

● **Central Administrative Tribunal Lucknow Bench Lucknow.**

CCP No. 5/2005 in O.A. No. 371/95

10th
This, the 10th day of September, 2008.

Hon'ble Shri M. Kanthaiah, Member (J)

Hon'ble Sri A.K. Mishra, Member (A)

Smt. Chand Mati w/o lat Sri Ram Kewal Ex. Teen and Copper Smith,
Loco Running Shed, Gonda, at present r/o Shankarji Wali Gali, near
Shiva Mantorsory School, P.O. Amendkarnagar, P.s., Bajar Khala,
Lucknow. U.P.

Applicant.

By Advocate: Shri S.K. Awasthi

Versus

1. Principal Secretary, Ministry of Railways, Govt. of India, New Delhi.
2. General Manager, Rail Bhawan, Govt. of India, New Delhi.
3. Divisional Railway Manager, NER, Ashok Marg, Hazratganj, Lucknow, U.P.
4. Administrative Officer, NER, Ashok Marg, Hazratganj, Lucknow.
5. Chief Account Officer, NER, Ashok Marg, Hazratganj, Lucknow.

Respondents.

By Advocate: Sri Azmal Khan

ORDER

By Hon'ble Shri M. Kanthaiah, Member (J)

The applicant has filed Misc. Application for restoration of CCP on the ground that on the date of dismissal of CCP i.e. 18th November, 2005, his advocate came late from High Court as such could not be present when the call was called out. Therefore, she sought for restoration of CCP.

2. The respondents have filed objections stating that they have already complied with the Tribunal's order and further that this application for restoration was not maintainable.

3. Heard both sides.

4. The point for consideration is whether the applicant is entitled for relief as prayed for.



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5. The admitted facts of the case are that the applicant filed O.A. No. 371/95 to quash the removal order dated 27.2.89 of removing her husband late Ram Kewal from service and also sought for compassionate appointment but this Tribunal disposed of the said O.A. on 31.10.2002 with a direction to the respondents to make payment of GPF amount of late employee and other admissible dues including the amount of CGEGIS to the applicant with interest @ 10% if not paid within a period of three weeks from the date of a receipt of copy of the order. The applicant is also entitled for interest @ 12% if the respondents fail to pay the amount within 3 months. Thereafter, the applicant also filed Review Application No. 60/2003 but the same was dismissed on 19th July, 2004. Thereafter, the applicant has filed CCP No. 5/2005 on 31.1.2005 and the same was dismissed on 18th November, 2005 with as following observations:-

"It may be mentioned here that even on two earlier occasions no one appeared on behalf of the applicant. The said dates are 7.3.2005 and 25.4.2005. There is an order on record dated 13.11.2003 in M.P. No. 288/2003 in O.A. No. 371/95 wherein it has been stated that since the order has been complied with M.P. No. 288/2003 has become infructuous. On this count or on account of non-prosecution, the application is dismissed."

6. On perusal of the order sheet dated 7.3.2005 and 25.4.2005, it is seen that none appeared for the parties and thereafter the matter was adjourned to 4.7.2005. Even on the date of orders on 18.11.2005, none appeared for both the parties.

7. On perusal of M.P. NO. 288/2003 in O.A. No. 371/95 which is referred in order dated 18th November, 2005 in CCP No. 5/2005 it is seen that the said application was filed by the applicant herself making allegations against the clerk concerned and for action against him during the pendency of O.A. and upon which this Tribunal has passed the orders on 13.11.2003 stating that the said M.P. had become infructuous. The Tribunal's order dated 18.11.2005 reveals that CCP was dismissed on account of non-prosecution. However, in

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this a mention has been made about order dated 13.11.2003 in M.P. No. 288/2003. It is not clear whether it is in respect of compliance made by the respondents. Further, the main O.A. was disposed of on 31st October, 2002 and Review Application was disposed of on 19th July, 2004. Added to it, the said M.P. was filed by the applicant herself against the clerk concerned of this Tribunal. Thus the respondents have no concern in respect of such M.P. and the same is not in respect of the compliance report submitted by the respondents. As such, the dismissal of CCP made on 18.11.2005 was only on account of non-prosecution but cannot be treated as made on account of compliance

8. In view of the above circumstances it is held that the CCP has been dismissed only for non appearance of the parties without recording any remarks about compliance. Therefore, in the interest of justice, it requires further hearing of both the parties. As such, the claim of the applicant is justified for restoration. Accordingly CCP is restored. List the CCP for orders on

16.10.08.


MEMBER (A)

HLS/-


MEMBER (J)

10.9.08