

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application NO. 342/07

Dated the 5th day of February, 2008

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

Suseela,
W/o late M Manoharan,
(Ex Technician Grade-I/Diesel/Electrical
Southern Railway),
No.55/31, LIC Nagar End,
No.8, Vinayakar Koll Street,
Moolapalayam, Erode.

.. Applicant

By Advocates : Ms Rajitha for Mr TCG Swamy.

-Vs-

1. Union of India,
represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town, PO, Chennai.
2. The Senior Divisional Mechanical Engineer,
Diesel Loco Shed, Southern Railway, Erode.
3. The Divisional Railway Manager,
Southern Railway, Palghat Division, Palghat.
4. The additional Divisional Railway Manager,
Southern Railway, Palaghat Division, Palghat.
5. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division, Palghat.

.. Respondents


By Advocates: Mr. Varghese Johan or Mr. Thomas Mathew, Nellimoottil.

This application having been heard on 14th January, 2008 the Tribunal delivered the following -

ORDER

The applicant, the widow of late M. Manoharan, who was working as Technician Grade-I/Electrical in the Diesel Loco Shed of Southern Railway, Erode, Palghat Division, has filed this application being aggrieved by the denial of family pension and other death related benefits by the respondents.

2] The facts as submitted by the applicant are that late Manoharan was missing since 27.12.2001 and the applicant had filed an FIR on 5.9.2002 with the Erode South Police Station. The fact of missing of applicant's late husband was published by the Police Department, through hand bills, posters etc. and exhibited at important places and also through Media. After completion of the investigation, the Police filed the Annexure-A1 report dated 22.12.2002 stating that the person concerned is 'undetectable.' After receipt of the Police Report the applicant submitted Annexure-A5 representation to the 3rd respondent but there was no reply to it. However, the applicant was given copies of Annexures-A6 to A8 orders issued by the 2nd respondent removing the applicant's husband from service w.e.f. 27.8.2003. Immediately the applicant submitted Annexure-A9 representation dated 2.3.2004 to which the applicant was informed that the 4th respondent is the competent authority to consider the grievances of the applicant. The applicant submitted Annexure-A11 to A13



representation to the 3rd respondent. Thereafter, the 5th respondent issued Annexure-A15 letter to the applicant stating that the applicant's husband had charge sheeted for his alleged unauthorized absence from duty from 1.9.2001 onwards. He had joined duty on 7.11.2001 and again absented himself from 7.12.2001 and the Disciplinary Authority after enquiry imposed a penalty of removal from service w.e.f. 28.9.2003, however, considering his earlier service, sanctioned a compassionate allowance equal to 50% of pension admissible to him as per his eligibility from 28.9.2003, and, therefore, the order of removal from service cannot be modified. The applicant submitted another representation addressed to 5th Respondent to which also there was no response. The applicant has assailed Annexure-A15 order dated 13.12.2006 on the ground that the said order was passed after the deemed demise of the applicant's late husband and is opposed to the principles of natural justice. According to the applicant, orders of Railway Board, Annexures-A17 to A/19 stipulate that in such cases death should be deemed from the date of filing of FIR and the order of penalty is liable to be declared as nonest.

The following reliefs are sought for in this application:

- (i) Call for the records leading to the issue of Annexure A6, A7 and A8 and quash the same, duly declaring that the same are illegal, discriminatory and unconstitutional;
- (ii) Call for the records leading to Annexure-A15 and quash the same.
- (iii) Declare that the applicant's late husband must be deemed to have died while in service on 4.9.2002 and declare further that the

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applicant is entitled to the benefit of all the death benefits, including death gratuity, family pension etc. as provided for under the Rules with effect from 5.9.2002 and direct the respondents to grant the same forthwith;

(iv) Direct the respondents to consider and grant appointment on compassionate grounds to any one of the wards/ Dependents of the applicant's late husband M. Manoharan.

(v) Direct the respondents to grant the applicant interest on arrears of pension, death gratuity etc. at the rate of 10% per annum to be calculated from such date as may be found just, fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case;


(vi) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

3] Respondents have filed a reply statement denying the averments of the applicant, and that the penalty of removal from service cannot be modified, and the prayer of the applicant is not maintainable either in law or on facts. According to them, late M. Manoharan unauthorizedly absented himself from duty from 1.9.2001 onwards, in violation of Rules, hence a charge Memorandum dated 22.10.2001 for major penalty was issued to him by the Disciplinary Authority, Divisional Mechanical Engineer, Diesel, Erode. After long absence Sri Manoharan reported for duty on 7.11.2001 and he was permitted to join. The Charge Memo dated 22.10.2001 was processed for further action and while the Charge Memo was under process, he again unauthorizedly absented from duty from 27.12.2001 onwards. Hence the Charge Memo was sent by Registered Post on 5.2.2002 to his residential address at

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Erode advising him to inspect and take extracts of the documents mentioned in the enclosed list of documents within 10 days and also to take the assistance of any other railway official or Railway Trade Union for representing his case before the Inquiry Authority. As the charged employee did not submit any explanation, the Post Master, Erode Railway Colony Post Office was requested by letter dated 18.6.2002 to confirm delivery of the letter and the Post Master informed that the Registered letter was delivered to the addressee on 6.2.2002, but Sri Manoharan did not bother to submit any explanation.

4] In the enquiry, witnesses were examined and was found that the employee was unauthorizedly absent from 13.8.2001 to 15.8.2001, 1.9.2001 to 6.11.2001 and 27.12.2001 onwards. The Inquiry Officer held that the charges levelled against Sri Manoharan were proved and a copy of the enquiry report was forwarded to his Residential address, which was returned with the remarks "not claimed". Taking into consideration the gravity of misconduct the order dated 8.8.2003 was passed imposing penalty of removal from service w.e.f. 27.8.2003. The penalty advice sent to his residential address was returned with the endorsement "left". However, the disciplinary authority considering the earlier service of Sri Manoharan sanctioned compassionate allowance to him equal to 50% of pension w.e.f. 28.9.2003 as per the Memorandum dated 8.1.2004 and no gratuity was sanctioned to him.



5] The applicant had submitted representation on 25.3.2004 requesting cancellation of penalty and quarter vacation notice and for grant of family pension to her and appointment to her son on compassionate ground. She also requested for grant of pension and other settlement dues of her husband treating the penalty of "removal from service" as "termination from service". Sri Manoharan was drawing his salary through Indian Overseas Bank, Erode and on enquiry the Branch Manager informed that a cheque for Rs. 4000/- was debited on 15.1.2002 from his account (Annexure-R4). On considering the entire facts, it is found that the case of the applicant's husband is not a case of genuine missing, therefore, Annexure-A15 letter dated 13.12.2006 was issued based on relevant consideration.

6] It is further averred that the respondents have followed all the Rules and Procedures prescribed for conducting the enquiry and awarded the major penalty. The applicant has not bothered to lodge the FIR within a reasonable time from the alleged date of missing of her husband. According to the respondents, Annexure-A17 to A19 relate to grant of settlement dues to the eligible members of Railway employees, who have suddenly disappeared and whose whereabouts are not known. These orders of the Railway Board have no application in the case of the applicant, as they relate to clear cases of missing employees. In the case of the applicant's husband, he was already

charge sheeted for unauthorised absence and subsequently reported for duty but again absented. The respondents have taken a stand that it is a case of disappearance of the employee to avoid the disciplinary action in order to get the benefit of Railway Board's order dated 22.8.1991.

7] The applicant has filed rejoinder denying that the charge memo dated 22.10.2001 was received by her husband and stating that no communication had ever reached the applicant's late husband, who was admittedly missing from 27.12.2001. In any case, the order of removal from service was issued after the date of deemed demise of the applicant's late husband and the respondents have no case that the applicant's husband is alive or that he was seen alive after 27.12.2001. The applicant has also disputed the Annexure-R4 issued by the respondents to prove that a cheque was issued on 15.1.2002 by late Manoharan.

8] We have heard Ms Rajitha, learned counsel for the applicant and Mr Varghese John, learned counsel for the Respondents-Railways.

Counsel for the applicant produced order dated 23.5.2003 of this Tribunal in OA No.477/202 and order dated 16.8.2004 in OA No.553/2003, wherein this Tribunal had allowed similar claims on the basis of Railway Board's order dated 22.8.1991. However, the counsel for the respondents maintained that the position of the applicant's case was not a "genuine missing" but that of 'unauthorised absence'.

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9] I have carefully scrutinized the pleadings and other materials and orders of the Railway Board placed on record and considered the arguments of the learned counsel for the parties. The grant of settlement dues to eligible family members of Railway employees, who have suddenly disappeared and whose whereabouts are not known are admittedly governed by the Railway Board's instructions and circulars dated 19.9.86, 27.3.91, 22.8.91 and further clarification issued on 21.9.94 (Annexure-A17 to A19 and Annexure-R5). From the earlier instructions of 1986, it is seen that all those cases were to be considered on merit and when an employee disappears leaving the family, 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 would be paid ; and 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 therein. The benefits may be sanctioned on fulfilment of 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; and (ii) An Indemnity Bond should be taken from the nominee/ dependents of the employee that all payments

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will be adjusted against the payment due to the employee in case he appears on the scene and makes any claim. The family can apply to the Head of the Office for grant of family pension etc. in accordance with the prescribed procedure. By order dated 27.3.91 these benefits were made applicable to the case of missing pensioners also. By order dated 21.1.94 it was clarified that the family pension would continue to be sanctioned and paid one year after the date of lodging the FIR, but this will accrue from the date of lodging of the FIR.

10] It was in the letter dated 22.8.91 (Annexure-R/5) that the question of those railway servants, who are missing and whose whereabouts are not known to their family, who were removed from service for unauthorised absence came to be considered. Since the applicant's case falls in one such category, the short question in this case is whether this order of the Railway Board is applicable or not. To appreciate the facts of the case, the Board's letter dated 22nd August, 1991 is extracted below:

"Copy of Board's letter NO.E)D&A)91, RG 6-41 dated 22nd August 1991 addressed to GMs. and others.

Cancellation of penalty of removal from service imposed on charge of unauthorised absence where it later transpires that the case is one of "genuine missing" and grant of consequent benefits to the missing person's family.

Some cases have come to notice where Railway servants who were missing and whose whereabouts were not known to their family were removed from service for unauthorised absence. It has been represented by the N.F.I.R. In P.N.M. Meeting with Railway Board that initiation of disciplinary action in such cases where even the police after all-out efforts have not

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been able to trace the employee is not justified since they are to be presumed as dead under Section 108 of the Indian Evidence Act. The N.F.I.R. also represented that in such cases, the disciplinary action/ punishment should be annulled and the families be granted family pension and their request for compassionate appointment to wards etc., to which they would have been entitled but for the disciplinary action be also considered.

2. The Board have considered the matter and it is clarified that in cases of the type mentioned above where it is established that the Railway employee was really missing and not unauthorizedly absent, the disciplinary action should be treated as initiated on invalid premises and the on going disciplinary action or the punishment order should be annulled. While the annulment of the on going disciplinary proceedings in such cases may be made by the disciplinary authority, in the case of punishment orders already issued, the annulment may be made by the appellate/ revisionary Authority, as the case may be. For this purpose, it is not necessary to follow any 'Revision' or "Review" procedure since the charges / punishment are obviously based on invalid premises. After the dropping of the disciplinary action and annulment of the punishment of removal, as the case may be, the relevant benefits like grant of leave en-cashment, salary dues, retirement benefits etc. may be extended as outlined in Board's letter No. F(E)III/86/PN 1/17 dated 19th September 1986..
3. In cases of the aforesaid type, the question of giving compassionate appointments towards may also be considered after a period of 7 years/ 3 years as provided in item (iii) of Par I of Board's letter No. E(NG)III/78/RC 1/1 dated 7th April, 1983."

11] Para 2 of the above applies in case of on going disciplinary action and also in cases where orders of punishment have already issued. The disciplinary action should be treated as initiated on invalid premises and the on going disciplinary action or the punishment order should be annulled and in case of punishment order already issued this action has to be taken by the appellate /

revisionary authority. It is further to be established that the railway employee is 'really missing' and not 'unauthorisedly absent'. The above order has to be read in the context in which it was issued.


12] These orders were issued when the National Union has taken up the matter with the Railway Board representing that the initiation of disciplinary action in cases where police had not been able to trace out the employee is not justified. After the matter was duly considered by the Railway Board it was clarified that disciplinary action can be annulled if it is established that the railway employee was 'really missing' and not 'unauthorisedly absent'. Emphasis was given to the words '*really missing*' and '*genuinely missing*' as contended by the respondents. According to the respondents, the applicant's case is not one of '*genuinely missing*' as disciplinary action against his unauthorized absence was initiated much earlier to his alleged date of disappearance and the employee had disappeared to avoid the disciplinary action. They contended that the Railway Board's orders which are applicable to the genuine cases of missing persons and not to the cases that of the applicant and the tendency of the employees to take advantage of those provisions to circumvent the disciplinary action by disappearance should be nipped in the bud. The respondents have placed reliance on an order dated 5.4.2006 in OA No. 44/20045 of this Tribunal, wherein it was held that there has to be a nexus between the period of absence covered by the disciplinary



proceeding and the period of missing of the employee. A close scrutiny of the facts of the instant case disclose that the applicant's husband absented himself from duty w.e.f. 1.9.2001 onwards and after a long absence he reported for duty on 7.11.2001 and was allowed to join. When charge memo dated 22.10.2001 was processed for further action he again absented from duty from 27.12.2001 onwards. Charge Memo was sent by Registered Post with Acknowledgment due on 5.2.2002 to his residential address advising him to inspect and take extracts of the documents within 10 days. As the charged employee did not submit his explanation, the Post Master Erode Railway Colony Post office, was requested by letter dated 18.6.2002 to clarify whether the registered cover sent on 5.2.2002 has been delivered to the addressee and in reply the Deputy Manager, Customer Care Centre vide his letter dated 24.6.2002, Annexure-R/2, informed that the registered letter was delivered to the addressee on 6.2.2002. There is no reason to disbelieve the report of the Postal authorities. The respondents conducted an enquiry, though ex parte, and on consideration of the enquiry report imposed the penalty of removal from service vide order dated 8.8.2003 with effect from 27.8.2003. It is, therefore, evident from the above that the disciplinary action had been initiated against the applicant's husband before his reported date of disappearance. Again a doubt cast by the respondents on the conduct of the applicant has also to be considered in this context. Her husband

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was absent from 1.9.2001 and after that he reported for duty on 7.11.2001. He again absented himself from 27.12.2001 onwards. The applicant never approached the employer/respondents or the police informing that her husband is missing, which would have been the normal course to adopt. The FIR was lodged on 5.9.2002 after a long delay of more than 8 months and the reason given for delay was that her husband goes on line work and used to return after 2 or 3 months, which the respondents have disputed. A delay of 2 or 3 month could be accepted but not 9 months. It is seen from the pleadings that the applicant was staying in the Railway Colony itself alongwith other employees of the Railways and there was no difficulty on her part to approach the Authorities to ascertain his whereabouts. Even after the FIR was lodged the respondents were not informed of the same. The police finally submitted a report to the Court of Judicial Magistrate, No.III, Erode on 22.12.2002 stating that the person concerned is 'undetectable'. Even after submission of the police report, the applicant was silent till 25.3.2004 and waited for more than a year to submit her representation to the respondents. The earlier representation submitted was praying for family pension and compassionate appointment, which has been enclosed at Annexure-A5, which is also undated. It is only by Annexure-A9 representation dated 2.3.2004 that the applicant reported the matter to the respondents referring to the police report and missing of her husband. Hence the grounds taken by the applicant



are not borne out by the facts.


13] Similarly, the events in the disciplinary proceedings will also reveal that the charge memo dated 5.2.2002 was received by the applicant as confirmed by the Deputy Manager of the Senior Superintendent of Post Office vide his letter dated 24.6.02 that the registered letter was delivered to the addressee on 6.2.2002. Subsequent communications by the disciplinary authority regarding appointment of enquiry officer and fixing dates for inquiry etc. were returned with the remarks as 'not claimed'. Ex-parte enquiry was held on 3.3.2003 in which the administrative witnesses were examined and produced the attendance register of the charged employee for the year 2001 and 2002 and found that the charged employee was absent from duty from 1.9.2001 to 6.11.2001 and from 27.12.2001 onwards. Even at this stage, had the applicant produced the 'non-detectable' report of the police before the Disciplinary Authority it could have taken notice of the matter. The applicant has waited till 25.3.2004 and only when she was asked to vacate the official quarter she approached the Respondents. In the enquiry the respondents also considered the evidence received from the Bank. Annexure-R4 dated 20.7.2006 of the Chief Manager, Indian Overseas Bank, Periyarnalar, Erode shows that the applicant's husband issued a cheque dated 15.11.2002 for Rs. 4,000/- in favour of one Sri NK Murthy. The applicant has stated that it was a post dated cheque. Even if this explanation has to be considered the cumulative facts and

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circumstances mentioned above, disclose that the entire incident and the conduct of the applicant in not bringing the factual position in time to the notice of the respondents is not free from doubt and is dubious. A mere technical view of the matter as contended by the applicant that the Non-traceable report has been received before the actual order of removal was passed would not be sufficient for bringing the applicant within the purview of the Railway Board's instructions.

14] From the facts as narrated above I am in agreement with the contentions of the respondents that the missing of the applicant's husband was not a case of '*really missing*' or '*genuinely missing*' and he was 'unauthorizedly absent' only to circumvent the enquiry. The circumstances in this case also lead me to draw such a reasonable presumption.

15] The applicant cannot get the advantage of the order dated 23.5.2003 in OA No.477/2002 of this Tribunal as in that case the factual situation was entirely different, as the applicant therein had approached the Railway authority well in advance and requested them to take action to trace out the missing employee and the respondents being aware of the matter issued the order of removal from service. Similarly, the factual situation in OA 553/2003 (order dated 16.8.2004) was also different and the respondents were aware of the facts of missing and lodging of FIR with the Police when the 'non-traceable' report was furnished to the respondents. The respondents have relied on the order



dated 5.4.2006 in OA No.44/05, which is more akin to the facts of this case. In this case, the Departmental proceedings had commenced prior to the filing of the FIR regarding missing of the employee. Hence, in the totality of the facts and circumstances of the case and also in view of the observations made above, I do not find any merit in the prayer of the applicant to grant the relief as sought for and the application is dismissed. No costs.


(SATHI NAIR)
VICE CHAIRMAN

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