

16

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.302 of 2013

Cuttack this the 21st day of July, 2016

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)

Musi Behera
Aged about 60 years
Widow of late Ghana @ Ghana Behera
Vill/PO-Khapuriapada
PS-Bhandaripokhari
Dist-Bhadrak
Odisha,
Retd. Bridge Khalasi
O/o.Dy.C.E./CON./E.Co.Rly
Station Bazar
Town/Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan
T.K.Choudhury

-VERSUS-

Union of India represented through:

1. The General Manager
East Coast Railways
E.Co.R.Sadan
Chandrasekharapur
Bhubaneswar
Dist-Khurda
2. Chief Administrative Officer(Con.)
East Coast railway,
Rail Vihar
Chandrasekharapur
Bhubaneswar
Dist-Khurda
3. Senior Personnel Officer, Con./Co-Ord.,
East Coast Railway
Rail Vihar
Chandrasekharapur
Bhubaneswar
Dist-Khurda



4. Deputy Chief Engineer(Con.)
E.Co.Rly.
At/PO-Station Bazar
Town/Dist-Cuttack
5. Financial Advisor & Chief Accounts Officer/Con./E.Co.Rly.
Rail Vihar
Chandrasekhapur
Bhubaneswar
Dist-Khurda

...Respondents

By the Advocate(s)-Mr.D.K.Behera

ORDER

R.C.MISRA, MEMBER(A):

Applicant is the wife of late Ghana @ Ghana Behera, who, while working as Bridge Khalasi under the respondent-railways had retired from service with effect from 30.6.2005. However, applicant's husband passed away on 19.03.2009. While the matter stood thus, applicant submitted a representation dated 23.7.2012 to the Senior Personnel Officer, Con/Coordination, East Coast Railways (res.no.3) claiming restoration of scale of Rs.4000-6000/- with effect from 1.10.1999, which her husband was in receipt of on account of 2nd financial upgradation under the ACP Scheme and had subsequently been withdrawn, including grant of consequential financial benefits, i.e., arrears salary, DCRG, commuted value of pension, in the same footing as that of the applicant in O.A.No.660 of 2005 and WPC No.7429 of 2008. Since there was no response, applicant had approached this Tribunal in O.A.No.145 of 2013 which was disposed of vide order dated 20.3.2013 with direction to res.no.3 to consider the points as raised in the representation



and communicate the decision to the applicant in a reasoned order within a specific time frame. In compliance of the aforesaid direction of the Tribunal, res.no.3 issued a speaking order dated 08.04.2013(A/12) rejecting the claim of the applicant. Aggrieved with this, applicant has approached this Tribunal in the 2nd round of litigation seeking for the following relief.

"To quash the impugned order of rejection dated 22.06.2005 & 08.04.2013 under Annexure-A/4 & A/12 by extending the benefit of order dated 22.11.2007 passed in O.A.No.660 of 2005 and pay the consequential benefits, i.e., differential arrear salary, leave salary, DCRG, commuted vale of pension and pension after re-fixing pay in the scale of Rs.4000-6000/-".

2. On being noticed, Railway Administration have filed their counter opposing the prayer of the applicant to which applicant has also filed a rejoinder.

3. Upon perusal of records, we have heard the learned counsel for both the sides. During the course of hearing, Mr. Routray submitted drew our attention to the orders of this Tribunal in O.A.No.660 of 2005 disposed of on 22.11.2007 and submitted that the facts of the instant O.A. being similar to O.A.No.660 of 2005, the Tribunal may pass similar orders.

4. We have gone through the order dated 22.11.2007 of this Tribunal in O.A.No.660 of 2005. In that O.A., applicant Rathi Sahoo challenged the legality of order dated 22.06.2005(Annexure-A/9). This Tribunal, having relied on an

19

earlier decision in O.A.No.740 OF 2005 held and disposed of O.A.No.660 of 2005 in the following terms.

"Though records in this case have not been called for, in so far as the documents are concerned, all are the same in both the cases and identical counter has been filed. As such, in this case also, there is no question of applicant having been granted first Rs.196-232 and later promoted as Bridge Khlasasi as contended by the respondents in their counter. The very first appointment in his case should, therefore, be held as Bridge Khalasi and all that happened earlier was upward revision of pay scale and as in the other O.A.No.740 of 2005, this O.A. also is allowed. Respondents are directed to work out the period when the applicant completed 12 years of regular service(including 50% of temporary status) and based on the same, the ACP shall be afforded to the applicant. Order dated 22.06.2005(Annexure-A/9) is hereby quashed and set aside so far as the same related to the applicant. But the respondents shall work out the ACP as stated above and after adjusting the amount paid to the applicant the balance shall be payable. His pensionary benefit shall be revised correspondingly. Suitable orders be passed within a period of two months from the date of communication of this order and arrears paid within two months thereafter".

5. It is the case of the applicant that since the name of her husband ^{has} ~~is~~ found place in the Office Order dated 22.06.2005(A/4) herein along with Rathi Sahoo, applicant in O.A.No.660 of 2005 and that the same has been quashed in so far as Rathi Sahoo is concerned, in the same analogy, impugned order dated 22.06.2005 is liable to quashed as applicant's husband was similarly situated person as that of Rathi Sahoo.

6. Here a question comes up for consideration as to whether the Tribunal without condoning delay, at this distant point of time, could quash the impugned order issued in the year 2005.

22

It is to be noted that while considering the earlier O.A. No.145 of 2013 filed by the applicant, learned counsel then appearing for the respondent-railways had raised the point of maintainability on the ground of limitation.

7. In support of his contention for condonation of delay, applicant in this O.A. has relied on the decision of the Hon'ble Apex Court in Union of India vs. K.C.Sharma & Ors. reported in 1997 SCC (Vol.-7) 721 and Maharaj Krishna Bhatt and ors. vs. State of Jammu & Kashmir & Ors. reported in (2008) 2 SCC (L&S) 783 in which it has been held that the Tribunal has powers to condone delay in case of seeking relief as has been extended to similarly situated persons.

8. No doubt the Tribunal is empowered to condone delay provided that the Tribunal is convinced that there were sufficient reasons which prevented the aggrieved person/applicant from approaching the Tribunal in time and in this respect, applicant has to seek condonation of delay. However, in the instant case, no such petition seeking condonation of delay has been filed by the applicant. It is a case where the delay is not just beyond the period of limitation – rather the delay is abnormal which is about more than seven years. Besides this, as it is seen from the record, applicant's husband retired from service with effect from 30.6.2005 and thereafter, he passed away on 19.03.2009, by which time orders of this Tribunal in O.A.No.660 of 2006 passed on



22.11.2007 had been confirmed by the Hon'ble High Court vide order dated 8.7.2008 in WPC No.7429 of 2008. Therefore, it cannot be said that the above information was not within the knowledge of the applicant's husband during his life time.

9. However, we are convinced on the basis of records that the facts relating to applicant's case are similar to the facts in respect of O.A. No.660 of 2005. In view of this, we dispose of this O.A. with direction to respondent-railways to reconsider the matter in the light of the decision of this Tribunal in O.A.No.660 of 2005 as upheld by the Hon'ble High Court vide order dated 8.7.2008 in WPC No.7429 of 2008 and pass appropriate orders within a period of 120 days from the date of receipt of this order. Speaking order dated 08.04.2013(A/12) is quashed and set aside.

In the result, the O.A. is disposed of as above. No costs.

(S.K. Pattnaik)
(S.K.PATTNAIK)
MEMBER(J)

BKS

(R.C. Misra)
(R.C.MISRA)
MEMBER(A)