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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 634/2002

Cuttack this the 7th day of May, 2003

Kanchanabala Mohapatra,  
wife of late B. K. Mohapatra, Ex. SWM, KP XR,  
Vill/PO-Madanpur, Dist. Khurda

.... Applicant

Versus

Union of India

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to Reporters or not ?
2. Whether it be circulated to all Benches of the Tribunal or not ?

*M. R. Mohanty*  
07/05/03  
( M. R. MOHANTY )  
MEMBER (JUDICIAL)

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CORAM : THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

Kanchanabala Mohapatra,  
wife of Late B.K. Mohapatra, Ex. SWM, KPXR,  
Vill/PO- Madanpur, Dist. Khurda  
... Applicant

For the Applicant .... Mr. S. Mohanty, Advocate

Versus

1. Union of India, represented through its Secretary to Govt of India, Department of Railway, Railway Bhawan, New Delhi.
2. General Manager (P), South Eastern Railway, Garden Reach, Kolkata.
3. Divisional Railway Manager (P), South Eastern Railway, Khurda Road, Khurda

..... Respondents

For the Respondents- Mr. Ashok Mohanty, Advocate  
Mr. B.K. Bal, Advocate.

O R D E R

MR. M. R. MOHANTY, MEMBER (JUDICIAL):

1. B.K. Mohapatra, was in services of the Railways, as a Switchman. While working as such, having faced a disciplinary proceedings ( under Annexure-1 dt. 19.03.1990), he was ordered to be removed from service with effect from 15.02.1992 ( under Annexure-A dated 03.02.1992 (to the counter) and, soon after his removal, he expired on 24.12.1992. After his death,

his widow ( the present Applicant) made several representations to get the order ( of the punishment, imposed on her husband) set-aside and for payment of compassionate allowance/family pension for sustenance of the family members of the deceased ; as is evident from Annexures-2,3 and 4. Ultimately, under Annexure-5 dated 27.04.2000/01.05.2000, the Divisional Operation Manager of Khurda Road Division of South Eastern Railways passed the following orders:-

" I have called for the case under Rule-25 of RS(D&A) Rule, 1968 on own motion. Even though it was a fit case for punishment of removal from service by Disciplinary Authority, as charged official since expired, I have taken a lenient view purely on humanitarian ground and decided to grant compassionate allowance not exceeding 2/3rd of pension and gratuity upto employee's death and compassionate allowance not less than minimum family pension to widow of Shri Mohapatra, which will meet the ends of natural justice. "

Thereafter, on 19.05.2000 the Applicant was asked under Annexure-6 to submit certain documents for release of compassionate allowance and gratuity. Instead of releasing the compassionate allowance/family pension/pensionary benefits in favour of the Applicant, when the matter was questioned by the Divisional Railway Manager (P) of S.E.Railways at Khurda Road and clarification was sought for from the Chief Personnel Officer of East Coast Railway of Bhubaneswar ( under Annexure-7 dated 19.09.2000); the Applicant moved this Tribunal in the present Original Application ( seeking for a direction to the Respondents to release her dues, as ordered under Annexure-5 dt.27.04.2000/ 01.05.2000) under Section-19 of the Administrative Tribunals Act, 1985.

2. In the counter filed by the Railways/Respondents, it has been disclosed that as the A.D.R.M. is bereft of any

power under the rules, payment of dues (as ordered by him) could not be materialised and, as a consequence, the matter was referred to the office of the Chief Personnel Officer, Bhubaneswar; who had ordered under Annexure-G dt.12.10.2001 that there is no provision to grant compassionate allowance to the widow of a removed Railway employee after his death (based on the appeal of the widow) and the decision of A.D.R.M. is not supported by any rule and, as such, no compassionate allowance can be sanctioned to the widow of late B.K.Mohapatra, Ex-SNM and, accordingly, payment could not be released in her favour. It has been specifically pointed out in the counter that under Rule-25, the A.D.R.M. has no power to review the matter/ order of punishment on his own motion; after long lapse of time and, as such, the Applicant is not entitled to get such allowance at all.

3. Heard counsel for both sides and perused the records.

4. Before starting to answer the problem in hand, for the sake of brevity, Rule-65 of Railway Pension Rules dealing with the compassionate allowance is quoted herein below :-

" 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."

Rule-25 of the Disciplinary Appeal Rules Annexure-D to counter is quoted herein below :

" 25. Review-(1) Notwithstanding anything contained in these rules:-

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- (i) the President, of
- (ii) the Railway Board, or
- (iii) the General Manager of a Zonal Railway or an authority or that status in any other railway unit of Administration in the case of a Railway servant serving under his or its control, or
- (iv) the Appellate Authority not below the rank of a Deputy Head of Department or a Divisional Superintendent in cases where no appeal has been preferred, or ;
- (v) any other authority not below the rank of a Deputy Head of Department or a Divisional Superintendent in the case of a Railway servant serving under its control;

may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules repealed by rule-29 and may, after consultation with the commission where such consultation is necessary ".

5. Learned counsel for the Applicant during his argument, submitted that as allowing/ordering compassionate allowance has nothing to do with regard to Rule-25; which deals with regard to reviewing the order of punishment imposed on a Government servant, the Applicant is entitled to get the allowance, as ordered by the A.D.R.M. to be paid. Learned counsel for the Applicant has also argued that in the rules, with regard to payment of compassionate appointment, no time limit has been prescribed. Rather a blanket power has been given to the authorities competent to dismiss or remove a Government servant from service may, if the case is deserving of special consideration sanction a compassionate allowance. Further more it has been argued that compassionate allowance has not been sanctioned in favour of the widow; rather it has been sanctioned in favour of the family of an ex-railway servant to be paid on his death. Stating so, it has been pointed out by the learned counsel for the Applicant that merely because the authority/A.D.R.M. invoked Rule-25 for reviewing the order on his own motion that does not entail forfeiture of the order allowing compassionate allowance and that allowing

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compassionate allowance, as available under rule-65, is one part and interfering with the order of punishment on review as available under rule-25 is another part and, therefore, as submitted by the Advocate for the Applicant, the provision of review as enshrined in rule-25 is totally irrelevant with regard to payment of compassionate allowance under rule-65 to the Applicant.

6. Learned Senior Counsel Mr. Ashok Mohanty, during his argument, submitted that as the order of the A.D.R.M. is bereft of powers rested under the Rules, the same is not sustainable and, accordingly, payment could not be released and, ultimately, the said order was directed not to be complied with. It is his further case that Authorities have the power to cancel any order, if the same has been made wrongly against the rules and that, therefore, no wrong having been committed (in not paying the said dues to the Applicant, which is based according to rules) the Applicant is not entitled to any of the reliefs sought.

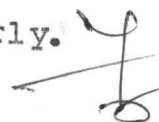
7. I have examined the matter thoroughly in consonance with the rules and considered the submissions carefully. None of the parties have canvassed the status of the Divisional Operations Manager as to whether he is the Disciplinary Authority/Appellate Authority/Reviewing Authority of the Applicant; and, that as to whether he is coming under the category of authorities as mentioned under Rule-25(iv) and(v) of the rules. It has been disclosed in the counter that, on the appeal of the Applicant, the then A.D.R.M./KUR took a lenient view purely on humanitarian grounds and decided to grant compassionate allowance not exceeding 2/3rd of the pension and gratuity up to date of death of the employee and to pay

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Compassionate allowance (not less than minimum family pension) to the widow of late Mohapatra. On a bare reading of paragraph-25 of the counter it came to the light that authority who has removed the Applicant has entertained the petition of the Applicant and ordered for compassionate allowance. Rule-65 also empowers such authority to pass orders in the matter of compassionate allowance to the employees; who is dismissed or removed from service (even after imposition of order of punishment) without disturbing the quantum of punishment imposed on him/her. Similar question came up for consideration before the Bangalore Bench of this Tribunal rendered in the case of Sri V. Prakasham Vrs. D.M. SC Railways & Others (reported in 1990 (Vol. I) AIR SLJ 202) and while answering the question, the Division Bench of the Tribunal held as under:

" This rule says that ordinarily a person removed from service by way of penalty will not be eligible to pension, but on compassionate grounds a compassionate allowance can be granted. Whether such an allowance should be granted has to be decided after the punishment is imposed; the punishment remains unaffected irrespective of whether a compassionate allowance is or is not granted. Removal from service means that the official concerned will no longer be allowed to stay in service. But whether he should be paid an allowance after removal is a separate matter which does not affect the quantum of punishment already awarded."

8. In this connection, it is to be noted here that Rule-25 of the Railway Disciplinary Appeal Rules deals with regard to punishment and Rule-65 deals with regard to payment of compassionate allowance. These have two separate and independent identity and, in the said premises, I find no irregularity in the matter of ordering payment of compassionate allowance/family pension under Annexure-05. Hence the order under Annexure-G dt. 12.10.2001 to the counter is hereby quashed and the Respondents are directed to calculate the arrear dues of the Applicant and to pay the said amount to the Applicant within six months and continue to pay her family pension every month, starting from end of June, 2003, regularly.



9. In the result, therefore, this Original Application is allowed; by leaving the parties to bear their won costs.

*Manoranjan Mohanty*  
07/05/03  
( MANORANJAN MOHANTY )  
MEMBER ( JUDICIAL )