

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 303 of 2009

Reserved on 11.11.2016.

Pronounced on 23rd November, 2016

Hon'ble Ms. Jayati Chandra, Member - A

1. Syed Modh Ali Sabir aged about 57 years S/o Late Haider Abbas R/o 178/24 Kha, Red Gate Hotel Lane (M.N. Abidi Marg) Golaganj, Lucknow.
2. Smt. Haseen Fatima aged about 50 years W/o Syed Mohd Ali Sabir R/o 178/24 Kha, Red Gate Hotel Lane (M.N. Abidi Marg) Golaganj, Lucknow.
3. Syed Mohd Farhan aged about 25 years S/o Syed Mohd Ali Sabir R/o 178/24 Kha, Red Gate Hotel Lane (M.N. Abidi Marg) Golaganj, Lucknow.

..... Applicants

By Advocate: Sri A. Moin

VERSUS

Union of India through

1. The Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. General Manager, South Central Railway, Secunderabad.
4. Chief Personnel Officer, Office of the General Manager South Central Railway, Secunderabad.

..... Respondents

By Advocate: Sri B.B. Tripathi

ORDER

By means of this O.A filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:

- a. To quash the impugned order dated 20.02.2009 passed on behalf of Respondent No. 4 as contained in Annexure A-2 to the O.A.

J. Chandra

- b. To quash the impugned order dated 23.10.2008 passed on behalf of Respondent No. 3 as contained in Annexure A-1 to the O.A.
- c. To quash the impugned order dated 07.05.2008 passed on behalf of the Respondent No. 4, as contained in Annexure A-5 to the O.A with all consequential benefits.
- d. To direct the respondents to make payment of extra-ordinary pension to the applicants within a specified time with arrears alongwith interest @ 18% p.a w.e.f. 29.02.2008 till the date of actual payment.
- e. To direct the respondents to pay the lumpsum gratia of Rs. 10 lacs as admissible under the Rules with interest @ 18% p.a w.e.f the date the same became due i.e. 30.01.2008 till the date of actual payment.
- f. To direct the respondents to correctly fix the pay of late Sri Jafar in view of the facts enumerated and the consequent fixation as per VI Pay Commission and to make the payment of the same within a specified time.
- g. To direct the respondents to regularise the retention of the Railway quarter of late Sri Jafar from 30.01.2008 to 26.05.2008 under the powers vested with the respondents and refund the excess amount charged towards retention of the Railway quarter within a specified time.
- h. To direct the respondents to refund the alleged amount of excess over payment of salary as indicated in the impugned order alongwith interest @ 18% p.a till the date of actual payment particularly when no details have been given about the alleged excess payment.
- i. To direct the respondents to make payment of balance of 60% of arrears of pay on account of implementation of VIth Pay Commission w.e.f. 01.01.2006 till 30.01.2008 including medical leave, salary of July 07 till 30.01.2008 with interest @ 18% p.a.
- j. To direct the respondents to consider the claim of the applicant No. 3 for compassionate appointment in terms of Railway Board order as referred to within a specified time.
- k. To direct the respondents to pay the cost of this application.
- l. Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

J. Chandra

2. The facts of the case as stated by the applicant are that late Sri Syed Mohd Abu Jafar was son of Applicant No. 1 and 2 and elder brother of Applicant No. 3. He obtained four years' training at Jamalpur after qualifying in Special Class Railway Apprentice (SCRA) Examination in the year 2000. He passed B.Tech Examination and was appointed on probation for 1½ years as per order dated 29.06.2005. On completion of probation he joined as Additional Divisional Mechanical Engineer (I) at Gooti (A.P.) on 31.05.2007. Sri Jafar was admitted to the Railway Hospital at Guntakul on 18.07.2007 as a result of conspiracy and torture by one Sri Shrikant, Sr. DME he severely beaten up while discharging his official duties. The applicant No. 1 and 2 on receiving the information went to Guntakul and found that he was suffering from "Anxiety Neurosis". The applicant No. 1 and 2 brought Sri Jafar to Lucknow on 22.07.2007 with due permission of Railway Authorities and Doctors so that late Sri Jafar could be treated at KGMU, Lucknow. Late Sri Jafar remained on medical leave from 18.07.2007 till 23.02.2008. However, he died on 30.01.2008 after his discharge for KGMU on account of a train accident at Charbagh Lucknow which was brought on as a result of harassment, torture and beating. The facts of his death were brought to the knowledge of the Railway authorities. The services of Late Sri Jafar were terminated retrospectively w.e.f. 30.01.2008 by order dated 07.05.2008. This order is violative of natural justice as prima-facie there can be no termination of a person who has already expired.

3. By the impugned order dated 23.10.2008, the claim for payment of family pension has been turned down by respondent No. 4 by wrongly holding as Late Sri Jafar was appointed in the year 2005 and the New Pension Scheme (NPS) had come into effect from 01.01.2004 his case comes under the NPS. This view of the respondents is challenged on the ground that the applicant had joined in the year 2005 on probation for 1½ years but he had been posted at Jamalpur in the year 2001 for 4 years training as Special Class

J. Chandra

Apprenticeship. Rule 23 read with Rule 20 of the Railway Services (Pension) Rules, 1993 states as follows:

“20. Commencement of qualifying service- Subject to the provisions of these rules, qualifying service of a railway servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed, without interruption, by substantive appointment in the same or another service or post:

Provided further that -

(a) *in the case of a railway servant in a Group ‘D’ service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose; and*

(b) *in the case of a railway servant not covered by clause (a), service rendered before attaining the age of **eighteen** years shall not count, except for compensation gratuity;*

21.

22.

23. Counting of service on contract- Service constituting period of probation of a railway servant appointed as a probationer or on probation and also the last two years of apprenticeship period of Special Class Apprentices shall be treated as qualifying service.”

Thus, his qualifying services for the purpose of pension/ family pension and gratuity (DCRG) start w.e.f. 29.06.2003.

4. Further, the case merits award of extra-ordinary pension on death of Late Sri Jafar as he died on 30.01.2008 while on medical leave since July 2007. The Railway Services (Extraordinary Pension) Rules, 1993 categorically provides that all railway servants who entered in railway service on or before 1937 and died on account of accident, the family members of deceased are entitled to extra-ordinary pension under Rule 12 of Extraordinary (Pension) Rules. The

J. Chandra

applicant was suffering from Anxiety Neurosis brought on by the torture undergone at the hands of Sri Shrikant, Sr. DME and others at his last place of posting and was admitted at Guntakul Railway Hospital on 18.07.2007. Rule 3(iii) of the Extraordinary Pension reads as follows:

3. (3) "injury" means an injury as is mentioned in Scheduled I, Permanent Total Disablement shall be deemed to result from every injury specified in Part I of Schedule I or from any combination of injuries specified in Part II of that Schedule where the aggregate percentage of loss of earning capacity (percentage of disability) amounts to hundred per cent or more. Every injury specified in Part II of Scheduled I shall be deemed to result in Permanent Partial Disablement."

Sri Jafar was not suffering from any decease prior to or at the time after joining the railway services. He developed "Anxiety Neurosis" condition only after the treatment he received prior to his admission at Railway Hospital, Guntakul on 18.07.2007. As per medical ticket issued by Railway Hospital at Guntakul he was diagnosed as suffering from Psychiatric disorder with Akathesia which stand in the category of Psycho Neurosis as indicated in Schedule II to the Railway Services (Extra-ordinary Pension) Rules, 1993.

5. While it is admitted that an amount of Rs. 120088/- had been arranged for payment and further an amount of Rs. 16764/- had been arranged for payment towards PF and payment of Rs. 44792/- without forwarding letter regarding the head to which these payments relates.

6. Late Sri Jafar was in service on the date when the VI Pay Commission recommendations were accepted for implementation as such he is entitled for receiving arrears of pay w.e.f. 01.01.2006 till 31.01.2008. Only 40% of that amount has been paid and balance 60% has been indicated as being due later for which there is no justification as the employee has already expired. Even this calculation of arrears as the pay of Sri Jafar has been wrongly fixed as on 01.01.2006 as the respondents have failed to taken into account that the services of Late Sri Jafar were started from 29.06.2003. Thus, he becomes automatically entitled for two

increments in the year 2004-05 as such his past pay and subsequent his revised pay as on 01.01.2006 requires revision.

7. By impugned order dated 23.10.2008 and 20.02.2009, the claim for compassionate appoint of applicant No. 3 has been turned down without application of mind by asserting that applicant No. 3 was not dependent on Sri Jafar but no reasons have been assigned or given as to why applicant No. 3 is not dependent on late Sri Jafar. As per Govt. of India order it is provided that with the prior approval of the Secretary of the Ministry/ Department concerned, the appointment on compassionate grounds may be considered even when there is an earning member in the family of the diseased. As per Swamy's Compilation on compassionate appointment (Annexure A-8) the following provisions have been made:

"EXCEPTIONS - (1) In exceptional circumstances, with the prior approval of the Secretary of the Ministry/ Department concerned, the appointment on compassionate grounds may be considered even when there is an earning member in the family of the deceased.

2. In the deceased was unmarried, one of the dependent brothers/ sisters will be eligible for consideration, on giving an undertaking that he/she will look after the other family members who were dependent on the deceased Government servant."

8. By the impugned order dated 20.02.2009 the period of 24.10.2007 to 30.01.2008 has been shown as leave without pay whereas this period should have been read as extraordinary leave on medical ground, particularly since it is an admitted fact that late Sri Jafar was undergoing treatment at Railway Hospital at Guntakul and subsequently at Lucknow.

9. By the impugned order dated 20.02.2009, it has been indicated that an amount of Rs. 5000/- has been deducted towards the arrears of rent water etc. for the railway quarter allotted. In this connection, it is stated that the applicant No. 1 had submitted a detailed representation on 06.05.2008 to

J. Chandra

the authorised persons of the respondent No. 4 that he was not aware about the rule position, as such he could not vacate the railway quarter on behalf of his son and subsequently the railway quarter was vacated on 26.05.2008. The applicant No. 1 has requested for permission for retention of railway quarter from 31.01.2008 to 26.05.2008. The said retention application is still pending as no final decision has been taken.

10. The respondents through their CA have denied the claims of the applicants stated that it is admitted that late Sri Jafar was taken as the special class apprentice and completed his training on 29.06.2005. Thereafter, he joined on probation. As per Director Jamalpur's letter No. IMEWE.02.14/2004 dated 25.05.2007, he reported for his duty on 30.05.2007 and was posted as Assistant Divisional Mechanical Engineer/Diesel/Gooty (Guntakal Division) and he joined on 31.05.2007. Late Sri Jafar was hospitalised on 18.07.2007 at Railway Hospital at Guntakul and diagnosed from Anxiety Neurosis and was placed on sick list w.e.f. 18.07.2007. The applicant No. 1 came and took his son with him to Lucknow on 20.07.2007 for better treatment against the advice of the Railway Doctors given as per Sr. Medical Superintendent/ Administration/ Railway Hospital Guntakal's letter No. G/MD/84/Treatment dated 20.07.2007. This specific averment of ill treatment, harassment and torture by Sri Srikant, Sr. DME has been denied specially as the said Sri Srikant has not been made one of the respondents. Late Sri Jafar was placed on sick list from 18.07.2007 for one month (30 days) on the request of the applicant No. 1 i.e. father of Late Sri Jafar. He continued on sick list from time to time till 27.01.2008. He was discharged from sick list from 27.01.2008 as per Chief Medical Superintendent/Guntakal's letter dated 13.02.2008. As per the Leave Rules (Medical) extension of leave could not be granted to a fit person unless he was declared sick by Railway Doctors for which an employee is required to attend certain mandatory medical examination. His extension of

S. Chandra

medical leave was sent by his father (applicant No. 1) not by the officer concerned. Late Sri Jafar as per information died as he was run over by a train at Charbagh Railway Station and as such it cannot be said that his death was due to an incident occurring at his work spot while on duty.

11. The memorandum dated 07.05.2008 was issued terminating his services w.e.f. 30.01.2008 in order to start the process of settlement of dues. It has been clearly stated in the body of the letter that such termination order is without prejudice and the use of the word "termination" has no negative connotation. It simply means that the services 'cease' to exist. This term 'termination' is being used in other such cases in the railways only to start processing the settlement of dues.

12. Late Sri Jafar joined railway services on 31.05.2007. He was governed by new pension scheme which came into effect from 01.01.2004 in terms of Railway Board letter No. F(E)III/2003/PNI/24 dated 31.12.2003. He also submitted the 'New Pension Scheme' proforma at the time of his joining in which he has mentioned the date of his joining into service as 29.06.2005 initially on probation. The provision of treating the period of last two years of apprenticeship of special class as per rule 23 of the Railway Services (Pension) Rules, 1993 has been deleted in terms of Railway Board letter No. F(E)/III/99/PNI/38 (modification) New Delhi dated 23.05.2000, as such the date of appointment of late Sri Jafar is to be counted from 29.06.2005 which is also date of his joining that he himself has indicated in his proforma filled up for New Pension Scheme.

13. It has been clarified by letter dated 23.10.2008 that an amount of Rs. 120088/- has been paid as Central Government Employees Group Insurance Scheme and Rs. 16764/- has been paid towards Provident Fund and Rs. 44792/- has been paid towards 40% of arrears consequent on implementation of VI Pay Commission. In so far as the 60% of the arrears of VI CPC are concerned, the same

amounting to Rs. 74729/- was paid through DD No. 430676 dated 15.10.2009 and the same was sent through RL No. 899 dated 18.10.2009.

14. The salary of late Sri Jafar has been fixed correctly as the last two years of apprenticeship period of Special Class Railway Apprentice has been deleted for the purposes of calculating the qualifying service. Therefore, the date of appointment becomes 29.06.2005. He had been given two advance increments on 25.04.2006 and 25.01.2007 as per instructions contained in Board's letter No. E(TRG)89/(13)/3 dated 15.09.1992.

15. As per Railway Board's letter No. E(NG)II/88/RC-1/Policy dated 04.09.1996, the compassionate appointment can be offered only to the dependent family members of the deceased employee, subject to the condition that the candidate proposed for appointment is shown as dependent on the Ex. Employee as per Pass Rules. As per the pass declaration submitted by late Sri Jafar at the time of joining this Railway he has not shown any one as dependent on him. Applicant No. 3, Syed Modh Farhan was not dependent on late Sri Jafar but on his father who is alive and working in Central Government office as Senior Account Officer.

16. In so far as the retention of railway quarter allotted to late Sri Jafar at Guntakal is concerned, as per existing instructions, railway quarters can be retained upto a period of 24 months on normal rent in death cases. Accordingly, permission was given to retain the railway quarter at the request of applicant No. 1 from 31.01.2008 to 26.05.2008 on normal rent. There is no provision to continue to retain the railway quarters free of cost. A total amount of Rs. 15497 was recovered from the settlement dues as per the following chart:

1. Over payment of salary for the month from 04.09.2007 to 23.10.2007	Rs. 10469/-
---	-------------

T. Chandra

2. Arrears of rent from 24.10.2007 to 26.05.2008	Rs. 4122/-
3. Arrears of water charges	Rs. 417/-
4. Arrears of Electricity Installation (Geyser)	Rs. 209/-
5. Arrears of Electricity Energy	Rs. 280/-
Total	Rs. 15497/-

17. The applicants filed the rejoinder affidavit. They have reiterated the points raised in the O.A. They further stated that the respondents themselves had concealed the letter sent by applicant No. 1 for extension of medical leave upto 23.02.2008 which is contradictory to the statement in order dated 20.02.2009. In Para 3 of the impugned letter they have themselves mentioned that they are in possession of leave application from 24.12.2007 to 23.02.2008. The proforma for New Pension Scheme filled up by Late Sri Jafar does not bear any date of filling but it seems to have been forwarded on 20.06.2007 which is during the period of severe harassment which resulted with the occurrence of bleeding on 18.07.2007 as such there to be in a close nexus to deny legitimate benefits. There is a contradiction as 10% employee's share has never been deducted from Late Sri Jafar till his death. This 10% deduction cannot be made subsequently after the death of late Sri Jafar. The provision of deleting the last two years of apprentice period is denied due to failure of respondents to annex any proof.

18. The settlement of medical leave between 18.07.2007 to 30.01.2008 is also disputed. Leave application from 18.07.2007 to 30.01.2008 was handed over to Sri Srikant, Sr. DME and permission had been given by Sri Srikant. Leave applications from 18.08.2007 to 16.09.2007, 17.09.2007 to 16.10.2007, 17.10.2007 to 24.11.2007, 25.11.2007 to 23.12.2007 and 24.12.2007 to 23.02.2008 were sent to Sr. DME, Sri Shrikant and Dr. Sri B.D. Joshi by speed post after telephonic talks. Copies of these were also handed over to the welfare inspector. During the medical

leave, late Sri Jafar was taking treatment of Dr. P. Narain, MBBS of Gomti Nagar who advised late Sri Jafar to take rest from 18.07.2007 for four months. His case became suddenly critical and admitted to KGMU, Lucknow w.e.f. 27.12.2007 to 09.01.2008 and discharged on 09.01.2008 and was advised to attend hospital after 15 days. As such the medical leave has to be determined in accordance with leave rules as applicable. Hence, the entire period should be treated as leave on medical ground. Hence, part of the leave as leave on half pay and leave without pay is not correct.

19. Heard the counsel for the parties and perused the records on file.

20. Based on the submissions made by the learned counsel for the parties and on the perusal of records the following issues have been identified for adjudication:

- (i) Determination of date of joining for the purpose of Pay/pension fixation of late Sri Jafar and arrears payable, if any.
- (ii) Eligibility for consideration under Railway Services (Extraordinary Pension) Rules, 1993.
- (iii) Determination of leave.
- (iv) Retention of railway quarter and charges thereof.
- (v) Settlement of dues including justification of recovery made.
- (vi) Consideration of compassionate appointment of Applicant No. 3.

21. **Determination of date of joining:** The learned counsel for the applicant has relied upon Rule 23 of Railway Services (Pension) Rules 1993 for the averment that the date of qualifying service should be 29.06.2003. The last two years of apprenticeship as period of Special Class Apprentice are to be counted as qualifying service. A library copy of Bahri's compilation of Railway Board's orders on establishment matters including financial Directorate of

T. Chandra

2000 contains RBE No. 100/2000 on the subject of Amendment to the Railway Services (Pension) Rules 1993 vide No. F(E)III/99/PN1/38 (Modification) dated 23.05.2000 reads as follows:

“NOTIFICATION

S.O. No. In exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution, the President hereby makes the following rules further to amend the Railway Services (Pension) Rules, 1993, namely :-

- i. These rules may be called the Railway Services (Pension) First Amendment Rules, 2000.**
- ii. They shall come into force from the date of their publication in the Official Gazette.**
- 2.**
- 3.**
- 4.**
- 5. In Rule 23 of the said rules, the words "and also the last two years of apprenticeship period of special Class Apprentices" shall be deleted."**

22. As late Sri Jafar joined as Special Class Apprentice in the year 2005, although no appointment orders have been provided but by his own admission the applicants stated that late Sri Jafar was sent for four years training in the year 2000 but was appointed on w.e.f. 29.06.2005. Therefore his case is squarely covered by the RBE order dated 23.05.2000 and as such, Railway Services Extraordinary Pension Rules 1993 is not applicable on him. Thus, the salary and pensionary benefits of Late Sri Jafar are to be covered by the actual date of joining being 29.06.2005. Therefore, he is also covered by the New Pension Scheme since New Pension Scheme came into effect from 01.01.2004 in terms of Railway Board letter No. F(E)III/2003/PNI/24 dated 31.12.2003.

23. As the entire averment of the applicants for revised salary is based on the erroneous belief that the service date of late Sri Jafar is to be counted w.e.f. 29.06.2003 which is

J. Chaviche

not correct. Thus, his case for grant of increment and entitlement for qualifying services for leave etc. is to be from 29.06.2005. The respondents have stated that the applicant has already been granted two advanced increments on 25.04.2006 and 25.01.2007. In the matter of payment of arrears of 6th CPC, it was admitted that the 40% of the same based on initial date of appointment being 29.06.2005 has been paid. Subsequently it has not been denied that 60% payment has been paid by D.D. No. 430676 dated 15.10.2009. Therefore, the case for re-fixation of the salary, arrears thereof and revised pension is not allowed.

24. The averments of the applicants that 10% of the salary had not been deducted towards contribution to the NPS cannot now be interpreted as his eligibility for his continuance with the old pension scheme since the old pension scheme had ceased to exist prior to the entry into service by late Sri Jafar w.e.f. 01.01.2004.

25. **Eligibility for consideration under Railway Services (Extraordinary Pension) Rules, 1993:** The applicants have stated that late Sri Jafar became the victim of "Anxiety Neurosis" as a consequence of torture, harassment and ill treatment etc. from Sri Srikant, Sr. DME and others in his place of posting. He was beaten up and was admitted in hospital consequently on 18.07.2007. Subsequently, late Sri Jafar continued to be treated for the same condition in Lucknow and became victim of a rail accident as a direct consequence. The Rule 4 of Railway Services (Extraordinary Pension) Rules, 1993 reads as follows:

"4. (1) (a) Disablement shall be accepted as due to railway service provided it is certified that it is due to wound, injury or disease which -

- (i) is attributable to railway service, or*
- (ii) existed before or arose during railway service and has been and remains aggravated thereby.*

J. Chandra

(b) Death shall be accepted as due to railway service provided it is certified that it was due to or hastened by-

- (i) a wound, injury or disease which was attributable to railway service, or*
- (ii) the aggravation by railway service of a wound, injury or disease which existed before or arose during railway service.*

(2) There shall be a casual connection between: -

- (a) disablement and railway service,*
- (b) death and railway service,*

for attributability or aggravation to be conceded. Guidelines in this behalf, as provided in the Appendix appended to these rules shall be treated as part and parcel of these rules.

Clarification:- *It will be seen from the new (revised) Forms C, D and E that these forms of medical certificates have been so designed that they would indicate whether the entitlement criteria laid down in rule 4 have been satisfied or not, and therefore, normally, no other separate certificates in that behalf may be necessary. It is essential for the Administrative Officer as well as the Accounts Office concerned to satisfy themselves that the death or disability is, in fact, attributable to or aggravated by the Railway service which alone makes an Extra Ordinary Pension Award admissible and for that purpose, it is essential for both of these authorities to satisfy themselves in that behalf and certify the nexus and casual connection between disablement and railway service or between death and railway service (as the case may be), in any particular case, as laid down in the rule 4 on the basis of the medical and other documents regarding the case. If a railway servant had died in such circumstances and that a medical report could not be secured, even then, the nexus and the casual connection between death and railway service has to be established before conceding acceptance of death due to Government service. (Railway Board's letter No. PC III/78/EOP/3/Main dated 18-12-1981).*

(3) Notwithstanding anything contained in these rules, the degree of default or contributory negligence on the part of a railway servant may be taken into consideration in making an award under these rules in favour of such railway servant, but, shall not be taken into account where such award is made in favour of the family of the such railway servant.

J. Chandra

26. In the present case the applicants are making an averment that late Sri Jafar's Anxiety Neurosis was on account of harassment at work place. They have not provided any medical certificate issued by first doctor who examined him at the time of admission to Railway Hospital Guntakul. In fact, it is admitted fact of both the parties that late Sri Jafar was discharged from Railway Hospital Guntakul on 20.07.2007. The applicants have in their rejoinder stated that initially the applicant was under treatment of one Dr. Narayanan, MBBS, Gomti Nagar, Lucknow. Although in the O.A he had mentioned that the purpose of removing late Sri Jafar from Railway Hospital at Guntakul was to allow him to treat at KGMU, Lucknow. The applicants have elaborated that late Sri Jafar was critical and admitted to KGMU, Lucknow only on 27.12.2007 and was discharged on 09.01.2008. Again there is no medical report to demonstrate that the hospitalization was indeed on account of "Anxiety Neurosis" or some other cause. Moreover, repeatedly in the leave applications dated 14.08.2007, 13.09.2007, 09.10.2007, 19.11.2007 and 22.12.2007 the applicant No. 1 while sending the case for medical leave has continuously stated that late Sri Jafar "is recovering well". Therefore, the applicants have failed to establish that the condition as specified in Rule 4 of Railway Services (Pension) Rules, 1993 has been met. Hence, I am not inclined to interfere in the decision taken by the respondents in the matter of extraordinary pension.

27. **Determination of leave:** The applicants have stated that they had forwarded the leave applications after telephonic conversation for the period 18.08.2007 to 16.09.2007, 17.09.2007 to 16.10.2007, 17.10.2007 to 24.11.2007, 25.11.2007 to 23.12.2007 and 24.12.2007 to 23.02.2008. Such being the case read with the fact that the date of joining of late Sri Jafar is to be treated as 29.06.2005. The matter of adjustment of the period against various types of leave entitled may be freshly examined.

J. Chandre

28. The effect of impugned order dated 07.05.2008 by which the services of the late Sri Jafar has been terminated w.e.f. 30.01.2008 is to be examined in the light of any adverse implication on the late Sri Jafar. The respondents have themselves admitted that the termination is mere a formality to begin the process of settlement of dues. Furthermore, they have stated that this is usual practice. It is also stated that the termination is to be interpreted merely as "cessation of service". From the fact that all dues etc. have already been paid and it is usual practice of the department, there is no need to interfere with the order.

29. **Retention of railway quarter and charges thereof:** It is clear from the chart at Para 16 above that the certain recoveries have been made from the settlement dues of late Sri Jafar. In so far as arrears of rent, water charges, electricity charges and electricity installation charges are concerned, the respondents have stated that these arrears are computed on the normal licence fee levied on the government quarter as Railway quarter can be retained only on normal rent for 24 months in death cases. There is no provision for retaining the quarter free of cost, as such recovery on account of rent from 24.10.2007 to 26.05.2008 and arrears of water charges, electricity charges and electricity installation charges have been legitimately adjusted and warrant no interference.

30. **Settlement of dues including justification of recovery made:** However, in so far as recovery of Rs. 10469/- as over payment of salary from 04.09.2007 to 23.10.2007 is concerned, in view of ratio laid down by the Hon'ble Supreme Court in **State of Punjab v. Rafiq Masih (2015) 4 SCC 334**, wherein the Court laid down that employees, who are beneficiaries of even wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. This benefit is extended to lower salaried employees and those who are close to retirement or are retired. In this case, the recovery not made in the life time of the employee cannot be recovered from the terminal benefits

T. Chandra

(even if the terminal benefits are on account of death and not retirement). Hence, Rs. 10469/- recovered from the salary must be refunded to the applicant.

31. Consideration of compassionate appointment of

Applicant No. 3: The Hon'ble Apex Court in catena of decisions has said that compassionate appointment is not a matter of vested right and it must be seen in accordance with the scheme of the department. Further, in case of State of J&K & Others Vs Sajad Ahmad Mir, Civil Appeal No. 6642 of 2004 delivered on 17.07.2006, the Hon'ble Apex Court held that the whole purpose of compassionate appointment of a family member of a Government employee dying in harness is to obviate hardship likely to be caused to the family and adverse financial difficulties which it is likely to face due to death of its bread earner. Such appointment is not an appointment under statutory right but is in the nature of concession keeping in view extreme hardship of indigent family of the deceased employee. The case of compassionate appointment becomes less valid if the family has managed to exist for a number of years after the death of the earning member. In this particular case applicant No. 3 was not dependent upon the late Sri Jafar as per his own declaration of dependents.

32. The applicants have sought the shelter of DoPT order as quoted in Para 7 above. It is clear from the reading of the Exception clause that the approval of the Secretary of the Ministry/ Department is to be sought only when appointment on compassionate ground is being considered even when there is an earning member in the deceased family. It cannot be interpreted as extending to all cases nor does it state where the decision is to be turned down a case of compassionate appointment, the same has to be approved by the Secretary of the Department. It is also to be noted that the Railway Department's scheme for compassionate appointment has not been produced by the applicant. In this case, Sri Syed Mohd Farhan, Applicant No. 3 is brother of the deceased has not denied that the applicant No. 1 is in

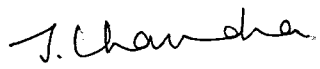
T. Chandra

government service. The first dependency of any family member particularly as son is on the father and not on the brother. Further, late Sri Jafar at the time of joining had indicated the fact that he did not have any dependent including his mother. Therefore, the case for compassionate appointment warrants no interference.

33. Based on the discussions above, the O.A is disposed of with the directions to the respondents to:

- (a) adjustment of the period between 04.09.2007 to 30.01.2008 with leave at the credit of late Sri Jafar taking his date of joining the service as on 29.06.2005 as per rules.
- (b) refund of Rs. 10469/- recovered from the salary due.

No other relief. No costs.


(Ms. Jayati Chandra)
Member (A)

RK