

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 275 of 97

Present : Hon'ble Mr.D.C.Verma, Vice-Chairman
Hon'ble Mr.M.K.Mishra, Administrative Member

1. SUSHILA BAURI,
widow of Late Ramdhan,
Ex-O.S. in Office of G.M.(P)/CLW
since deceased, R/O Vill.
Chayanpur, P.O.- Siakulberia,
Dist.- Burdwan.
2. KALYAN BAURI,
S/O Late Ramdhan,
address as above.

...APPLICANTS.

VERSUS

Union of India, through
General Manager, C.L.W.,
Chittaranjan - 713331,
Burdwan.

...RESPONDENTS.

For the applicants : Mr.B.Chatterjee, counsel

For the respondents: Mr.P.K.Arora, counsel

Heard on : 16.8.04

Order on: 2/9/04

O R D E R

M.K.Mishra, A.M.

This OA has been filed by Smt.Sushila Bourie, widow of Late Shri Ramdhan, Ex- O.S. in the Office of General Manager (P)/CLW, Chittaranjan, District - Burdwan and by Shri Kalyan Bourie, son of the deceased employee, under Section 19 of the A.T.Act, 1985 whereby making prayer for the following reliefs :

a) the applicants pray for a direction upon the respondents to make payment of all pensionary benefits to the applicant No.1 from 30.10.84 till death (2.7.91) as he was illegally removed and that even not on moral terpitude and set aside the removal notice;

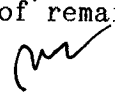
b) family pension to the applicant No.1 from 3.7.91 till paid with interest as illegally denied so long;

c) consequent upon all the above facts and circumstances compassionate appointment to the applicant No.2 as bread winner;

2. Before we go into the details of this case, it was brought to the notice of the Bench of this Tribunal that the relief regarding appointment of the son of the deceased employee, Shri Kalyan Bourie on compassionate ground has been withdrawn and the ld.counsel for the applicant stated this fact at the Bar confirming the withdrawal of this relief. Therefore this Tribunal is not considering this aspect of the OA on merit or otherwise.

3. Briefly the facts of the case are that Late Shri Ramdhan Bourie was working as Office Superintendent in Chittaranjan in the office of the General Manager (P)/CLW and died on 2.7.91 as per Medical Certificate (Annexure A/5) while he was working. While he was an employee in that office he was removed from the service/employment vide exparte order dated 29.10.84 on account of unauthorised absence from duty for a long period. The order of removal came into effect from 30.10.84. The deceased employee was stated to be absconding from the home/office since 14.4.83. Necessary procedure was followed by way of providing reasonable opportunities to the deceased employee but as stated in various correspondences it has been observed that the deceased employee could not avail those opportunities to explain his cause of being absent from duties. Since the deceased employee was removed from the service, pensionary benefit was not allowed to him and the grievance of the applicants is that the Official Respondents should have allowed pensionary benefit to the deceased employee till 2.7.91 when he died and thereafter family pension should have been given to the widow of the deceased employee Smt. Sushila Bourie, the applicant No.1 along with interest as per rules.

4. Ld.counsel for the applicant vehemently argued that since the deceased employee was not removed on account of dishonesty, inefficiency, immoral turpitude and misconduct, therefore the removal order cannot forfeit the right and claim in respect of pension/family pension for the services rendered in the past. It was also contended by the ld.counsel for the applicant that the service of memos for allegations of remaining unauthorisedly absent from the office was



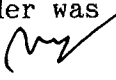
never made on the deceased employee till the ~~exparte~~ order of removal was passed by the employer which is not justified. Even the order of removal was not served on the employee. Therefore keeping in view ~~of~~ the circumstances as mentioned above pensionary benefits should have been allowed to the deceased employee up to his death and thereafter to his widow in the shape of family pension. The authority to forfeit the pension/family pension lies with the President of India and no order in this respect was ever passed by the competent authority.

5. Ld.counsel for the applicant further submitted that there was no wilful or deliberate absence from the duty by the deceased employee and no charge sheet was served on him before removal order was passed ~~exparte~~. The deceased employee completed more than 25 years of service. Hence he fulfilled all the conditions which are essential for claiming pensionary benefits. He on behalf of the applicant fervently prayed that the deceased should get the pension along with the interest thereon from 30.10.84 to 2.7.91 and his widow should be allowed to have the benefits of family pension from 2.7.91 till now along with interest and onwards.

6. In reply ~~of~~ the respondents to this OA it was submitted that the removal order was passed in the case of the deceased employee on 29.10.84 and this OA has been filed on 12.3.97. Thus it is barred by limitation under Section 21 of the A.T. Act, 1985.

7. We have considered the issue of limitation on merits. We are of the considered view that the issue of pension with monetary benefits is of recurring nature and is likely to be recurring in future also (month wise). Therefore limitation under Section 21 of the A.T. Act, 1985 do not prevent us to adjudicate on this OA. This finds support from the decision of the Apex Court in the case of M.R.Gupta -vs- Union of India & Ors. reported in (1995) 5 SCC 628.

8. Ld.counsel for the respondents submitted that sufficient opportunities ^ewere made available to the deceased employee with memos issued to him from time to time and all relevant procedure before removal order was ~~passed~~ had been followed by the competent authority



as per provision of Railway Servants (D&A) Rules, 1968. It was further contended that Rule 309 & 310 of the Manual of Railway Pension Rules, 1950 as amended from time to time were followed in respect of pensionary benefits. These rules provide as under :

D. Cases in which claims for pensionary benefits are inadmissible :

308. Cases in which pensionary benefits are not earned at all.- When the whole period of employment of an employee is in one or more of the following capacities, no claim to pensionary benefits is admitted --

- i) in part-time capacity (eg. Railway pleader);
- ii) at casual market/daily rates;
- iii) as an apprentice;
- iv) in a non-pensionable post;
- v) in a post paid from contingencies except as provided in para 409 (ii);
- vi) in a temporary capacity, unless the Railway servant quits service on account of superannuation or permanent incapacity due to bodily or mental infirmity or is discharged from service arising directly or indirectly from a reduction of establishment or he dies while in service;
- vii) under a covenant or a contract which does not specifically provide for grant of pensionary benefits;
- viii) work done on payment of a fee or honorarium.

Explanation -- For the purpose of these rules--

(1) A Special Class Apprentice is deemed to be an apprentice for only the first four years of his apprenticeship, the last two years of apprenticeship will be treated as a period of probation.


(2) All the posts on the Railways will be deemed to have been pensionable from the beginning.

309. Removal or dismissal from service.-- No pensionary benefit may be granted to a Railway servant on whom the penalty of removal or dismissal from service is imposed; but to a Railway servant so removed or dismissed, the authority who removed or dismissed him from service may award compassionate grant(s)-- corresponding to ordinary gratuity and/or death-cum-retirement gratuity -- and/or allowances --corresponding to ordinary pension -- when he is deserving or special consideration; provided that the compassionate grant(s) and/or allowance is awarded to such a Railway servant shall not exceed two-thirds of the pensionary benefits which would have been admissible to him if he had retired on medical certificate.

As per the above rules the deceased employee had lost the claim of pension/family pension to the widow because the benefits of his past services rendered by him had been forfeited because the unauthorised absence from duty for a long period is a misconduct.

9. We have carefully considered the submissions of the ld.counsel for both the parties and have gone through the materials available on

record. We observed that the ld.counsel for the applicant took support of the decision of the Jodhpur Bench of this Tribunal in the case of Rekha Chauhan -vs- Union of India & Ors. reported in 1996(34) ATC 572 which is not applicable in this case because in the case of Rekha Chauhan, her husband was removed from service after his conviction by the Lower Court and when in appeal his conviction was declared invalid he was reinstated subject to final outcome of the criminal case. When the criminal appeal was finally decided the applicant's husband was sentenced till rising of the Court and a fine of Rs.100/- was also imposed on him. This punishment was not in the notice of the respondents. Therefore the applicant's husband was allowed to continue in service till his retirement on 28.2.91. Provisional pension was also sanctioned to him w.e.f. 1.3.91 and when the applicant's husband died on 27.11.93 the provisional pension was also granted to the applicant from 28.11.93. When the facts of the applicant's husband's conviction was brought to the notice of the respondents, the gratuity of the applicant and thereafter family pension to the widow was stopped vide order dated 15.5.95. This stoppage of payment of gratuity and family pension to the widow was held invalid on account of the fact that the husband's pension stoppage was not supported by a specific order by a competent authority after application of mind on the conviction i.e. no such order was passed. Secondly there was no provision of withdrawing family pension although there is a provision to withhold pension. The reasons were also not recorded as to why family pension was withdrawn. Further the order of stoppage of family pension was passed by the incompetent authority. And lastly it was held therein that the widow gets the family pension as to her own right and not by any inheritance from her deceased husband. In the case under consideration the deceased employee was removed from service not because of conviction but because of misconduct of being unauthorised absent from duty for a long period. Since he did not avail the various opportunities provided to him to represent his case before the competent authority he was



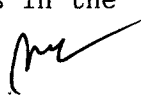
never reinstated by the employer. Again no provisional pension was sanctioned to the deceased employee before his death and so is the case with the family pension to the widow. These facts go to show that the ratio of Rekha Chauhan is not applicable in this case.

10. Ld.counsel for the applicant quoted the provision as laid down in Section XI under the heading Family Pension Scheme, a chapter of Railway Pension Rules & Retirement Benefits, compiled by Swapan Kumar Ghosh and published by Verman & Company of Saharanpur (UP), 1989 Edition. The ld.counsel quoted the salient features of the scheme as under :

i) This scheme gives a life pension to the widow/widower of the Railway servant who has put in a minimum continuous service of one year either in temporary, officiating or permanent capacity. The condition of minimum one year's continuous service has been removed with effect from 27th January, 1979.

iv) In case of widow/widower, the pension is for life, but in case of sons and unmarried daughters of Railway servants, the pension is paid upto the age of 25 years (effective from 6th August 1987). An unmarried daughter shall become ineligible for family pension from the date she gets married. Further, the family pension payable to a son or daughter shall be stopped if he or she starts earning his or her livelihood or attains 25 years of age whichever is earlier.

As per the above provisions the widow/dependents are entitled to family pension. To this extent there is no doubt. But there are certain pre-conditions before the claim for family pension is granted to them. In the present case very unfortunately the deceased employee was removed from service by the competent authority and since the deceased employee did not challenge that order before the Appellate Authority therefore that order of removal took the final shape and was still in vogue. As per rule 309 of Manual of Railway Pension Rules, 1950, removal from service would not render the benefit of pension to the employee when he is alive and since the family pension is with reference to the pension of the employee, the widow or his dependents will not be entitled for family pension after the death of the employee since there is a specific provision in respect of pensionary benefits in the case of removal or dismissal of the employee, the

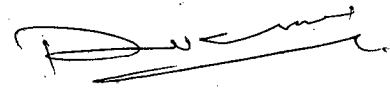


applicant No.1 will also not be entitled to such claim for family pension benefits. Thus the OA of the applicant fails. However, the applicant is at liberty to approach the appropriate authority through a representation to be made by her if she desires so, on the basis of concrete facts for granting of award if possible of compassionate grants corresponding to ordinary pension as provided under Rule 309 & 310 of Manual of Railway Pension Rules, 1950.

11. The OA therefore stands dismissed. No order as to costs.


MEMBER (A)

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VICE-CHAIRMAN