

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO.188/2008

Dated this the 5<sup>th</sup> day of April, 2010

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER  
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Deenamma Cherian W/o late T. Cherian  
Ex Goods Guard/QLN,  
residing at Vayalil Puthen Veedu  
House No. 183, Jawahar Nagar, Pattathanam  
Kollam now residing at Moonumoolam thara  
Bethel, Madathil, Karazhma PO  
Oachira Kollam.

Applicant

By Advocate Mr. Johnson Gomez

Vs

- 1 Union of India represented by the  
Secretary, Ministry of Railway  
New Delhi.
- 2 The Chief Personnel Officer  
Southern Railway  
Chennai
- 3 The Senior Divisional Personnel Officer  
Southern Railway,  
Thiruvananthapuram.
- 4 The Divisional Railway Manager,  
Southern Railway,  
Thiruvananthapuram.

Respondents

By Advocate Mr.Thomas Matheaw Nellimoottil

The Application having been heard on 17.3.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The grievance of the applicant who is the widow of Shri T. Cherian railway employee is that her late husband/she has not been paid the retiral benefits.

2 According to the applicant her late husband while working as Goods Guard at Kollam in the Southern Railway, Trivandrum Division was compulsorily retired from service w.e.f. September, 1987. He challenged the order before the Industrial Tribunal, Kollam which allowed the Petition and permitted him to be reinstated in service w.e.f. November, 1996 with continuity of service, backwages and all other benefits withholding full wages for a period of 2 years (A-2). The 4<sup>th</sup> respondent challenged the order of the Industrial Tribunal before this Tribunal through O.A. 447/1996 which was disposed of by modifying the order A-2 and directed reinstatement without back wages but the period would count for seniority, increment and pension and without recovery of pension already paid (A-3). Consequently, by office order dated 18.11.96, he was ordered to be reinstated in service (A-4). But he could not join as he was bedridden due to illness. However, he challenged A-3 and A-4 which was dismissed by A-5 order. The dismissal order was challenged before the High Court which was dismissed. Unfortunately, the employee expired on 21.1.2003. The applicant submitted representation for disbursement of pensionary

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benefits (A7). As there was no response, she filed O.A. 684/03 before the Tribunal which was disposed of directing the respondents to consider A7 representation submitted by the applicant. The respondents rejected the representation submitted by the applicant. The applicant filed further representation which was not disposed of so far. Hence she filed this O.A for a declaration that the employee has been reinstated in service w.e.f. 2.9.1996 the date on which A3 order was passed, with all consequential benefits, to quash A9 and to direct disbursement of the pensionary benefits due to the employee in the light of A-3 order.

3 The respondents filed reply statement opposing the O.A being hit by res judicata. They submitted that applicants' husband had earlier filed O.A. 991/99 praying for reinstatement which was dismissed by this Tribunal on delay(A-6). The OP and Revision Petition filed before the High Court was also dismissed (R-1). The applicant had filed O.A. 684/2003 for terminal benefit which was disposed of without contesting (A-8). In these circumstances the prayer in the OA for reinstatement and for retiral benefits is hit by constructive res judicata. On merits, they submitted that the Tribunal by its order in O.A. 447/96 ordered reinstatement of the applicant. However, he had not reported for duty in spite of A-4, therefore it has to be deemed that the reinstatement did not take effect and that compulsory retirement orders prior to that became final.

4 The applicant filed rejoinder contending that the respondents have not taken a final decision on A-8 and that the impugned order was in the nature of an advice to intimate whether her late husband was

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drawing pension after reinstatement till his death and whether she was drawing family pension from there onwards to process the revision of pension as also DCRG if any due. She further contended that the withdrawal of the M.A. 737/07 in O.A. 683/2003 was with liberty to take appropriate action impugning A-9 order which culminated in A-12 proceedings and she filed the present O.A. On 17.3.2008.

5 We have heard learned counsel appearing on both sides and have gone through the pleadings.

6 The admitted facts are that the husband of the applicant was given notice for compulsorily retired w.e.f 1.9.87 which was challenged by him before the Industrial Tribunal, Kollam. The Industrial Tribunal directed reinstatement with back wages except for two years. The respondents challenged the order of the Industrial Tribunal before this Tribunal through O.A. 447/96 which modified the order of the Industrial Tribunal directing reinstatement without back wages. The respondents issued Annexure A-4 for reinstatement of the applicant in service vide Office order dated 18.11.1996. His pay in the post of Goods Guard in the scale of Rs. 1200-2040 was also fixed at Rs. 1800/- as on 1.4.95. We have perused the Service Register of Shri T. Cherian produced before us. The reinstatement of the applicant pursuant to the order of the Tribunal in O.A. 447/96 is recorded with pay fixation order as in Annexure A-4. It is further stated that his pay has been revised consequent on Vth CPC and is fixed at Rs. 5625 in the scale of Rs.4,500-7000 as on 1.4.96 .

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7 It was averred by the respondents that in spite of A-4 and several subsequent reminders, the applicant's husband never reported for duty. Therefore, the reinstatement did not take effect and the compulsory retirement orders prior to that became final. Annexure A-5 order dated 25.11.1999 in M.A. 874/99 in O.A. 991/99 of this Tribunal dismissed the M.A for condonation of delay in filing the O.A, challenging A-4 order. Para 3 of the order is extracted below:

"3. We are not satisfied that the applicant was laid up and was not in a position to file an application in time as contended by the applicant. If the applicant was really unwell and was advised bed rest between 15.6.96 to 2.7.97 either in Annexure R-3 representation made by him on 22.1.97 or when he was repeatedly directed to report for duty he would have written to the respondents that he was laid up and was not in a position to report for duty. We, therefore, are not convinced that the applicant has made out a good ground for condonation of the delay. In the result the M.A is dismissed."

Annexure A-11 dated 12.3.91 is the copy of the PPO issued by Sr. Divisional Accounts Officer, Trivandrum fixing the ex-employee's pension from 1.9.1987 on the basis of compulsory retirement and the family pension of the applicant. The applicant's counsel, stated that the ex-employee did receive pension, and the applicant, the family pension till date but apparently no revision was effected on account of V and VI CPC.

8 When matters remained so, Annexure A-9 was issued by the Personnel Branch Trivandrum dated 9.12.2003, which created considerable confusion. We are surprised by the issuance of the above letter of the respondents to the applicant. There is a series of litigation between applicant's husband/applicant and the respondents on the issue of grant of pensionary benefits to the deceased

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employee/applicant. However, the respondents themselves are not sure whether the deceased employee had received pension and the applicant has received family pension. This state of affairs in the Railway administration warrants serious attention of the superior officers. However, we refrain from adding anything more.

9 In view of above discussion, the O.A is disposed of with the following directions:

(i) The respondents are directed to revise the family pension of the applicant granted vide PPO dated 12.3.1991 (Annexure A-11) w.e.f the death of the employee i.e. 31.10.2001, in accordance with the recommendations of the V and VI CPCs, if it is not done so far, and arrears paid.

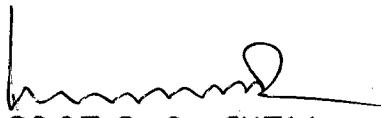
ii) Recovery towards rent etc. for Quarter No. 194/F/QIN shall be effected in accordance with extant rules.

10 The O.A is allowed as above. No costs.

Dated 5<sup>th</sup> April, 2010

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

kmn

  
GEORGE PARACKEN  
JUDICIAL MEMBER