hundred seventy five rupees per mensem".

The above rules were framed long before the coming over the constitutional provision, which guarantees right to life. In the circumstances, we hold that if the punishment of removal from service has been ordered for conduct other than on grounds of lack of integrity, the authority competent to dismiss/remove may grant compassionate allowance to save the wife/ dependant children from penury. No doubt compassionate allowance is to be sanctioned in most exceptional cases; and in our view, in the instant case, that ~~exceptional requirement is fulfilled~~, because, the order of removal from service was done by the Respondents- Department, without taking into account or finding out the vicissitudes of life through which family of the had passed since 1989, and without confronting the husband of applicant No.1 with the decision to do away with his service. The Courts have repeatedly been

holding that removal from service being a capital punishment, the disciplinary authority should use it with utmost care and caution, observing all the requirement of natural justice. It has also been held that it is not a fair deal to remove a person from service on grounds of long absence. In this case the Respondents have never found out, although they had means to do that job through their Welfare Department, as to why the husband of the applicant No.1 was not coming to duty and the fact of the matter being that he was suffering severe ailments, it makes the bounden duty for the Respondents to take recourse to the provisions of Rule-65 of Pension Rules, 1965, to mitigate the heardship of the family of the deceased. It has also to be stated here that a provision has also been made under Family Pension Scheme of Railway Servants, 1965 (Rule-75 of Pension Rules, 1993) "after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 53; the family of the deceased shall be entitled to a family pension 1964". Such beneficial provision, having been made in the Pension Rules, the Court can hardly keep its eyes shut or refuse to hear the crying of the widow of the deceased railway servant and leave the matter at lurch. We, therefore, hold that it is a fit case where the intervention of the Tribunal is warranted.

Having regard to the facts and circumstances

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of the case and the provision of Pension Rules, 1993, we direct the Respondents to pass orders granting compassionate allowance posthumously to the deceased railway servant on the ground that the punishment of removal from service was shockingly disproportionate to the offence alleged against him. Further, that having served for 20 years, the deceased railway servant had acquired a right to pension and that right of his could not have been obliterated without hearing him formally. That having not been done, the Respondents cannot deny him the benefit of Rule-65 and, therefore, we order that they should grant compassionate allowance retrospectively and thereafter from the date of death of the deceased railway servant, the family should be paid family pension in terms of Rule-75 of Railway Services Pension Rules, 1993. We also order that as we are satisfied that the applicant No.1's husband was suffering from various ailments, which ultimately dragged him to the jaws of death, the Respondents-organisation should grant leave as due and admissible in favour of the deceased railway servant as per the leave rules. Keeping in view the financial condition of the family of the applicants, all efforts should be made by Res. No.1 (to whom a copy of this order be sent by Regd. Post under name) to complete all the formalities within a period of 120 days from the date of receipt of this order. We, however, pass no order with regard to grant of compassionate appointment under

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the Rehabilitation Assistance Scheme.

Accordingly, the O.A. succeeds to the extent indicated above. No costs.

Mohanty
(M.R.MOHANTY)
MEMBER (JUDICIAL)

19/04/05

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S. N. Som
(S.N. SOM)
VICE-CHAIRMAN