

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 109 of 2009

Thursday, this the 4th day of March, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Reetha, W/o. late A. Joseph, Thyvilakom House,
 St. Thomas, Kochuthura, Pallithura P.O.,
 Trivandrum.

..... **Applicant**

(By Advocate – Mr. D. Vijaya Kumar)

V e r s u s

1. Union of India, rep.: by Secretary,
 Ministry of Railways, Rail Bhavan,
 New Delhi.
2. The Divisional Railway Manager (DRM),
 Railway Divisional Office, Southern Railway,
 Trivandrum.
3. Senior Divisional Mechanical Engineer,
 Divisional Office, Personnel Branch,
 Trivandrum-14.

..... **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 04.3.2010, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice K. Thankappan, Judicial Member -

The applicant, the widow of the pensioner of the Railway, filed this Original Application for a direction to the respondents to allow and disburse entire pensionary benefits due to the deceased Railway employee.



2. The short factual matrix of the case leading to the filing of the application are as follows:-

a) The husband of the applicant late A. Joseph joined in the Railway and was working as C&WF/CHTS under the Senior Section Engineer/C&W/CHTS and retired from service with effect from 1.8.1997 on the basis of a removal order passed by the respondent Railways. While the husband of the applicant was working as such he unauthorisedly absented from service with effect from 19.4.2007 and on initiating proceedings against the said Joseph as per the final order passed by the Senior Divisional Mechanical Engineer/TVC vide letter No. V/M.226/XIV/C&W/AJ, dated 29.7.1997, the employee was removed from service and thereafter as per the order dated 9.8.2004, 2/3rd pension was allowed by the Senior Divisional Mechanical Engineer, TVC subject to certification of qualifying service.

b) While so the said Joseph died on 7.3.2008 leaving behind him, the applicant and six children. After the death of late Joseph the applicant approached the authorities for allowing and disbursing family pension and the due pension of the deceased employee by filing Annexure A-3 representation with all necessary documents for the said purpose. Since the authorities kept silent on the above, the applicant filed the present Original Application with prayers as stated above.

3. The Original Application has been admitted by the this Tribunal on 20.2.2009 and notice ordered to the respondents. On receipt of the notice

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issued from this Tribunal a reply statement has been filed for and on behalf of the respondents. Though in the reply statement the service, the removal and the retirement subsequent to the removal order have been admitted, the qualifying service of the deceased employee has been disputed so as to issue any pension and pensionary benefits as ordered in the order dated 9.8.2004 of the Senior Divisional Mechanical Engineer, TVC. The further stand taken in the reply statement is that there was no record as such now available with the Railways regarding the service of the applicant but at the same time it is admitted in the reply statement that the Railway employee has joined in the service on 23.8.1982 and continued in service till the removal order passed in pursuance to the unauthorised absence and the proceedings initiated thereafter on 1.8.1997.

4. On receipt of the reply statement a rejoinder also has been filed on behalf of the applicant in which the applicant further produced Annexures A-5 and A-6 records an undertaking given by the employee numbered as 1/7/1/1/PC-V/98/1/7/1/1.

5. We have heard the counsel appearing for the applicant Mr. D. Vijaya Kumar and also Mr. Thomas Mathew Nellimoottil counsel appearing for the respondents. We have also perused the documents produced in this Original Application. The counsel for the applicant had reiterated the averments in the Original Application and further submits that the husband of the applicant joined in the Railway service on 23.8.1982 and he was working as C&WF/CHTS under the Senior Section Engineer/C&W/CHTS till his

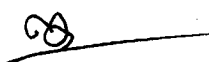


removal from service w.e.f. 1.8.1997 and if this period is calculated no doubt the employee is entitled for pension applicable to the removed employee. Further the counsel submits that as per Annexure A-4 order passed by the Senior Divisional Mechanical Engineer, TVC it would show that the husband of the applicant was removed from service in terms of the penalty advice of the Senior Divisional Mechanical Engineer, TVC dated 29.7.1997. It is also the case of the applicant that as per Annexures A-4 series and A-5 series the entire service particulars of the husband of the applicant has been given to the respondents which would prove the entire service of the husband of the applicant. If so, the applicant is entitled for the family pension and all other pensionary benefits due to her husband. The counsel further submits that the stand now taken in the reply statement is that the Railway is not having any records showing the service particulars of the husband of the applicant. The stand now taken for rejection of the claim of the applicant for pension and other benefits including that of gratuity due to the husband of the applicant is non-availability of the service records. This cannot be believed and it shall not be attributable to the applicant or the Railway employee as it is the duty of the Railways to keep the service records.

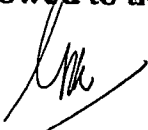
6. From the arguments advanced by the counsel appearing for the parties this Tribunal has to decide whether the applicant is entitled to the relief which she claimed in the Original Application or not. Admittedly the husband of the applicant joined in the service on 23.8.1982 and continued up to 1.8.1997, till he was removed from service on a penalty order issued



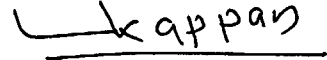
by the Senior Divisional Mechanical Engineer. Even though the husband of the applicant was found absent from duty for certain period for which the disciplinary action has already been taken against him which has resulted in the removal of the employee, that by itself would show that all the records of the service of the applicant were/are with the respondents and the stand now taken in the reply statement that records are not available cannot be attributed to the applicant or the Railway employee. We have already considered all the documents now produced here especially Annexures A-4 series and A-5 series and also the option given by the deceased employee while he was allowed the 2/3rd of the pension. The only condition stipulated in Annexure A-4 letter is that allowing of 2/3rd pension and 2/3rd gratuity shall be subject to the verification of the qualifying service. Now the question to be considered is that whether the husband of the applicant has sufficient period of service for allowing pension. As we have already found that the respondents have no case before us either in argument or in reply statement that the husband of the applicant had no sufficient qualifying service to allow full pension and pensionary benefits. If so, we are of the view that it is only proper to order that the respondents shall consider the case of the applicant taking into consideration of the fact that the earlier appointment and joining of the husband of the applicant is on 23.8.1982 till removal on 1.8.1997. If so calculating from 23.8.1982 the service period of the husband of the applicant for the pensionary benefits can be considered and appropriate orders shall be passed within a reasonable time in the matter at any rate within three months from the date of receipt of a copy of this order.



7. With the above direction and observation this Original Application stands allowed to the extent indicated. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

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