

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 44/2005

WEDNESDAY, THIS THE 5th DAY OF APRIL, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MRS. GEORGE PARACKEN, JUDICIAL MEMBER**

P. Parimala W/o late P. Prakasam
Pointsman-B/Southern Railway
Coimbatore Junction, Palghat Division
residing at Door NO. 269, Near Chavadipalayam
Railway Station, Nanjal, Uthukull Post
Erode.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs.

- 1 Union of India represented by
the General Manager, Southern Railway
Headquarters Office, Park Town PO
Chennai-3
- 2 The Divisional Railway Manager,
Southern Railway, Palghat Division
Palghat.
- 3 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat.
- 4 The Senior Divisional Operations Manager
Southern Railway, Palghat Division
Palghat.
- 5 The Divisional Safety Officer
Southern Railway, Palghat Division
Palghat.
- 6 The Station Manager,
Southern Railway
Coimbatore Junction Railway Station
Coimbatore.

By Advocate Mrs. Sumathi Dandapani

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed seeking the following reliefs:

- (a) Call for the records leading to the issue of Annexures A-6 and A-13 and quash the same
- (b) Declare that the applicant is entitled to be granted family pension and other death benefits as if the applicant's late husband passed away on 14.3.2003
- © Direct the respondents to grant all consequential benefits, within a time limit as may be found just and proper by this Hon'ble Tribunal
- (d) Award costs of and incidental to this application
- (e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2 The applicant is the wife of one P. Prakasam who was working as a Pointsman-B at Coimbatore Junction Railway Station, Southern Railway, Palghat Division. He was found missing from 15.6.2002. The applicant is aggrieved by the Annexure A-6 and Annexure A-13 orders removing her husband from service and the consequential denial of family pension and other death benefits to her as provided under the rules.

3 The facts submitted by the applicant are as follows. On 15.6.2002 Sri Prakasam left the house for taking up his duty with his food, uniform etc. and did not return. Since his whereabouts were not known for a long time she submitted a representation on 18.10.2002 to the 6th respondent requesting him to take appropriate action to report the matter to the Police and to get a F.I.R. Registered. The 6th respondent made an endorsement to her asking her to contact the Inspector of Railway Police Coimbatore Junction for necessary action. Since her attempt to take help from the

RPF failed, she gave a complaint on 14.3.2003 at the Modakurichi Police Station, Erode District and a FIR was registered. The news of missing was published in several newspapers and in the Doordarshan etc. Thereafter she submitted written representations on 17.3.2003, 24.3.2003, and 10.4.2003 (Annexures A3, A-4 and A-5). She was given a copy of a Penalty Advice dated 31.7.2003 (Annexure A-6) stating that Shri Prakasam has been removed from service on account of unauthorised absence. On receipt of this order also the applicant made several representations seeking family pension and other death benefits. Thereafter she was informed by the third respondent by letter dated 22.11.2004 (Annexure A-13) rejecting her request for grant of family pension and other death benefits. The applicant has challenged the above orders as arbitrary and discriminatory as she is entitled to family pension and other death benefits in terms of the orders of the Railway Board dated 19.9.86, 27.3.91 and 21.1.1994 (Annexures A-15, A-16 and A-17). According to the applicant, the intimation regarding the missing of her late husband and the filing of the FIR was known to the authorities as they have been informed from time to time. Annexure A-6 order removing her husband from service was issued well after the FIR was lodged, hence the authorities should have drawn to the presumption of death of the employee and therefore the order of removal issued on 31.7.2003 is a nullity in the eyes of law and hence the same is liable to be set aside. Annexure A-6 is only an attempt to deny the applicant the benefit of family pension which becomes otherwise payable to her.

4 The respondents have filed reply to the OA. It is their case that though the husband of the applicant was missing from 15.6.2002, a charge

memo had been issued to the husband of the applicant on 8.7.1998 for unauthorised absence for various spells during 1.1.97 to 22.3.1998 which was about four years prior to the missing. It was represented by the applicant that her husband was missing from 15.6.2002 and accordingly the Inspector, Railway Police Coimbatore was addressed by letter dated 7.4.2003 (Annexure R-3(4) and another representation was received from the applicant on 21.7.2003 (Annexure R-3(5) and that the applicant has lodged a F.I.R. with the Police on 14.8.2003 (Annexure R-3(5). It is further submitted that Annexure A-15, and A-17 relied on by the applicant related to employees who have suddenly disappeared and whose whereabouts are not known and has no application to the case of the applicant's husband. The Railway Board's letter dated 22.8.91 Annexure R-3 (7) relates to cases where departmental charge sheet is issued after filing the F.I.R with the Police in which case the action for disciplinary proceedings should be treated as initiated on invalid premises and the ongoing disciplinary action or the punishment for the same should be cancelled. In the case of applicant's husband, the chargesheet was issued on 8.7.1998 the F.I.R. was lodged with the Police on 14.3.03 reporting the missing of her husband from 15.6.2002 and the proceedings of the Judicial Magistrate, Erode had declared that the husband of the applicant was undetectable only w.e.f. 12.9.2003. As such the DAR action initiated for unauthorised absence of 4 years prior to his missing cannot be annulled in terms of Annexure R-3(7). It is also stated that the presumption of death under Section 108 of the Evidence Act cannot be drawn from the date of lodging of the complaint but only after it is treated as "undetectable" from 12.9.2003 and Shri Prakasam was removed from service before that date

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viz. on 31.7.2003.

5 The applicant has filed a rejoinder stating that the Divisional authorities were very much aware that the applicant's husband was missing at least two months prior to the submission of the enquiry report and they were not justified in removing an employee from service who is missing. The disciplinary proceedings which commenced from 1998 was delayed due to the reasons attributable to the respondents. Once it is found that the employee was missing from 15.6.2002 and is said to be undetectable, the presumption of death should have been drawn from the date of missing and action should have been taken under Annexure R-3(7) order. According to Annexure A-16, the date of disappearance of the employee would be reckoned from the date of lodging of FIR before the Police and after a period of one year the benefits of family pension and gratuity are to be sanctioned from the date of lodging of the F.I.R. and the same benefit should have been extended to her.

6 The respondents filed an additional reply statement contending that the applicant's husband had been participating initially in the enquiry proceedings however, he did not attend the enquiry on several dates and the last date fixed by the enquiry officer also he was absent and therefore the enquiry was conducted ex-parte. They also denied the allegation that the penalty advice was issued deliberately for the fear that the applicant would approach later with a case of family pension.

7 The learned counsel for the applicant relied on the Railway Board's

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order at Annexure at A-15 dated 19.9.86 and the two judgments of this Tribunal on the same issue in O.A. No. 477/2002 and O.A. NO. 553/2003. According to the Railway Board Order No.63/91 dated dated 27.3.1991 the date of disappearance of the employees would be reckoned from the date of lodging of the F.I.R with the Police and the period of one year after which the benefits of family pension and gratuity are to be sanctioned will also be reckoned from that date. In the order at Annexure A-17 dated 21.1.1994 (RBE No. 3/94) this was slightly modified to provide that though family pension will continue to be paid after one year from the date of lodging of the FIR, it would accrue from the date of filing of the FIR. According to the counsel for the applicant, by virtue of the above instructions in this case the family pension became payable from 14.3.2003, the date of lodging of the FIR and the retirement benefits would be also due on the same principle from that date instead of the normal period of 7 years provided under Section 108 of the Evidence Act. As regards the question whether these instructions apply to employees against whom disciplinary proceedings were pending, the learned counsel for the applicant had drawn our attention to the earlier judgments of the Tribunal in O.A. 477/2002 and O.A. 553/2003 and Railway Board's letter No.63/91 dated 27.3.91. In these cases the applicants therein had been dismissed from service on charges of unauthorised absence. The OAs were allowed by the Tribunal declaring that the employees were genuinely missing and their "disappearance" having been established, removal from service was not warranted. The learned counsel for the respondents submitted that both the cases were distinguishable on the facts as in the case of the applicant in O.A. 477/2002 the applicant was missing from 1994 and the charge sheet was issued after seven years. In the case of the applicant in O.A. 553/2003, the charge sheet was issued in 2001 and

the FIR was lodged in the same year and he was also removed from service in the same year. In the instant case, the applicant was charge sheeted for unauthorised absence in the year 1998 itself and he was reported missing in 2002 only and the FIR was lodged in the year 2003. It is clearly not a case falling under the instructions of the Railway Board dated 22.8.91 (Annexure R-3(7)

8 We have considered the argument of the learned counsel for the parties and perused the records produced before us. The facts regarding the missing of the applicant's husband and the lodging of the F.I.R and related issues have not been disputed. The questions that arise for consideration in this OA is whether the applicant became eligible for grant of family pension as on the date of lodging of the FIR in 2003, in terms of the Railway Board's orders at Annexures A-15 and A-16 and whether the DAR case against the applicant's husband falls within the purview of the Railway Board order at Annexure R-3(7). It is true that in Annexure A-15 it is stipulated that when an employee disappears leaving his family the family can be paid in the first instance the amount of salary due, leave encashment due and the amount of Provident Fund pertaining to his own subscription in the State Railway Provident Fund having regard to the nomination made by the employee. After the lapse of a period of one year, other benefits like DCRG/family pension in respect of pensionary staff and the Government contribution/special contribution towards Provident Fund in respect of staff governed by SRPF(Contributory) Rules may also be granted to the family in accordance with the prescribed procedure. While the learned counsel for the applicant drew our attention to these provisions

he has not noticed the formalities to be observed before sanction can be given for the above benefits as prescribed in para 3 of the letter. Para 3 is extracted below:

3. The above benefits may be sanctioned after observing the following formalities:-

- (i)The family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all efforts had been made by the police.
- (ii)An Indemnity Bond should be taken from the nominee/dependents of the employee that all payments will be adjusted against the payment due to the employee in case he appears on the scene and makes any claim.

9 The above would show that the family has not only to lodge a report with the Police Station and also obtain a report that the employee has not been traced. By Annexure A-16 order it was decided that the date of disappearance of the employee will be reckoned from the date of lodging the FIR and the period of one year after which the benefits of family pension and gratuity are to be sanctioned will also be reckoned from the date of lodging the FIR. That only prescribes the date from which the eligibility for the benefits would accrue. It was made clear in the Railway Board order No. 3/94 dated 21.1.1994 (Annexure A-17) that payments will continue to be paid after one year only. Hence these instructions have to be made applicable in the instant case, the applicant would become eligible for family pension w.e.f. 14.3.2003 the date of lodging the FIR but the sanction of payment for the same would be made one year after 14.3.2003. However, such a sanction could not be given in the case of the applicant as her husband was removed from service by an order dated 31.7.2003 (Annexure A-5).

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10 The next question therefore is whether the instruction issued for grant of family pension in the case of missing persons dated 22.8.1991 (Annexure R-3(7) would come to the rescue of the applicant herein. For appreciating the issue in the proper context the text of the order is reproduced below:-

Cancellation of penalty of removal from service imposed on charge of unauthorised absence where it later transpires that the case is one of "genuine missing" and grant of consequent benefits to the missing person's family.

Some cases have come to notice where Railway servants who were missing and whose whereabouts were not known to their family were removed from service for unauthorised absence. It has been represented by the N.F.I.R. in P.N.M. meeting with Railway Board that initiation of disciplinary action in such cases where even the police after all out efforts have not been able to trace the employee is not justified since they are to be presumed as dead under Section 108 of the Indian Evidence Act. the NFIR also represented that in such cases, the disciplinary action/punishment should be annulled and the families be granted family pension and their request for compassionate appointment to wards etc. to which they would have been entitled but for the disciplinary action be also considered.

2 The Board have considered the matter and it is clarified that in cases of the type mentioned above where it is established that the Railway employee was really missing and not authorisedly absent, the disciplinary action should be treated as initiated on invalid premises and the on going disciplinary proceedings in such cases may be made by the disciplinary authority, in the case of punishment orders already issued, the annulment may be made by the appellate/revisionary authority, as the case may be. For this purpose, it is not necessary to follow any 'Revision' or 'Review' procedure since the charges/punishment are obviously based on invalid premises. After the dropping of the disciplinary action and annulment of the punishment of removal, as the case may be, the relevant benefits like grant of leave encashment, salary dues, retirement benefits, etc.; may be extended as outlined in Board's letter No. F(E)III/86/PN1/17 dated 19th September, 1986.

3 In cases of the aforesaid type, the question of giving compassionate appointment towards may also be considered after a period of 7 years/3 years as provided in item (iii) of Para 1 of Board's letter No. E(NG)III/78/RCI/I dated 7th April, 1983.

11 The argument of the applicant's side is that in terms of this order disciplinary action initiated against the applicant should be treated as void and the punishment order should be annulled. A reading of the above instructions in its entirety would show that these instructions had been issued to consider those cases of Railway servants who were "really missing" and not "unauthorisedly absent" but were proceeded against as if they were unauthorisedly absent. The matter had been taken up by the Union as there were a large number of such cases and it was decided that disciplinary action in such cases should be treated as initiated on invalid premises and that on going disciplinary action/punishment orders should be annulled. It is clear from a reading of these orders that there has to be a nexus between the period of absence covered by the disciplinary proceedings and the period of missing xxxxxxxxx of the employee. In other words, the disciplinary action initiated for unauthorised absence should be for a period during which the employee was reported to be missing but the missing was considered as unauthorised absence. Such situations were sought to be rectified by this order. In the instant case the applicant's husband's period of absence was for a four year period prior to the actual missing. He went missing in the year 2002 whereas the charge memo was issued in 1998 for unauthorised absence during 1997 and earlier period. The applicant's husband was in service from 1998 to 2002 and participated in the initial stages of the enquiry. The dates of enquiry as seen from the reply statements of the respondents are 28.11.2000, 25.1.2001, 6.1.2002, 28.1.2002 and all these dates were intimated to the applicant and during the period, he was available in service but he had not chosen to attend the enquiry. Finally on 18.1.2002 the last date of enquiry,

also he did not attend and the enquiry was concluded ex-parte. The Enquiry report was forwarded to him on 2.6.2002 and the order was issued on 31.7.2003. The enquiry report was returned unserved because by the time the employee was missing. The employee went missing only after the enquiry report was sent to him. Till then, he was very much available in service. The counsel for the applicant contended that since by the time the enquiry report had been finalised the respondents had knowledge of the lodging of the report and hence they should not have gone ahead with the enquiry and dropped the disciplinary proceedings. However, Annexure R-3(7) does not direct any such action nor can such a presumption of death be drawn by the respondents just because an FIR was filed. The case was reported as undetectable only on 3.9.2003 and the presumption of death could have been only from that date by which time the order of removal had already been issued. If the charge sheet for unauthorised absence was issued covering the absence during the missing period, there would have been some force in the contention of the applicant that the disciplinary action should be treated as invalid in terms of Annexure R-3(7). In as much as the husband of the applicant was removed from service on the charge of unauthorised absence pertaining to an earlier period from 1.1.1997 to 22.3.1998 which was not related to the missing period at all, we are inclined to agree with the stand of the respondents that the punishment imposed cannot be annulled in terms of Annexure R-3(7) order and that Annexure R-3(7) orders are not intended for such cases. If that would have been the intention, the order would have been differently worded to enable dropping of disciplinary proceedings against all missing persons. The very fact that the order mentions that the cases

should be one of "genunine" and "really" missing of the employee confirms the above position. The judgments relied upon by the applicant are also distinguishable on the same grounds as in O.A. 553/03 the disciplinary action pertained to the missing period and in O.A. 477/02 the factor which weighed with the Tribunal in allowing the OA was that though the applicant was missing in the year 1994 the order of removal from service was issued in 2002 even without serving the charge memo on the employee. Therefore, the orders of the Tribunal in these two OAs are not applicable to the instant case. The prayer\$ of the applicant is therefore not sustainable.

We do not deny that such cases may be causing hardship to the families of the employee but we are unable to grant the reliefs asked for by the applicant as her case does not fall within the purview of the orders of the Railway Board on the subject. The OA is therefore dismissed. No costs.

Dated 5.4.2006.



GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN