

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

OA No.40/2010

Date of decision : 29th day of February, 2012

(Reserved on 24.01.2012)

CORAM

HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Smt. Baila W/o late Shri Moideen Bhati,
Resident of Rampura Basti, Near Raiwlay
Quarter, Station Road, Lalgarrh, Bikaner
(husband was working as TNC at
Lalgarrh Station, N.W. Railway)

...Applicant

(By Advocate Mr. Nitin Trivedi)

Vs.

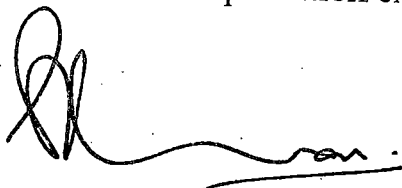
1. Union of India, through General Manager,
North Western Railway,
Headquarter Building, Jaipur.
2. The Divisional Railway Manager,
North Western Railway,
DRM Office, Bikaner.
3. The Senior Divisional Personnel Officer,
North Western Railway Workshop,
Bikaner.
4. The Station Superintendent,
North Western Railway Workshop,
Bikaner.

....Respondents

(By Advocate Mr. Vinay Jain)

ORDER

The applicant is before this Tribunal praying for relief by way of setting aside the order at Annexure.A/1 dated 8.8.2005, through which ex-gratia payment of Rs. 500/- already paid to her husband was held to be the only amount payable, and her request for payment of further compensation/ex-gratia was refused. She has prayed that the respondents be



directed to pay appropriate ex-gratia amount and other compensation to the applicant, on account of the death of her husband due to injuries suffered by him while working on duty, with all consequential benefits, along with simple interest @ 12 percent per annum, and any other reliefs, apart from the costs.

(2) The case of the applicant is that her husband was working under the Respondents at Lalgarh Railway Station from 8.5.1973 till he expired on 26.11.1989. One day on 5.7.1989 some dispute had arisen between the Railway employees present at the Railway Station with two military personnel, after which around 50 military personnel came in trucks, and attacked all the Railway staff on duty, in which the applicant's husband sustained grievous injury, fell down unconscious, and was rushed to the military hospital, Lalgarh, for immediate treatment, where from he was later on referred to the PBM General Hospital, Bikaner. When there was no improvement in his condition, he was sent to the Central Hospital at Delhi for further treatment, and was operated there, but the health of the applicant's husband kept on worsening day by day. He was thereafter discharged from the Hospital at Delhi and came back and was admitted to the Railway Hospital, Bikaner, on 17.11.1989, and atlast he expired on 26.11.1989. She has relied upon the medical certificate of the cause of death issued at the time of the death of her husband, showing the cause of death, which has been filed as Annexure.A/2.

(3) Thereafter, correspondence with Respondent No.3 ensued, and she was asked to submit the documents for her appointment on compassionate



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grounds, and another set of correspondence was for asking her to submit guardianship certificate, so that she may get all the death-cum-retiral benefits due to the deceased. Details were provided by the applicant, but she has submitted that neither she was given any appointment on compassionate grounds, nor was she provided with any compensation for the remaining period of leave of her husband. Thereafter, the applicant repeatedly reiterated her contentions in this regard, and her son gave representation as at Annexure.A/7 dated 26.5.2005, and the applicant herself gave representation by Annexure.A/8 dated 18.7.2005.

(4) The applicant has submitted that since the death of her deceased husband was directly related to the grievous injuries inflicted upon him by the military personnel while he was on duty, therefore the small ex-gratia amount of Rs. 500/- at that time itself paid to her deceased husband is inappropriate in the eyes of law, and her case ~~had~~ never been considered by the respondents properly by accepting that the death of her husband took place on account of his being beaten up by the military personnel while he was on duty. She has, therefore, submitted that this is a departure from the practice of the Railway administration, and only the amount of Rs. 500/- payable on account of simple injury had been paid to the deceased, while appropriate ex-gratia payment was required to be made for his death on account of injuries sustained while performing the duties, and such denial of compensation is violative of Article 21 of the Constitution of India. It was further submitted that it was very difficult for the applicant and her family members to sustain themselves due the illegal and arbitrary actions of the

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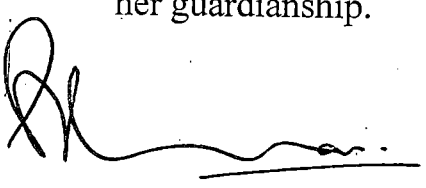


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respondents in neither providing appropriate ex-gratia amount, nor giving her appointment on compassionate basis.

(5) In the reply submitted on 28.1.2011, the respondents submitted that on the death of the deceased husband of the applicant, she was offered appointment on compassionate grounds on the post of Khalasi first, and later on, on an application given by her, the offer of appointment was changed to the post of Masalchi. But, on medical grounds, she was found unfit, and thereafter in the year 1996, on a further application submitted by the applicant for giving compassionate appointment to her son Shri Akbar Ali, the signatory of Annexure.A7 representation, the applicant's son was provided compassionate appointment on 9.9.1997 on the post of Carriage Safaiwala. It was further submitted that all the death-cum-retiral benefits which the applicant was entitled to on the death of her husband, were disbursed to her, and no balance amount of any monetary benefit is payable or due to be disbursed. It was denied that the applicant's husband had sustained any grievous injuries during the attack by of Army men on the Railway station staff, and that in that incident the applicant's husband had only sustained simple injuries, for which payment of ex-gratia of Rs. 500/- was made to him immediately. Later on, he expired due to other illnesses, regarding which the applicant had even given a statement before the District Judge, Bikaner, which is included in the order of the District Judge, Bikaner dated 31.3.1992 passed in Miscellaneous Civil Petition No.106/90 regarding her guardianship.

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(6) A copy of the order of compassionate basis appointment of the applicant's son was also produced by the Respondents as Annexure.R.1. It was further submitted that the applicant's husband had expired due to cardiac respiratory failure, which is clear from Annexure A/2 produced by the applicant herself, and it has wrongly been asserted by her in the OA that the deceased had expired due to grievous injury inflicted on him by the military personnel, and that it is clear that the applicant's husband had expired much later, due to illness, and not due to injuries. It was, therefore, prayed that the applicant has not come before this Tribunal with clean hands, and she has concealed material facts, and, therefore, the OA deserves to be dismissed. It was further submitted that if the applicant's averments were true, then she should be called upon to explain as to why she had not given any representation in this regard earlier (for nearly 15-16 years), to get the enhanced compensation that she has prayed for now. It was, therefore, submitted that the applicant is not entitled to get any ex-gratia payment. and that the OA is liable to be dismissed merely on account of concealment of material facts by the applicant.

(7) It may be mentioned here that the applicant had also filed a Miscellaneous Application for condoning the delay along with OA, but that came to be allowed through an order dated 17.8.2011, and, therefore, the point of delay is not material as of now.

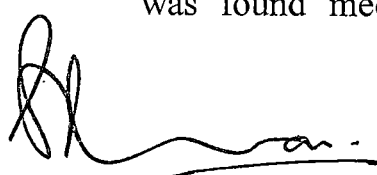
(8) Heard in detail and considered the arguments of both the sides. It is seen that the applicant has taken all the necessary legal actions to get herself declared as the natural guardian of the children of the deceased, and got the

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guardianship certificate issued from the Court of the District Judge, Bikaner, through order dated 31.1.1992 (Annexure R/2). She has also given representations from time to time, which have been annexed to her OA. It is also true that she has not mentioned in her OA anywhere the fact regarding herself also having been offered compassionate appointment earlier by the respondents, and later on her son having been given compassionate appointment by the respondent authorities, which were crucial and germane facts in the context of her prayers.

(9) Also, on a perusal of the medical certificate of the cause of death Annexure.A/2, it is seen that the death of the applicant's husband was due to the primary reason of Koch's Chest Haemolysis and contributory and secondary reason of cardio-respiratory failure. The dictionary meaning of "Haemolysis" is "the rupture of red blood cells, leading to loss of hemoglobin". Such a reason for death, which took place more than 4 months after the unfortunate incident at the Railway station, may or may not be related to the incident of the deceased being beaten up, since rupture of red blood cells cannot be related to internal or outer physical injury in any direct manner.

(10) However, since in this case immediate compensation was paid to the applicant's husband, at that point of time it must have been proportionate or related to the quantum of injury suffered by him. The applicant has not been able to make out successfully a case of administrative bias against her, as she was herself given an offer of compassionate appointment, and when she was found medically unfit, her son was provided with compassionate



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appointment by the respondents. If such compassionate appointment had not been provided to her son, the respondents could have been held guilty of administrative bias, but not now.

(11) In these circumstances, the prayer for enhanced payment of any ex-gratia, as prayed for by her in this O.A., does not stand to reason, and is not sustainable in the eyes of law. Therefore, OA is rejected, but with no order as to costs.

Dated this the 29th day of February, 2012



SUDHIR KUMAR
ADMINISTRATIVE MEMBER

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