

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 477 of 2002

Friday, this the 23rd day of May, 2003

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

v. K. Geetha,
W/o late Kannan,
No.242/63, Kapilar Street,
Chunnambu Chulai, Old Suramangalam,
Salem.

....Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India rep. 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 Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

....Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 23-5-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Aggrieved by the inaction on the part of the respondents to grant family pension and other terminal benefits to the applicant, although the fact that the applicant's husband K.Kannan who was working as Pointsman at Kannur was missing with effect from 20-12-1994 and his whereabouts were not known, the applicant has filed this application for a declaration that nonfeasance on the part of the respondents to grant her family pension with effect from 21-12-1994 and other terminal dues is arbitrary, discriminatory and unconstitutional and for a direction to the respondents to grant her family

pension with effect from 21-12-1994 and to disburse the terminal benefits with interest at 18% with effect from 21-12-1994. The material allegations are as follows:-

2. The applicant's husband K.Kannan, while working as Pointsman at Kannur Railway Station, was found missing from 20-12-1994. The applicant as also the mother of late Kannan approached the railway authorities on various occasions and requested for immediate action. The Station Master, Southern Railway, Kannur sent a message dated 15-2-1995 to the DPO/Palghat with copies to DOM/Palghat and Sr.DSO/Palghat informing that K.Kannan did not report to his house since 22-12-1994 and has not joined duty. The applicant sent various representations to the Railway Administration as is seen from postal receipts at Annexure A1 to A3. She submitted Annexure A6 representation to the Divisional Railway Manager on 20-11-1999 informing him that nothing was heard about K.Kannan since 20-12-1994 and requesting that she be given the family pension. A further representation was made to the Divisional Railway Manager on 31-8-2000 (Annexure A7). She followed up the matter by making further representations Annexure A9 and A-10. The applicant has also produced the FIR (Annexure A13) and reports (Annexure A11 and A12) stating that there was no chance of her missing husband being traced out. Finding no response, the applicant has filed this application for the reliefs as aforesaid.

3. Respondents in their reply statement contend that the applicant is not entitled to any family pension or other terminal benefits as her husband Kannan has been removed from service by order dated 6-5-2002 (Annexure R1). However, it has also been indicated that the applicant was directed by a letter dated 15-2-2002 (Annexure R2) to submit an attested copy of the

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FIR filed before the Police Authorities and the report and certificate received from them, but the said communication was returned unserved. It is contended that the applicant, who has not produced the necessary FIR and other materials to enable the Administration to examine her case for grant of family pension, has rushed to the Tribunal and therefore, the application is not maintainable.

4. On a careful scrutiny of the pleadings and other materials placed on record and on hearing the learned counsel of the applicant and respondents, I am of the considered view that the respondents have not approached to the serious issue involved in this case with the seriousness and sympathy it deserved. It is rather unfortunate that, after sending a letter to the applicant in a wrong address directing her to produce the FIR and the report and certificates from the Police authorities to enable the Administration to process her case for grant of family pension on 15-2-2002 and knowing that the letter was not served on her, an order of removal from service of K.Kannan dated 6-5-2002 was passed on the basis of an alleged ex-parte enquiry even without a memorandum of charge served on the employee. The sole purpose of passing Annexure R1 order dated 6-5-2002, to my mind, is to ward off the claim for family pension of the applicant. If a memorandum of charge had been issued to Kannan and an enquiry was in progress, the DPO/Palghat, who issued Annexure R2 letter to the applicant, would have indicated that in the letter. It is, therefore, abundantly clear that Annexure R1 order was issued without a due process of holding an enquiry in accordance with the procedure prescribed in the Railway Servants (Discipline & Appeal) Rules after serving the memorandum of charge on Kannan. Even an ex-parte enquiry can be validly held only after serving the memorandum and notifying the venue and date of enquiry.

The enquiry report too has to be supplied. The order terminating service also would be effective only on its communication. This has not taken place. Annexure R1, therefore, is of no consequence and is inoperative. While the applicant had given the correct address in her representations, the reason behind sending Annexure R2 letter in a wrong address is also not understandable. Probably it was intended to defeat the claim of the applicant. In any case, as the fact that K.Kannan is missing from 20-12-1994 onwards cannot be disputed and that the FIR (Annexure A13) has been registered and the police have reported that it was not possible to trace out his whereabouts in the certificates (Annexure A11 and A12), the respondents are bound to process the case of the applicant for grant of family pension and other terminal benefits without any further delay in accordance with law. Since the whereabouts of K.Kannan, the husband of the applicant, is not known for the last seven years as is evident from Annexure A11 to A13 that it is not possible to trace out his whereabouts, a presumption of death is to be drawn in his case. Respondents should have on that basis processed the claim of the applicant for grant of family pension and other terminal benefits. This having been not done, the respondents have to be directed to process the case of the applicant for grant of terminal dues and family pension without any further delay.

5. In the conspectus of facts and circumstances of the case, the Original Application is disposed of with the following declaration/directions:-

- (i) Since the whereabouts of K.Kannan, Pointsman are not known from 20-12-1994, a presumption of death has got to be drawn;

(ii) Respondents are directed to process the case of the applicant for award of family pension and other terminal dues on the basis of Annexure A11 and A12 reports as also the FIR at Annexure A13 and to make available to the applicant the monetary benefits if any flowing therefrom within two months from the date of receipt of a copy of this order.

6. There is no order as to costs.

Friday, this the 23rd day of May, 2003


A.V. HARIDASAN
VICE CHAIRMAN

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