

१८

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application Nos.27/2008**

**Date of decision: 29.07.2010**

**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.**

Smt. Vijay Laxmi, w/o late Sh. Bhagwati Parsad aged about 72 years Ex-Fitter T.No. 1327, office of the Dy Chief Mechanical Engineer ( W ) North Western Railway, Bikaner, r/o 172, Dhoni Paio Chunji Wali Gali, Mathura (UP)

: Applicant.

Rep. By Mr. J.K. Mishra & A.K. Kaushik,: Counsel for the applicant.

**Versus**

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Dy. Chief Mechanical Engineer (W) North Western Railway, Bikaner.

: Respondents.

Rep. By Mr. K.N. Joshi : Counsel for the respondents.

**ORDER (Oral)**

**Per Hon'ble Mr. Justice S.M.M. Alam, Judicial Member.**

This application has been filed by Smt. Vijay Laxmi, wife of late Shri Bhagwati Parsad, who was working as Fitter T.No. 1327 in the office of the Dy. Chief Mechanical Engineer, North Western Railway, Bikaner. She has filed this O.A for grant of following reliefs:

*gmk*

- " (i) That this Hon'ble Tribunal may kindly be pleased and set aside the impugned order vide Annexure A/1 dated 13.12.2007.
- (ii) That this Hon'ble tribunal may kindly be pleased to direct the respondent to grant and release compassionate allowance in respect of late Husband Sri Bhagwati Prasad of the Applicant as per rule 65 of Railway service (Pension ) rules 1993 with all consequential benefits including family pension there of along with payment of arrear with interest at the market rate.
- (iii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

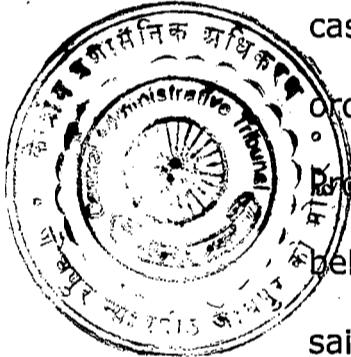
-2-

(iv) That the costs of this application may be awarded to the applicant.

2. The brief facts of the case are as follows:

The applicant, Smt. Vijay Laxmi is the widow of Shri Bhagwati Prasad. Late Shri Bhagwati Prasad was employed under the respondent No. 2 as Fitter bearing token No. 1327. He was removed from service with effect from 28.09.1989 as on 02.05.1985, the said Bhagwati Prasad was involved in a criminal case instituted under Sec. 3 of Railway Properties (Un-authorised Possession) Act bearing Criminal Case No. 578/85. He was tried by Railway Magistrate, Bikaner. The judgement in the said criminal case was delivered on 28.09.1989, and by the said judgement and order Shri Bhagwati Prasad was convicted but was released under Probation of Offenders Act and was directed to maintain good behaviour for a period of two years. After pronouncement of the said judgement (Annex. A/2), the said Bhagwati Prasad filed an application before the respondents along with a copy of the judgement and requested the authorities that his suspension be revoked. Thereafter the respondents issued a show cause notice to the said Bhagwati Prasad vide Annex. A/3. The applicant's husband, viz, Bhagwati Prasad filed another representation before the second respondent stating therein that vide judgement of the Railway Magistrate dated 28.09.1989, he was released under the Probation of Offenders Act. It was also stated that no major punishment like removal from service could be awarded to him.

*From*



28

3. Meanwhile, the applicant's husband preferred a criminal appeal before the learned Session Judge, Bikaner against the decision of the Railway Magistrate. The said appeal was transferred to Special Judge of SC & ST Court and registered as Criminal Appeal 06/03. However, the respondent No. 2 passed an order on the representation of the applicant's husband vide Annexure A/4, by which the penalty of removal was imposed on the applicant's husband under Sec. 14 (1) of Discipline and Appeal Rules. The applicant's husband filed an appeal against the said order of removal vide Annexure A/5. but till the date of filing of the O.A no reply to the representation was received. In the meantime he attained the age of superannuation on 30.06.1992.

On 03.02.1993, the learned Sessions Judge pronounced the judgement in the criminal appeal filed by the applicant's husband and in the said judgement the learned Sessions Judge held that since the applicant's husband was released under the Probation of Offenders Act, after conviction, as such the order of conviction should not adversely affect the service of the applicant's husband Bhagwati Prasad. After the judgement, again the applicant's husband filed an application along with a copy of judgement delivered in criminal appeal 06/03, vide Annex. A/7. But in spite of the judgement as well as the representation, the applicant's husband was not taken on duty. It is also stated that the applicant's husband filed a mercy petition before the Hon'ble President of India, but with no effect.

4. The applicant's husband died on 15.11.2005. Thereafter the applicant submitted a representation to the respondent No. 2, on

12.04.2006 (Annex. A/11) requesting the respondents that she has no other sources of income and hence the retiral benefits of her late husband viz. provident fund, LIC, leave encashment and other retiral benefits be released to her. But when no action was taken by the respondents, the applicant filed O.A. No. 188/2007 before this Tribunal. The said O.A was disposed of at the admission stage itself by order dated 22.08.2007, with a direction to the applicant to file a detailed representation within 15 days from the date of receipt of a copy of that order and on receipt of the same, the respondents were directed to consider the applicant's case as per rules and pay her the terminal benefits, such as family pension, leave encashment, LIC and PF etc. and to pass a speaking order within four months from the date of receipt of such representation from the applicant. It was also directed that if any grievance still survives, the applicant would be at liberty to file another O.A.

5. After the disposal of the said O.A, the applicant submitted a representation as per the directions of this Tribunal vide Annexure A.13, dated 30.08.2007. Thereafter the respondents issued the impugned order dated 13.12.2007 (Annex. A/1), whereby the respondents informed the applicant that PF amount Rs. 752 was paid to her husband vide Cheque No.003694 dated 05.04.1993 and no leave salary was due; with regard to family pension it was stated that as the applicant's husband was not in receipt of pension on compassionate allowance etc, applicant was not entitled to get family pension. Thereafter, the applicant filed the present O.A for grant of compassionate allowance and other benefits.

130

6. On filing of the O.A, notices were issued to the respondents and in compliance of the notice, the respondents appeared before this Tribunal through their lawyer and filed reply to the O.A. In the reply the respondents have contended that the application is hopelessly time barred and the respondents were justified in passing the order of removal of the applicant's husband in spite of the fact that the applicant's husband was released under probation of Offenders Act. The further contention of the respondents is that there was no legal bar in awarding the punishment of removal from service on the delinquent employee, who has been convicted in a criminal offence even though he has been released under the Probation of Offenders Act.



Heard learned advocates of both parties. Perused the application, reply as well as the documents annexed with the application and reply of the respondents.

8. During the hearing, the learned advocate of the respondents submitted that this application was hopelessly time barred as the prayer for taking the applicant's husband to duty was made by the applicant's husband himself which was refused vide order of the respondents dated 19.07.1990, and the applicant's husband was removed from service with effect from 28.09.1989 (annex. A/9). He submitted that the applicant's husband was alive for a further period of 15 years from the said date and he died only on 15.11.2005, but the applicant's husband did not prefer any

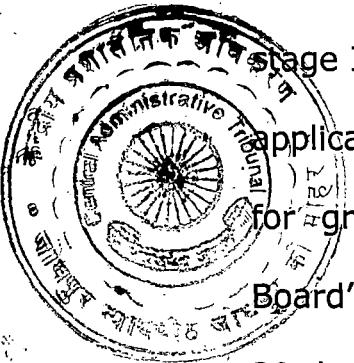
application for payment of retiral dues and the fact is that all the retiral dues were paid to him and since the applicant's husband was not granted any compassionate allowance, the applicant is not entitled for any family pension. He submitted that on this ground it should be held that the present O.A is time barred.

9. Controverting the arguments of the learned advocate of the respondents, the learned advocate of the applicant submitted that he has filed this application on behalf of deceased employee's wife as per Rule 65 of the Railway Services (Pension) Rules, 1993 (Annex. A/14) for grant of compassionate allowance. He further submitted that the Railway Board issued a circular No. RBE. No. 164/2008 dated 04.11.2008, which provides that even the past cases in which the Disciplinary Authority had not passed any specific order against the grant of compassionate allowance, such cases may be reviewed on receipt of representations from the dismissed/removed employees or from the family members of the dismissed employee. The learned advocate of the applicant submitted that as the applicant being the wife of deceased dismissed employee, she has every right to ask the authorities to review her claim for grant of compassionate allowance as per Railway Board's circular dated 04.11.2008 (annex. A/16). During the course of the argument, the learned advocate of the respondents conceded that the case of the applicant was not considered in the light of the Railway Board's circular dated 04.11.2008.

32

10. Considering the arguments of both sides and in view of the Railway Board's circular dated 04.11.2008 (Annex. A/16), it is desirable that the applicant should be given an opportunity to file a representation before the respondents for grant of compassionate allowance in the light of directions contained in the Railway Board's circular dated 04.11.2008 (Annex. A/16).

11. In the circumstances, mentioned above, I feel no necessity to pass any order on merit or on the point of limitation. However, the question is left open to decide if any O.A is filed in future with regard to the question involved in the present O.A. But at this stage I am of the view that the ends of justice would be met, if the applicant is directed to file a representation before the respondents for grant of compassionate allowance in the light of Railway Board's circular dated 04.11.2008 (Annex. A/16) within a period of 30 days from the date of receipt of a copy of this order and if any such representation is made by the applicant for grant of compassionate allowance in the light of the directions contained in the above mentioned Railway Board's circular dated 04.11.2008, within the above stipulated period, then the respondent No. 2 is directed to pass a detailed and speaking order within a period of three months from the date of receipt of such representation. The O.A is disposed of with the above observations. No costs.


 Justice S.M.M. Alam

[Justice S.M.M. Alam]  
Judicial Member.

दिनांक ८/११/८६ आदेशानुसार  
मेरी उपस्थिति में दिनांक ११/११/८६  
को वारा-॥ ११/११/८६ नम्बर मिल गया।

अद्यतात्र अधिकारी  
केन्द्रीय प्रसासनिक अधिकारण  
जोधपुर न्यायपीठ, जोधपुर