

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.553/2003

Monday, this the 16th day of August, 2004.

CORAM;

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

P.Pushpavalli, **W/o V.Premkumar,**
(Ex-Pointsman B,
Madukkarai)
Residing at: No.23-B,
Railway Colony,
Marappalam, Madukkarai,
Coimbatore District. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India rep. by the
General Manager,
Southern Railway,
Headquarters Offices,
Park Town.P.O.
Chennai-3.
2. The Senior Divisional Operations Manager,
Southern Railway,
Palghat Division, Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.
4. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.
5. The Station Master,
Southern Railway,
Madukkarai R.S. & P.O.
Coimbatore District. - Respondents

By Advocate Mrs Rajeswari Krishnan

The application having been heard on 23.2.2004, the Tribunal
on 16.8.2004 delivered the following:

O R D E R

HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

The applicant P.Pushpavalli, wife of V.Premkumar, a Pointsman at Madukarai Railway Station, Palghat Division is aggrieved by the non-sanction of family pension benefits to her consequent on the disappearance of her husband and rejection of her representation dated 21.8.2001 for the grant of family pension. She has produced the FIR etc. lodged on 28.3.2001 with the Station Officer, Maddukarai Police Station, and the final report dated 31.10.2001 of the police authorities declaring her husband untraceable. On the strength of these evidences she is claiming the benefit of family pension and other retirement benefits due to her husband in accordance with RBE No.63/91 issued by the Railway Board in March 1991 and a subsequent clarification issued vide RBE No.3/94 in January 1994. The respondents however, are contending that Premkumar was unauthorisedly absent for the periods 1.6.2000 to 9.6.2000 and 29.8.2000 to 13.9.2000 for which departmental action was initiated by issuing chargesheet on 5.1.2001 and which was acknowledged by him on 12.1.2001, and that ex-parte enquiry was conducted on 9.4.2002 and the disciplinary authority imposed the penalty of removal from service on 12.8.2002. The respondents are insisting that the applicant's representation for granting her the benefits on her husband's disappearance cannot be considered as the delinquent employee was removed from service and so he cannot be treated as a missing person.

2. Heard. When the pleadings were in progress, I felt it necessary in the interest of justice to first of all be assured if the evidence of non-traceable certificate averred to was genuine, for the contrary would mean a travesty of justice, potentially more dangerous than its miscarriage by

186 15

default. The respondents were graceful enough in obtaining confirmatory reports which were filed through a memo by the learned counsel for the respondents Smt.Rajeswari Krishnan.

3. I have no reason now not to rely on the contention of the applicant, nor can the respondents insist any longer that Premkumar went missing to avoid the DAR proceedings. The Police Report also mentions the fact that an advertisement was inserted by Police in a daily newspaper after making enquiries with relatives, friends and colleagues. So, Premkumar, by law is declared a missing person much before he was declared a delinquent official. I have noted that the enquiry was conducted in 9.4.2002, while he had been declared 'non traceable' since 31.10.2001. It is not as if the respondents were not aware of the fact. The applicant had enclosed the xerox copies of the FIR and the certificate, to her representation dated 22.1.2002. This representation (A-6) was rejected, solely on the ground that Premkumar was 'taken up under Discipline and Appeal Rules for unauthorised absence prior to the date from which he was reported to have been missing'.

4. Would it be reasonable in this context to deny the family pension benefit to the applicant?. Rules provide as follows:

"Copy of letter No.F(E)III/86/PN-1/17 dt.19.9.86 from Deputy Director Finance (Estt.)III, Railway Board, New Delhi to GMs/All Indian Railways and others.

Sub: Grant of settlement dues to eligible family members of Railway employees who have suddenly disappeared and whose whereabouts are not known.

A number of cases are referred to this Department for grant of family pension to the eligible family members whereabouts are not known. At present all such cases are considered on merits in this department. In the normal course unless a period of 7

Re. 22

years has elapsed since the date of disappearance of the employee, he cannot be deemed to be dead and the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

2. The matter has been under consideration of the Government for sometime as withholding of the benefits due to the family has been causing a great deal of hardship. The President is now pleased to decide that (i) 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. (ii) After the elapse 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(Contribution) Rules may also be granted to the family subject to the fulfilment of conditions prescribed in the succeeding paragraphs.

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.

4. The Head of Office will assess all government dues outstanding against the Government servant and effect their recovery in accordance with extant rules/instructions in force for effecting recovery of Government dues.

5. The family can apply to the Head of the Office of the Government servant for grant of family pension and DCR Gratuity, Government contribution/SC to PF, as the case may be, after one year from the date of disappearance of the Government servant in accordance with the prescribed procedure. In case the disbursement of DCR Gratuity or SC to PF, as the case may be, is not effected within three months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed in accordance with extant orders.

R.B.E..No.63/91 reads as follows:

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"R.B.E. No.63/91

Subject Grant of settlement dues to eligible family members of Railway employees who have suddenly disappeared and whose whereabouts are not known.

No.F(E)III/86/PN-1/17, dated 27.3.91

Attention is invited to this Ministry's letter of even number dated 19.9.86 on the above subject as per which the families of disappeared employees are eligible for the family pension and other benefits after expiry of one year from the date of disappearance of the Railway servant. As certain doubts are expressed in the application of the said orders dated 19.9.86, the matter has been further considered by the Government and it has been decided that the following clarifications/further instructions regarding the formalities to be observed, regulation of payment of the benefits etc. be followed.

2. Board's letter of even number dated 19.9.86, as well as the letter, will also be applicable in the case of missing pensioners mutatis mutandis.

3. The date of disappearance of the employee/pensioner will be reckoned from the date the First Information Report is lodged 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 this date. However, the benefits to be sanctioned to the family, etc. of the missing employee will be based on and regulated by the emoluments drawn by him and the rules/orders applicable to him as on the last date he/she was on duty including authorised periods of leave. "Family pension at normal/enhanced rates, as may be applicable in individual cases, will be payable to the families of missing employees." Family pension where sanctioned at pre 1.1.1986 rates will be revised/and consolidated w.e.f. 1.1.1986 in terms of this Ministry's letter No.PC-IV/87/Imp/PNI dated 20.4.87 as amended from time to time.

4. In the case of missing pensioners, the family pension at the rates indicated in the PPO will be payable and may be authorised by the Head of the Office concerned. Where the PPO does not contain this information, the Head of Office will take necessary action to sanction the family pension as due, as provided in Para 3 above.

5. Death gratuity will also be payable to the families, but not exceeding the amount which would have been payable as retirement gratuity if the person had retired. The difference between retirement gratuity and death gratuity shall be subsequently payable after the death is conclusively established or on the expiry of seven years period from the date of missing.

6. The Indemnity Bond to be obtained for the purpose from the family members, etc. will be in the formats enclosed with this letter. Separate formats for use in the case of missing employees & missing

12. 6. 20

pensioners have been prescribed. These formats have finalised in consultation with the Deptt. of Legal Affairs.

7. Cases already settled otherwise than in accordance with this letter need not be re-opened, unless such a re-opening will be to the advantage of the beneficiaries."

R.B.E.No.3/94 reads follows:

Sub: Grant of settlement dues to eligible family members of Railway employees who have suddenly disappeared and whose whereabouts are not known.
(No.F(E)III/86/PN-1/17 dated 21.1.1994)

Attention is invited to this Ministry's letters of even number dated 19.9.86 and 27.3.91 (Bahri's RBO 1991-I, 74; RBE 63/91) on the above subject as per which the families of the employees/pensioners whose whereabouts are not known are 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 and after the lapse of a period of one year other benefits like DCRG and family pension are also paid. The period of one year is reckoned with reference to the date on which FIR is lodged with the police about the disappearance of the concerned employee/pensioner. At present the family pension is sanctioned and paid to the eligible member of the family one year after the date of registering the FIR with the police and no family pension is paid for the intervening period of one year from the date the FIR is lodged to the date the family pension can be sanctioned. It has now been decided that the family pension, which in pursuance of the earlier orders, will continue to be sanctioned and paid one year after the date of lodging the FIR will accrue from the date of lodging the FIR or expiry of leave of the employee who has disappeared whichever is later. When the sanction for family pension is issued, the payment of pension from the date of accrual may be authorised. The usual procedure of obtaining the indemnity bond etc. as laid down in the letter dated 19.9.86 will continue to be followed. While sanctioning payment of family pension, it will be ensured by the concerned authorities that family pension is not authorised for any period during which payment of pay & allowances in respect of the disappeared employee has been made.

This is in supersession of Board's earlier order of even number dated 21.1.92(Bahri's RBO 1992-I, 7: RBE 8/92)"

5. Going by the rule position the applicant would be entitled to:

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i) In the first instance, amount of salary due, leave encashment due and the amount of Provident Fund pertaining to the employee's subscription in the State Railway Provident Fund having regard to the nomination made by the employee.

ii) After a year of registration of FIR, DCRG/Family Pension would be paid as authorised from the date of accrual i.e. the date of registration of FIR.

6. The procedures are well established in the Railways. In the instant case, FIR was lodged on 28.3.2001. So, the wife of the missing employee would be entitled to the contemplated benefits from 28.3.2002. She had already informed the position to Sr. DPO, Palakkad on 22.1.2002. She was apparently not aware of the rule position, or else she could have submitted an application for family pension in that date itself. She made the application, with a fervent plea for consideration, only on 14.10.2002. By that time the missing employee had already been removed from service. This is how the procedures for grant of pensionary benefits and the disciplinary procedures got intertwined.

7. The disciplinary order at A-5 has been impugned on the ground that the Railway Servants (Discipline & Appeal) Rules, 1968 is a penal statute and therefore all proceedings initiated under the said rules must abate once the person against whom the proceedings have been initiated is known or presumed to be dead, and hence the disciplinary orders based on a penal enquiry is void. This is not a valid argument as the employee is neither known nor presumed to be dead and there are procedures established by which an enquiry can proceed to its logical conclusion even when an employee is missing or absconding. The learned counsel for the respondents argued that since the charge memo was received by the employee before the registration of FIR, the enquiry had to be carried on and in this context sought to drive home the point that this case in fact might not be a genuine case of

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disappearance, but only a ploy to avoid disciplinary proceedings. This is not a reasonable argument as it would not be reasonable to assume that an employee would forgo long years of residual service to avoid the rigours of disciplinary process arising out of a comparatively short spell of unauthorised absence. Further, with the 'non-traceable' certificate of the Police, any doubt in regard to the genuineness of the case must abate and one should proceed on the presumption that the employee is genuinely 'missing'. In regard to the penalty of removal, the learned counsel for the applicant made a forceful plea that without any dishonest motive having been established, removal from service would neither be warranted nor reasonable. The maximum that could have been done after ex parte enquiry, if unavoidable, was to impose the penalty of dies non constituting a break in service. I have no hesitation in agreeing with this line of argument as I find that the disciplinary authority has at no stage considered the gravity of the charge as being propelled by dishonest motive. Avoidance of enquiry, as I have stated already, is only a conjecture that falls apart with the 'not traceable' report of the Police. A-6 order appear to be a fait accompli flowing from the position taken in A-5 orders. As the learned counsel for the respondents very ably argued, A-6 orders could not be faulted as long as A-5 orders survive and A-5 orders could not be assailed as that is in the statutory domain of the disciplinary authority where his judgment is based on the facts and evidences available to him through the operation of a due process of enquiry. But then how would A-5 order survive in the absence of a dishonest motive involving gross irregularity or negligence? The rules of discipline have to be applied judiciously and not mechanically. The missing official here is not absconding after committing any fraud or causing any financial loss to

N. I. 22

the Railways. He is simply 'missing' for no apparent reason putting his own life and that of his wife and children to grave risks of uncertainty.

9. In the result, I allow the application partially, set aside A-5 and A-6 and declare that the applicant is entitled to be granted family pension and the benefits as per the existing rules and subject to the execution of an indemnity bond as prescribed therein. I direct the respondents separately and together to ensure that the formalities for the sanction of gratuity and Family Pension to the applicant are completed at the earliest and on the basis of such sanction, payments including arrears are made to the applicant within three months from the date of issue of this order. No interest liability for delayed payment. No orders as to cost.

Dated, the 16th August, 2004.

H. P. Das.

H.P.DAS
ADMINISTRATIVE MEMBER

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