

CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

CALCUTTA.

Dated : 16.10.2001

Original Application no. 840 of 1996

Hon'ble Mr Rafiq Uddin, Member-J
Hon'ble Maj Gen KK Srivastava, Member-A

Smt. Bijali Palit

...Applicant

By Advocate : Shri RKC Thakur

Versus

Union of India & Others

... Respondents

By Advocate : Sri PK Arora

ORDER

Hon'ble Mr Rafiq Uddin JM

The applicant Smt. Bijali Palit who was wife of Late Sri Subrata Palit has filed this OA for seeking directions to be issued to the respondents not to give effect to the order of removal made on 29.4.1987 and communicated to the applicant on 21.5.1996 passed in respect of her husband. The applicant also seeks setting aside of the order dated 29.4.1987 and for issuing direction to the respondents to pay full retiral benefits including gratuity, family pension under liberalised family pension scheme, Medical facilities and other benefits provided under rules. The applicant also seeks direction to the respondents to offer appointment to her son on compassionate ground as per guide lines issued by the Railway Board.

2. In order to understand the controversy involved in the present OA, it is necessary to mention that the applicant had earlier filed OA 425 of 1995 before this Tribunal which was dismissed vide order dated 16.2.1996 with certain observations. It appears from the record that the said OA was filed by the applicant against order dated 23.5.1989 whereby the application of the applicant for appointment of her son on compassionate ground was rejected.

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3. It is also relevant to mention that this Tribunal vide order dated 5.8.1999 has dismissed the present OA holding that the applicant in the present OA has reagitated the matter second time which was already decided and disallowed vide order dated 25.3.1992 passed in OA 265 of 1992. The applicant has approached the Hon'ble Calcutta High Court by filing WPCT no. 456/99 against the said order dated 5.8.1999 which was allowed vide order dated 31.10.2000 and the matter remitted to this Tribunal back for consideration of the matter on merit afresh.

4. The relevant facts of the case are that the husband of the applicant Sri Subrata Palit was working as Assistant Driver (D) L/F, Eastern Railway, Barrungachi, Howrah. He has alleged to have remained unauthorised absent from duty from 16.7.1986 to 15.10.1986 and again from 16.10.1986 till date. The respondents purporting to have exercised powers under rule 14 (ii) of Railway servant (D&A) Rules 1968 and removed him from service. The respondents claimed that the charge sheet was sent to his home address which was recorded in his service record, the removal order was also sent to the same address. The charge sheet and the removal order was, however, received back with the postal remark 'left'.

5. It appears that the present applicant applied for appointment of her son on compassionate ground which was not accepted by the competent authority on 23.5.1989. The applicant, thereafter, filed OA 265/92 and 425/95 before this Tribunal which were also dismissed by this Tribunal.

6. The case of the applicant on the other hand is that her husband entered into Railway Service on 27.11.1952 as a cleaner and in due course he came to be promoted as Fireman Grade 'B' and was posted under LF/Barrungachi, Howrah. The applicant claims that her husband was drafted and booked for eye test by the competent medical authority of the Railways and accordingly he appeared before Divisional Medical Officer, Howrah on 16.6.1986, but unfortunately her husband has been missing from that date and none of the

family members nor any relative of her husband who are likely to hear and/or see him in the normal course of their life and business, did ever see or hear anything about the him since 16.6.1986. The applicant under these circumstances lodged an FIR with the local police station on 7.11.1986. The applicant in distressed and revaged condition became physically and mentally depressed and her four childrens, including three daughters and one son had to take shelter of her inlaws.

7. The applicant also claims that she alongwith her husband has been residing at 162/13, SN Roy Road (formally 162, SN Roy Road) Adarsh Pally, Calcutta and the same address was recorded in the office of the Railways. The address of the husband of the applicant was never changed before or after missing of her husband. The applicant also alleges that office of the Railway Administration did not take any steps and informed the applicant how her husband was missing or any information regarding his non attending his duties was sent to the applicant. The husband of the applicant was the sole bread earner of the family. When the husband of the applicant is not traceable for such a long period, the applicant treating his missing as a civil death, requested the DRM, E. Rly., for appointment of her son on compassionate ground and other financial assistance on 24.12.1986. On intervention made by Miss Mamta Banerjee, the then Member of Parliament with officers of the Railway Administration visited her residence on 24.12.1986 and made some inquiries in respect of missing husband of the applicant. The applicant was also asked to sign on papers for payment of Provident Fund (PF) of her husband which were handed over on 4.3.1987 by the welfare officer. The DRM vide order dated 23.5.1989 regretted the request and showed his inability to appoint her son on compassionate ground. The applicant further states that since no steps were taken by the respondents, she made several representations before the Railway Authorities, but without any result. Therefore, she was compelled to file OA 265/92 on 25.3.1992 which was dismissed on the ground that as 7 years from the date of missing of her husband was not elapsed, the application was premature. The applicant was, therefore, compelled to file another OA 245/95. Even after lapse of 7 years, the Railway Administration did not respond the representation made by the applicant. The applicant came to know through reply submitted

by the respondents in OA 425/95 that charge sheet was issued to her missing husband and punishment of removal was awarded to him on 29.4.1987. This Tribunal vide order dated 16.2.1996 observed that the penalty of removal from service remains unserved. The applicant cannot claim to attract the provision of Railway Circular regarding compassionate appointment. The applicant was also given liberty to approach the Tribunal against the order of removal from service after receiving the charge sheet, inquiry report etc. The Railway authority, however, did not take any steps in pursuance of the order dated 16.2.1996. The applicant has filed the present OA.

8. We have heard learned counsel for the parties and perused records.

9. We find from the perusal of order dated 16.2.1996 passed in OA 425 of 1995 that the observations were made by this Tribunal to the effect:-

"However, from the facts of the case, certain poignant fact emerge. It is mutually admitted that the petitioner's husband before his disappearance was a low paid employee who joined service as a cleaner and due to his hard work and merit got three successive promotions and was even confirmed in the last promoted post. He would have attained the normal age of superannuation on 31.10.90 i.e. he had more than 4 years of service at the time of his disappearance. It is also mutually admitted fact that at the time of his disappearance, he left behind a reasonable big family consisting of her dependent wife (the present petitioner), a son and at least two unmarried daughters. Under the circumstances, the economic distress of the family left behind is understandable. On the one hand, they were deprived of the regular income of the petitioner's husband, on the other, they have been denied all retiral benefits admissible under the rules because adding futher insult to the injury, the petitioner's missing husband had been subjected to a disciplinary proceedings for unauthorised absence from duty, may be from a subsequent date from 16.6.86 and for that he has been eventually removed from service. Such a removal order by a stroke of pen has washed away all the benefits admissible to him for his past 34 years of service and even if he is subsequently legally presumed dead, his family cannot get family pension under the rules. It is clear from the reply of the respondents that the entire DA proceedings were carried out against the petitioner's husband ex parte. He could not even be served with either the charge-sheet or the penalty order since he was not available at his residence.

Under the circumstances, even if certain penalty had to be imposed on him, it would have been in the interest of fair play and equity that it was maximum of the order of compulsory retirement from service so that the retiral benefits because of 34 years' of past service of the petitioner's husbsnd and his family are not denied to him or to his family."

10. We find that the aforesaid observations have been made by this Tribunal on the basis of undisputed facts. We, therefore, find force in the arguments of learned counsel for the applicant that the punishment order of removal passed against the husband of the present applicant is really shocking. We, therefore, consider it appropriate that the Railway Authorities should be directed to modify the punishment order of removal to that of compulsory retirement from service. We accordingly dispose of the present OA with the direction to the General Manager, Eastern Railway to modify the order of removal dated 29.4.1987 of Sri Subrata Palit to that of compulsory retirement from service and also to grant and pay all retiral benefits including amount of PF of Shri Subrata Palit to the applicant/legal heirs as per extant rules within a period of 6 months from the date of communication of this order.

11. There shall be no order as to costs.



Member-A



Member-J

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