

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.286 OF 2009

Cuttack this the 18th day of July, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Smt.S.Elamma, wife of late S.Taiah, aged about 75 years
residing at Block No.A/22/P, Loco Colony, Khurda Rload, PO-Jatni,
Dist-Khurda, Orissa, PIN-752 050

...Applicant

By the Advocates M/s.A.Das & D.K.Mohanty

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist-Khurda, PIN-751 023
2. The Divisional Railway Manager, East Coast Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-752 050
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-752 050

...Respondents

By the Advocates:Mr.T.Rath

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. Applicant in this Original Application is the mother of the deceased railway employee S.Bhagawati Rao. She is by now aged about 77 years. Late S.Bhagawati Rao was a regular employee of the Railway. He died in harness on 31.08.2001 leaving behind her mother as at the time of his death he was a bachelor. Hence the mother of the applicant claimed the retirement dues of her son. Apparently there having no action on the said request, she approached this Tribunal in OA No. 241/2007 which was disposed of by this Tribunal vide order dated 10.4.2008 with a direction to the Respondents to find out the service particulars regarding the son of the applicant and to consider the representation of the applicant and pass appropriate order if she is entitled to any benefit which should be disbursed within a

Vikas

reasonable time. Thereafter, the Respondents in letter under Annexure-A/6 dated 26.2.2009 intimated the Applicant as under:

"In obedience to Hon'ble CAT/CTC's order dt. 31-08-07 & 10-04-08 passed in OA No. 241/07 your representations dt. 03-12-02(Annex-A/4), 10-02-03 (Annex-A/5) & 11-6-03 (Anex-A/6) have been examined in detail and the case is disposed of accordingly as under:-

- I. That the ex-employee (S.Bhagabati Rao) while working as B.T.F. under SSE (C&W)PRDP, was removed from Rly Service w.e.f. 01-07-1991 as a measure of punishment for unauthorized absence. He was an u unmarried person during his service period i.e. upto his date of his removal from service. As per the extent provision, the Family Pension, DCRG etc. are not admissible in the instant case as it is a case of removal except his personal contribution i.e. PF & CGEGIS which are to be paid to the Legal Heir of the deceased employee;
- II. The PF settlement amounting to Rs.688/- has already been paid vide CO-7 No.020808700 dt.21-5-08.
- III. So far as the payment of CGEGIS is concerned it is to mention here that as the Service Record of the ex-employee is not available, recovery of CGEGIS w.e.f. 01-01-82 has been worked out from the PF Ledger available with Sr.DFM(PF)KUR. According to the monthly recovery, the particulars as well as interest for non recovery of monthly premium has been worked out from which total 97 months have not been recovered due to "No Pay" drawn and interest is to be levied along with adjustment of subscription. Hence the amount to be recovered i.e. Rs.2,005/- is more than the amount to be paid

W.A.

(Rs.1,491/-) to the legal heir and the ex employee is therefore not eligible to the payment of CGEGIS.

As such, the Legal Heir of ex employee is not eligible for payment of CGEGIS except PF deposit which has already been paid."

2. Hence by filing this OA she has approached this tribunal with prayer to quash the letter under Annexure-A/6 dated 26-02-2009 and to direct the Respondents to Pay the Applicant the pension as well as the pensionary dues retrospectively with interest as there is none to assist her for survival after the death of her son who was the sole earning member in the family. She has sought for the following relief.

- i) To quash the letter dated 26.2.2009 under Annexure-A/6
- ii) To direct the Respondents to pay the applicant pension and pensionary dues retrospectively with interest for her survival during old age.
- iii) To pass any other order/orders as deemed fit and proper.

3. Respondents filed their counter in which it has been stated that the son of the applicant while working as Basic Trade Fitter at Paradip under the Section Engineer (Carriage & Wagon) was removed from service for the prolonged unauthorized absence after a major disciplinary proceedings was initiated against him. Copy of the enquiry report was served on him but he did not prefer any representation or appeal. Hence after considering the enquiry report the Disciplinary Authority vide order under Annexure-R/1 imposed the punishment of removal on him. Since the son of the applicant was removed from service w.e.f. 18th July, 1991, the applicant was not entitled to the relief as claimed in this OA. In so far as the payment of the PF settlement dues is concerned, it has been stated that the PF amounting to Rs.688 has already been passed for payment to the Legal Heir i.e. the Applicant. But due to non receipt of the same it has been laying unpaid. The applicant has been instructed

Wale

vide letter dated 10.11.2009 to receive the same. But by reiterating the grounds taken in the letter under Annexure-A/6, the Respondents denied the entitlement of the applicant the CGEGIS amount of her son. Accordingly, Respondents have prayed for dismissal of this OA. Applicant has filed rejoinder more or less reiterating the stand taken in the OA.

4. We have heard Shri A.Das, learned counsel for the applicant and Shri T.Rath, learned Standing Counsel and perused the materials including the counter and rejoinder filed by the respective parties.

5. According to the Applicant, her son was appointed in the Railway on 05.10.1964 at Talcher under KUR Divn. Subsequently on 22.7.1975 he was transferred to KUR as Fitter Gr.III wherefrom he was transferred to Paradip on 13.10.1978 and expired on 31.08.2001. Respondents have filed copy of the letter of the Sr. Divisional Mechanical Engineer, ECoRly, KUR dated 18.11.2009 as Annexure-R/4 which speaks as under:

"The original D&A case file of Late S.Bhagavati Rao, BTF/Carriage/PRDP pertains to the year 1991. The old records of this office were thoroughly searched but the D&A case being extremely old (19 years) is not available in this office. However, the D&A old register was checked and it is found that late S.Bhagavati Rao, BTF/Carriage/Paradeep was taken up under the D&A rules for major penalty by the then AME/KUR on charges of absenting from duty from 15.9.1988 to 22.02.1989 (the day of inspection) and prolonged absence upto 19.3.1989 (as per extract of muster roll submitted by then Carriage Foreman (Spl)/Paradeep. It is also found that after finalization of the major penalty case the charged official late S.Bhagavati Rao BTF was removed from railway service vide punishment notice No. Mech/UA/Inspn/Apr/C/PRDP/3903 dated 19/25.06./02.08.1991. The original service sheet as desired is also not available in this office."

Copy of the punishment notice No. Mech/UA/Inspn/Apr/C/PRDP/3903 dated 19/25.06.91/02.08.1991 has been annexed by the Respondents as Annexure-R/1 to their counter. Operative part of the said order reads as under:

"Hence I have finally decided that Shri S.Bhagabati Rao, BTF/C/PRDP is not a fit person to continue any more in the

service and he should be removed from Railway service as a measure of penalty with effect from 18th July, 1991.

As it appears, copy of the order was sent to CF (Spl.)/PRDP with request to serve copy of the order on the applicant after due acknowledgement. But nothing has been produced by the Respondents showing that copy of the said order has been served on the ex employee.

According to the Applicant her son had never remained unauthorized absent during his service career nor was he removed from service. He was very much on the roll of the Railway till his death. While disputing the order of removal under Annexure-R/1, it has been contended that even for argument sake the said order is accepted yet the same is not sustainable as termination with retrospective effect de hors the Rules as well as judge made laws. On the other hand, Sri Rath, learned counsel for the Respondents countered this argument of the applicant by stating that the order under Annexure-R/1 has no retrospective effect. The said order was signed on 19.6.91. As per the prevailing practice at that point of time, the date of sending the same to the dispatch was noted below the date 19.6.91 as 25.6.91. Thereafter, the letter was sent on 2.8.91. The date 2.8.91 is nothing but the date of dispatch. Hence the plea that the order of punishment being retrospective implication as not sustainable is not acceptable. Perused the order under Annexure-R/1.

6. According to the Respondents, Annexure-R/1 is the notice of punishment dispatched on 2.8.1991 in which it has been stated by the Disciplinary Authority that the Applicant should be removed from service with effect on 18th July, 1991. Copy of this notice of punishment has not been endorsed to the ex employee. It was sent to the officer with request to serve the same on the Applicant. The word 'should be removed' in other words means the said order should be followed by another order removing the ex employee from service. But neither in the counter nor even in

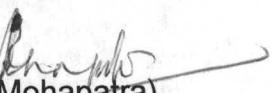
course of hearing Respondents' Counsel threw any light on the same. On the other hand Mr. Rath the learned Counsel for the Respondents by placing reliance on the decisions of the Hon'ble Apex Court in the cases of **C.Jacob v Director, Geology and Mines** reported in AIR 2009 SC – 264, **Bhoop Singh v Union of India and others** reported in AIR 1992 SC – 1414, **Karnataka Power Corporation Ltd. v K.Thangappan** reported in (2006) 4 SCC – 322 and **HCG Stock and Share Brokers Ltd. v Gaggar Suresh** reported in (2007) 2 SCC – 279 has strenuously argued that irrespective of the merit of the matter the delay being fatal, this OA is liable to be dismissed. We have gone through the above cited decisions relied on by the Respondents Counsel. Law is well settled that a decision of court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration to support their reasoning (**CIT v M/s.Sun Engineering Works (P) Ltd**, AIR 1993 SC-43). The facts and issues decided in the cases relied on by the Respondents' Counsel being different and distinct to the case in hand, the said decisions have no application to the present case.

7. In view of the discussions made above we have no hesitation to hold that the punishment notice is not sustainable in the eyes of law. According to the Applicant there is none to support her for survival at this age of 77 years. Hence the order under Annexure-A/6 is hereby quashed. We hold that the Applicant is entitled to the family pension of her son to the extent provided in the Rules. But instead of from the date of death of her son we restrict the payment of minimum family pension from the date this OA was filed i.e. from 22nd June, 2009. The arrears of minimum family

[Signature]

pension shall be calculated and paid to the applicant within a period of ninety days hence but the current minimum family pension shall be sanctioned and paid to the applicant by the end of September, 2011, if necessary by deputing the Welfare Inspector to the Applicant to get the necessary formality done for the purpose of sanction of the minimum family pension.

In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. Mohapatra)
Member (Admn.)


(A.K. Patnaik)
Member (Judl.)