

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

O.A. No. 19/92 (L)

1. Smt. Pramila Saxena
2. Sri Uday Raj Saxena

Applicants

VERSUS

Union of India & Others

Respondents.

Sri Aakhilesh Sahai : Counsel for the Applicants.

Sri Manik Sinha : Counsel for the Respondents.

Hon'ble Mr. S.N. Prasad - J.M.

(Hon'ble Mr. S.N. Prasad-Judicial Member)

The applicants have approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985, with the prayer to quash the impugned order contained in Para 10 of the Counter Affidavit filed in Writ Petition No. 1943 of 1990 paper one of compilation No. 1 which was received by the applicants on 15.7.91, for directing the respondents to pay family pension from the date of the death of deceased Digamber Nath, husband of the applicant no. 1, and for further direction to the respondents to issue appointment order in favour of the applicant no. 2, on compassionate grounds.

Briefly stated the facts of this case, inter-alia, are that the applicant no. 1 after untimely death of her husband on 24 October, 1967 during the minority of her three daughters and only son applied to the respondent no. 1 by name through registered letter for payment of all the benefits, pensions etc. As well as for appointment on compassionate ground and thereafter despite issue of reminder by registered-post and persistent efforts, nothing could materialise and the claim of the applicant for family pension and as well as for giving appointment to the applicant no. 2 on compassionate ground were rejected with the contention that the aforesaid Digamber Nath had resigned w.e.f. 07.8.63 and the said resignation was accepted by the Railway Administration.

In the counter reply filed by the respondents, it has been contended, inter-alia, that there was no

illegality of any kind in rejecting the claims of applicants regarding grant of family ~~and~~ pension and compassionate appointment to the applicant no. 2 because of the fact, the husband of the applicant no. 1 namely deceased Digamber Nath had resigned voluntarily and spontaneously and his resignation was accepted which became effective on 07.0.63 after the expiry of the period of notice of one month and after the death of aforesaid Digamber Nath the applicant no. 1, was paid all consequential benefits admissible to her under the rules. It has further been contended that after acceptance of the resignation tendered by aforesaid Digamber Nath a story to the effect that the aforesaid Digamber Nath was patient of acute mental ailment and that he might have sent the resignation under mental unsoundness has been concocted by Sri Vishwambhar Nath the elder brother of the aforesaid Digamber Nath, who was X.E.N./Con/B.G., N.E. Railway Gorakhpur as is evident from the letter written by the said Sri Vishwambhar Nath dated 23.3.79 and the forwarding endorsement made by him (Vide Anx. R-1 & R-2 to the counter reply).. It has further been contended that the aforesaid Digamber Nath tendered his resignation in the year 1963 as specified above and as such the resignation letter cannot be filed at this stage as same was destroyed as per rules (Copy of circular regarding destruction of records is Anx. No. R-4 to the counter reply). Thus in view of above circumstances the application of the applicant should be dismissed.

Rejoinder affidavit has been filed by the applicant no. 2 wherein almost those very grounds and view-points have been setout as already mentioned in the main application.

I have heard the learned counsel for the parties & have thoroughly gone through the records of the case.

The learned counsel for the applicant, while drawing my attention to the contents of the application, counter affidavit, rejoinder affidavit and the papers annexed thereto has argued reiterating the view-points

as set out in the application and with rejoinder affidavit that the aforesaid deceased Digamber Nath never tendered his resignation but he was in service upto his death, and has further argued that the respondents have wrongly and illegally rejected the claim of the applicants under the garb of so called resignation tendered by the aforesaid Digamber Nath, though infact as would be obvious from the perusal of the records that from the aforesaid Digamber Nath had not tendered his resignation; and has stressed on paper no. 18 of compilation no. 2 that this letter is an indicator of the fact that the aforesaid Digamber Nath had not tendered his resignation while he was in service upto the fag end of his career and he had been suffering from mental ailment, and has further argued that the applicants are entitled for reliefs sought for.

The learned counsel for the respondents while drawing my attention to the pleadings of the parties and the paper annexed thereto and while reiterating the contentions as set-out in the counter reply, has stressed that from the perusal of Para 4 (IV) of the application of the applicant, coupled with Anx. R-3 which is extract from the contributory Provident Fund Book of 1969-70 clinches the entire matter and establishes beyond any shadow of doubt that the aforesaid Digamber Nath had resigned and his resiganation became effective since 7.8.63 after acceptance by the competent authority concerned as there is clear endorsement to this effect and has further argued that paper no. 18 of compilation No. 2 which purported to be a letter written by General Manager (E), N.E. Railway Gorakhpur to the G.M. (Personnel) N.E.R. Gorakhpur should not be relied upon particularly in the face of the fact that the elder brother of said Digamber Nath namely Vishwambhar Nath was ^{who} E.E.N./Con/B.G., N.E.Rly Gorakhpur ¹ who had recommended the case of the applicant being elder brother of deceased Digamber Nath as would be obvious from perusal of paper no. 15 to 17 of compilation no. 2, and has further argued that the claims of applicants were legally and validly rejected by the competent authority concern and as such applicants are not entitled to any relief.

This is worthwhile making mention of this fact that a careful perusal of para 4(IV) of the application of the applicants shows the tacit admission of the fact to the effect that notice period was to expire on 7.8.63. In this context it is also important to point out that Annexure A-III to the counter reply which is an extract from the contributory Provident Fund 1969-70 pertaining to the said Digamber Nath bears clear endorsement regarding the tendering of resignation by the said Digamber Nath which became effective from 7.8.63; and it further shows that the amount which were lying outstanding at the credit of the said Digamber Nath by way of contributory Provident Fund were paid to the applicant Rs. 1 in the year 1970; and paper No. 22 of compilation No. 2 further shows that as per order of the High Court, the respondents were ordered to make the payment of all dues and benefits which have accrued to the applicants, by 10.7.1991.

This is also important to point out that paper No. 18 of the compilation No. 2 which purports to be photocast copy of the letter of General Manager(S) N.E. Railway Gorakhpur to General Manager(P) N.E. Railway Gorakhpur, dated 23.5.80 does not bear signature of the officer concerned by whom this letter was signed. In this connection, this fact should not be lost sight of that as per provisions contained in circular letter dated 17.10.1968, copy whereof is Annexure A-4 to the counter reply, inter-alia, shows that after 3 years of retirement and after 10 years of actual ~~after~~ resignation or discharge the papers are destroyed. The respondents have not been able to file letter or produce the resignation tendered by the aforesaid Sri Digamber Nath as the same has been destroyed due to expiry of the prescribed period of 10 years as resignation was tendered by aforesaid Sri Digamber Nath in the year 1963 as referred to above. This is also pertinent to remark that for the reasons best known to the applicants, original of the aforesaid paper no. 18 of compilation no. 2 has not been filed, though in the circumstances of the case that was

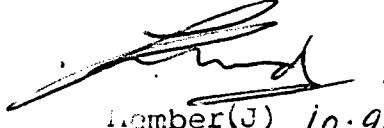
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quite essential which may reveal and highlight the contention of the applicant. Thus, from the scrutiny of the entire material on record and keeping in view the circumstances of the case, I find that the ^{~ said ~} papers no. 18 is found to be no of avail to the applicant, and other papers annexed to the application by the applicant and filed in compilation no. 2 are also found to be ~~way~~ of no help to the applicant.

Thus, from the foregoing discussions and after ^{over} pondering all the aspect of the matter and keeping in view all the material and evidence on the record, I find that the application of the applicant, is devoid of merit ^{and} same is to be dismissed. ~

In the result, the above application of the applicant is dismissed without any order as to costs.


Member(J) 10.9.92

Lucknow Dated 10.9.1992.
(RKA)