

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.111/2004

Tuesday, the 4th January, 2005

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Geetha,  
W/o late Kanna,  
Kapilar Street,  
Chunnampuchoolai,  
Old Suramangalam,  
Salem-5. - Applicant

By Advocate Mr TC Govindaswamy

Vs.

1. Union of India represented by  
the General Manager,  
Southern Railway,  
Headqurters Office,  
Park Town.P.O.  
Chennai-3.
2. The Addional Divisional Railway Manager,  
Southern Railway,  
Palghat Division,  
Palghat.
3. The Divisional Personnel Officer,  
Southern Railway,  
Palghat Division,  
Palghat.
4. The Senior Divisional Finance Manager,  
Southern Railway,  
Palghat Division,  
Palghat. - Respondents

By Advocate Mr. Thomas Mathew Nellimoottil

The application having been heard on 21.12.2004, the Tribunal  
on 4.1.2005, delivered the following:

O R D E R  
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant's husband was in lawful occupation of  
Railway Quarters No.115 C/Type I, at Salem Junction who was  
transferred to Cannanore and joined on 10.1.94. He retained

the quarters and normal rent was being recovered from his salary. The applicant's late husband was missing from 20.12.94. It is averred that message was given to the Station Master, Cannanore and Senior Divisional Operation Manager and the Senior Divisional Safety Officer, Palghat who had not given such information to ups. It is also averred that several representations were sent to the authorities and based on one such representations, the Railway Police Sub Inspector, Salem registered a F.I.R. on 31.10.98. No family pension or other death dues were given to the applicant. Thereupon, the applicant filed O.A.NO.477/2002 for grant of family pension with effect from 21.12.94 and for other settlement dues on account of the deemed demise of he husband Kannan and in furtherance of the orders of this Tribunal dated 23.5.2003 (A-1) Pension Calculation statement A-2 was issued and a sum of Rs.59,184/- is sought to be deducted from the applicant towards rent, Rs.40,792/- etc. As per A-2, the entire DCRG of Rs.13,032/- and leave salary of Rs.1,614/- seen adjusted and a balance amount of Rs.44,538/- is also directed to be recovered from the pension relief of the applicant. Pension Payment Advice was issued thereafter by the 4th respondent vide A-3 order dated 6.8.2003 which is effected from 31.10.98 instead of 21.12.94. It appears, the alleged difference of Rs. 44,538/- is towards rental/penal rent dues. A sum of Rs.830/per month is also being recovered from the applicants family pension, month after month. She was given to understand that the rent has been calculated as if the applicant was in unauthorised occupation of the Railway Quarters. The applicant submitted A-4 representation stating

h

that she had vacated the quarters on 28.12.98. There was no response to A-4 representation. Aggrieved by the said inaction, she has filed this O.A. seeking the following main relief:

- a) Call for the records leading to the issue of A-2 and A-3 and quash the same to the extent they recover an amount of Rs.59,184/- from the Death Gratuity, Leave Encashment and Dearness Relief on Family Pension due to the applicant and also to the extent the same calculate the applicant's Family pension, Death Gratuity and Leave Encashment on IV CPC scales of pay.
- b) Direct the respondents to refund the amount of Rs.59,184/- recovered/adjusted in terms of A-2 and A-3 with 9% interest calculated from the date of A-2.
- c) Declare that the applicant is entitled to have her Family Pension, Death Gratuity and Leave Salary calculated on the V CPC scales of pay and based on the rules applicable as on 31.10.98 and direct further to recalculate and grant the same, with interest calculated at the rate of 9% per annum, from the date of A-2.
- d) Direct the respondents to recalculate the Death Gratuity as 12 times the emoluments as on 31.10.98 in the V CPC scales of pay with 9% interest calculated from the date of A-2 and to grant the same forthwith.

A handwritten signature or mark, appearing to be a stylized 'H' or a similar character, is located at the bottom right of the page.

2. The respondents have filed a detailed reply statement contending that the applicant's husband has been absenting himself from duty since 1994 and the respondents have had no information about the applicant's husband. Hence, treating the case as one of unauthorised absence, action was taken under DAR. Enquiry Officer, in the meanwhile, produced FIR stating that the ex-employee was missing. By the order in O.A.477/2002, this Bench of the Tribunal drawn a presumption of death and further directed to process the case for award of family pension. Accordingly settlement of dues were arranged. The alleged missing of the applicant from 1994 but the FIR was lodged in 1998. The respondents is at a loss to understand why the applicant took such a long time to file the complaint before the police authorities. Had the applicant filed case and obtained FIR then and there, action would have been taken by the administration to pay family pension long back and therefore, in terms of Rule 15 and 16 of Railway Servants pension Rules, these dues were sought to be recovered. Though considerable amount already been recovered from the applicant the dues of the ex-employee is much more than what is payable by way of gratuity, cash equivalent of leave salary and therefore, respondents initiated action to recover the balance amount from the relief of family pension. In terms of the Railway Board letter dated 20.9.85 and the applicant also agreed for such recovery vide R-1 letter. The calculation of settlement dues were in terms of the provisions of Railway Servants(Pension) Rules 1993. There was no error and the respondents have acted only in regard to provisions of various



instructions. Family pension is being drawn by the applicant as a result of the service rendered by the ex-employee and hence she is supposed to pay off the liability to him also. The recovery of penal rent in case of non-vacation has been initiated. much revenue of the government will erode.

3. The applicant has filed a rejoinder reiterating his pleadings in the O.A. and further contended that thee peal of the respondents that they had no information about the husband of the applicant and therefore treating the case one of unauthorised case are all misleading and not fully correct. The applicant had vacated quarters only on 28.12.98. Applicant chose to remain idle over the applicant's grievance for years together until she left with no other alternative. In any case, the applicant is not liable to pay any rent and there can be, only normal rent. The respondents did not even indicate how Rs.40,792/- has been arrived at. The monthly rent deducted from the applicant's husband in July 1994 was only Rs.29/- this being a Type I Railway Quarters.

4. Respondents have filed an additional reply statement reiterating their contentions and further submitted a statement of calculation explaining how this amount has been derived at. Since there is no separate manual the Rules of Railway service Pension Rules 1993 are equally applicable to pensioners and family pensioners. With regard to the benefit of Vth CPC which came into effect on 1.1.96 since the applicant's husband was missing from 1994 is not eligible for the benefit recommended by the Government. Because the

h

applicant's husband was not physically present on that date. Therefore that benefit cannot be extended.

5. I have heard Shri TC Govindaswamy, learned counsel for the applicant and Shri Thomas Mathew Nellimoottil, learned counsel for respondents.

6. Learned counsel for thee applicant taken me to various pleadings and evidence and material placed on record. He argued that the calculation of the alleged arrears and granting non-calculation of salary and other benefits of the employee in tune with Vth CPC scales is not in conformity with the orders of this Tribunal. Therefore the applicant is entitled for thee benefit. Learned counsel for thee respondents on the other hand persuasively argued that the amount due to the applicant's husband has been correctly calculated and since the applicant's husband was not in the pay role as on 1.1.96, he is not entitled to get any benefit.

7. I have given due consideration of the arguments advanced by the learned counsel on either side. The fact remains that the applicant's husband was missing from 20.12.94 and the FIR was lodged only on 10.10.98. This Bench of the Tribunal in O.A.477/2002 (A-1) specifically observed that the purpose of passing R-1 order, "is to ward of the claim for family pension of the applicant". The Tribunal further observed:

A handwritten signature in black ink, appearing to be a stylized 'U' or 'M' shape, is located in the bottom right corner of the page.

".In any case, as the fact that 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."

The Tribunal further held that the presumption of death has to be drawn from 20.12.94 and process the case of the applicant for grant of terminal dues and family pension without any further delay. In furtherance of this order, A-3 order and calculation sheet A-2 was drawn on the basis that the family pensioner is eligible for dearness relief with effect from 31.10.98 and dearness relief for the period from 31.10.98 to 31.7.2003 payable to her has been adjusted by the office against the Railway dues of Rs.44,538/-. Further, the Railway dues of Rs.10,071/- may be adjusted against the entire dearness relief payable to family pensioner every month with effect from 1.8.2003 till such time the entire Railway dues is recovered. These orders are impugned in this O.A. In the representation (A-4), the applicant has made it clear that she has no objection to recover only the normal rent for the period occupied by the Railway quarters.

8. The point at issue to be decided are two fold:

- a) whether the penal rent that has been calculated by the Railways as dues is justified;



b) whether the applicant is entitled for the benefit of the CPC scale which is recommended by the Vth CPC as on 1.1.96.

9. The applicant's case is that when her husband Kannan was missing from 20.12.94 and she has been making repeated representations and passing on information to the concerned authorities who had not taken cognizance of the same and finally she was constrained to approach Railway Police in 1997 and FIR was lodged on 31.10.97. After elaborate deliberations, this Bench of the Tribunal in an earlier O.A. declared that the applicant's husband presumed to be dead from 20.12.94. It is also an admitted fact that the applicant had been in occupation of the quarters till they vacated on 28.12.98. The applicant has given reason that they could not vacate the Railway quarters within the permitted time since the applicant and 8 year old daughter struggled a lot for their survival and life was full of miseries during this period. When she was making best efforts to find out her husband but could not trace. From the material placed on record, I find that no effective steps whatsoever was initiated by the respondents in getting the quarters vacated and the rule 15 and 16 that has been followed by the respondents does not ipsofacto made applicable in the matter of death benefits. This is with reference to the pension and not family pension. Learned counsel for the applicant has taken to my attention to the decision reported in N.C.Sharma v. Union of India & others [C.A.T. Full Bench Judgements 2002-2003, 212] wherein it has been held that even in a case



of regular pensioner of Railways, Rule 16 does not enable the Railways to recover penal rent on account of non-vacation of Government accommodation after permissible period of retention. It could only be recovered by institution of proceedings under Section 7 of P.P. (Eviction of Unauthorised Occupant) Act and it further declared that recovery of such amount towards penal rent is violative of principles of natural justice. On going through the facts of the case, since no notice issued to the applicant before such a recovery is initiated, a unilateral decision to recover such huge amount from a family pensioner is not justified. I find that such recovery is not permissible under Rule 323 of the Railway Servants (Conduct & Service) Rules especially when the applicant had neither admitted, nor the dues have been determined with due process and there is no rules to recover such penal rent/interest from the applicant whose husband is missing from 1994. The applicant also has taken me to the decisions reported in Balwant Kaur v. State of Punjab & another [1987(5) SLR 264 P&H] and contended that the family pension being a personal character, cannot be withheld by the respondents. Considering the dictum laid down in the above decision (supra) I am of the view that the respondents are not justified in proceeding to recover the penal rent from the applicant. However, considering the fact that the applicant in A-4 letter had consented for recovery of normal rent for the period she has occupied in excess i.e. till 28.12.98, the respondents are at liberty to recover the same.

10. Regarding the next contention that the applicant is entitled to the benefit of CPC scheme of pay as recommended by



the Vth CPC from 1.1.96, it appears that from the direction of this Tribunal in O.A.477/2002 the drawn presumption of death of the applicant's husband <sup>is</sup> from 20.12.94. It is but natural that the benefit should be given to the applicant from that date. But from the impugned order, I find that the arrears of the benefits was granted to the applicant from 30.10.98, to the date of A-3 order. Now the applicant has no dispute for the date so fixed by the respondents. It is pertinent to note that, had the respondents fixed the date as 20.12.94, naturally the applicant could have received the arrears from that <sup>date</sup> <sub>which</sub> is not done in this case. Besides, the benefit of the CPC scale is denied on the ground that applicant's husband was not alive as on 1.1.96. Instead of challenging that date, what the applicant now pleading is that having being allowed to calculate the benefit from 30.10.98 the benefit subsequent to 1.1.96 as per Vth CPC recommendations could have given to her. The benefit was granted with effect from 30.10.98 by the respondents, may be to deprive her arrears of dearness relief etc. but the benefit deriving out of that date not extended in granting CPC scale which in my view is not justified. The benefit derived out of CPC recommendation in the circumstances is also to be granted to her. In other words, she is the loser for 4 years. Instead of challenging that date what the applicant now saying is that having she being allowed to calculate the benefit from 31.10.98 on the ground that the applicant's husband was not alive as on 1.1.96, it is quite natural that the benefit subsequent to 1.1.96 as per Vth CPC recommendations could have given to her. It is a logical sequence that the respondents had considered a particular date (31.10.98), the benefit and debenefit should follow. In that

context, I am of the view that the applicant is entitled to have her family pension, DCRG to be calculated on Vth CPC scale and the pay based on the rules applicable as on 31.10.98. The respondents could not take different yardstick in denying the arrears taking the date as of 1994 and also denying the pay scale that of 1998. The contention that the applicant's husband was not on duty after 1.1.96 will not stand hold good. Since the benefit of presumption has been drawn by the respondents in 1998, the pay which the applicant's late husband would have drawn under the Vth CPC scale to be taken for all benefits. The Vth CPC never said if one is not physically present on that date, such benefit cannot be granted. The Vth CPC nowhere denies such benefit.

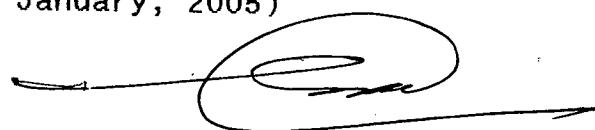
11. In the facts and circumstances, I am of the considered view that the impugned orders A-2 and A-3 as far as it calculate the penal rent and not granting the Vth CPC scales are faulted and to that extent the impugned orders are set aside. I further direct that the respondents shall calculate only the normal rent to be recovered from the applicant for the excess period and also calculate the benefit in CPC scale and grant the same to the applicant which would have drawn by the deceased as on 31.10.98 and also recalculate the family pension afresh and grant the consequential benefits to the applicant within a period of three months from the date of receipt of copy of this order. It is made clear that the applicant will not be entitled for any interest and the recalculated benefit under the CPC scale will only be notional till the date of filing the O.A., i.e. 12.2.2004, and actual

h

arrears be paid from that date till the payment is made. The recovery, if any, made earlier will be refunded.

12. The O.A. is allowed in the circumstances. No order as to costs.

(Dated, the 4th January, 2005)



K.V. SCAHIDANANDAN  
JUDICIAL MEMBER

trs.