

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW**

Dated: This the 23rd day of December, 2016

HON'BLE MS. JAYATI CHANDRA, MEMBER -A
HON'BLE DR. MURTAZA ALI, MEMBER - J

Original Application No. 541 OF 2009

Smt. Kusama Pandey, aged about 55 years, widow of Late Sri Prabha Shanker Pandey, resident of Village & Post –Neorana, District Unnao.

..... Applicant

By Adv: Shri Praveen Kumar.

V E R S U S

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Chief Mechanical Engineer, D.R.M. Office, Northern Railway, Hazratganj, Lucknow.

..... Respondents


By Adv: Shri B. B. Tripathi.

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER – J


The present O.A. has been filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985 seeking to quash the impugned order dated 8.1.1987 and to direct the respondents to pay her all retiral benefits of her husband and sanction family pension to the applicant w.e.f. 20.5.1990 along with interest@ 12% per annum.

2. The brief facts of the case are that the husband of the applicant Sri Prabha Shanker Pandey, was working as 'Tin Smith' in the Carriage & Wagon Shop, Alambagh Lucknow. It has been alleged that he was



implicated in a false criminal case in the year 1982 and he was placed under suspension vide order dated 17.3.1982. He died while in service on 20.5.1990. The applicant preferred several representations to the respondents for sanctioning her family pension, but she has not yet been granted family pension. It has been alleged that the conduct of petitioner's husband leading to his conviction was not examined before passing of the impugned order of his removal dated 8.1.1987 and thus it is illegal and void.

3. In the counter Reply, filed on behalf of respondents, it is stated that prior to this O.A., the son of applicant had preferred an O.A. No. 19 of 2002 claiming compassionate appointment and the said O.A. was dismissed by this Tribunal on 23.8.2009. It is further stated that the deceased employee Sri Prabha Shanker Pandey was involved in a murder case and he was convicted under section 302 I.P.C. on 9.4.1983. He had filed a Criminal Appeal No. 308/1984 before Hon'ble High Court against his conviction and during pendency of said criminal appeal, he was murdered on 20.5.1990. It is also stated that after conviction, a show cause notice dated 20.9.1986 was served upon the husband of the applicant and after considering his reply dated 10.10.1986 (wrongly stated as 10.10.1996), he was removed from service vide order dated 8.1.1987. It is submitted that the applicant had initially concealed the facts regarding removal from service of her deceased husband and also his involvement in a murder case. It is also stated that the O.A. is barred by limitation and the applicant is not entitled to family pension.



4. In the Rejoinder, the applicant reiterated the averments made in the O.A. and further stated that she had no knowledge in respect of removal order dated 8.1.1987 and it was never served upon her husband. It has also been alleged that during pendency of appeal filed against the conviction order, the impugned removal order might not be passed and the applicant is entitled to the family pension.

5. After hearing of parties, the O.A. was earlier dismissed on 26.8.2011 with the following observations:

"The order of the Tribunal dated 20.5.2011 clearly states that the Objection filed by the respondents regarding the applicant having concealed certain facts while filing the present O.A. It was further submitted by the respondents that the applicant's husband was removed from service, which was well within the knowledge of the applicant and thereafter the Tribunal rejected the M.P. No. 308 of 2011 for summoning the original records. The Tribunal was inclined to dismiss this O.A. on 20.5.2011 but the counsel for the applicant requested for one opportunity. Thereafter, the applicant was given several opportunities to produce the evidence to the fact that she is entitled for grant of family pension but could not produce any evidence despite several opportunities given to the applicant.

Since the applicant has not come with clean hands before this Tribunal as pointed out in order dated 20.5.2011 mentioned above and further the order of this Tribunal dated 15.7.2011 has not been complied with as yet, the O.A. is dismissed. No order as to costs."

Aggrieved by the said order, the applicant had filed Writ Petition No.2085(SB) of 2011. Hon'ble High Court quashed the order dated 26.8.2011 passed by this Tribunal and in view of order dated 4.7.2016, the O.A. has been restored to its original number.

6. Heard the learned counsel for applicant Sri Praveen Kumar and Sri B. B. Tripathi, learned counsel for respondents and perused the record

7. Learned counsel for applicant contended that while passing the impugned removal order dated 8.1.1987, the respondents did not



consider the conduct of the applicant which led to his conviction in the criminal charge and therefore, impugned order is liable to be set aside. He relied upon a judgment of this Tribunal dated 10.12.2013 in O.A. No. 64 of 2006 Ravinder Kumar Vs. Union of India and others .

8. Learned counsel for the respondents argued that after conviction of husband of applicant under Section 302 IPC, a show cause notice was issued to him and after consideration of his representation, the impugned removal order was passed. It is also contended that the said removal order was sent to the employee at his all 3 available addresses and he was fully aware of his termination order. It has also been submitted that the judgment dated 10.12.2013 referred by the learned counsel for the applicant is inapplicable to the present case, as the conduct of applicant, which had led to his conviction, was duly considered by the respondents and detailed and reasoned order was also annexed along with the impugned removal order dated 08.1.1987.


9. It is not in dispute that the husband of applicant late Sri Prabha Shankar Pandey was convicted under Section 302 IPC and after conviction, a show cause notice was given to him which was also replied by him where in it was stated that he had already filed a criminal appeal before Hon'ble High Court against the order of his conviction and so no action be taken against him.

10. On perusal of show cause notice dated 20.9.1986 (Annexure-3 TO OA NO.19/2002), representation dated 10.10.1986 (Annexure-RA-1) and



, impugned order dated 08.01.1987 (Annexure-CR-2) , it is evident that the respondents had considered the circumstances under which the husband of applicant was convicted under Section 302 IPC and they found his conduct, which had led to his conviction, was such as to render his further retention in public service undesirable. A penalty of removal from service was proposed in the said show cause notice and only after consideration of representation preferred by the deceased employee, the impugned removal order dated 08.01.1987 was passed. From the perusal of impugned removal order dated 8.1.1987, it is also evident that the detailed reasons were also attached with the impugned removal order and the copy of said removal order was sent to the husband of applicant at all his three addresses available in the office . Under these circumstances, it cannot be presumed that the impugned order was not delivered to the late employee till his death i.e. 20.5.1990.

11. We have also perused the averments made in O.A. No. 19/2002 (Annexure-1 to M.A. No.1037/10) filed by the son of applicant Shailendra Pandey for his compassionate appointment. In para 4(vi) of said O.A. , it has been stated that his father was continuously paid suspension allowance till his death. No proof of getting subsistence allowance after order of removal from service has been produced on behalf of applicant, while the learned counsel for the respondents has categorically denied that any subsistence allowance was given to the deceased employee after issuance of order of removal from service. There is no reason to disbelieve that neither subsistence allowance was



paid to the husband of the applicant after issuance of order of removal from service nor such payment could be made after his removal order.


The applicant has failed to prove that her husband had received the subsistence allowance till his death as claimed by the son of applicant in para 4(vi) of OA No.19/2002. Thus it can safely be presumed that the husband of applicant was aware of the order of removal but he did not choose to challenge the said order till he was alive i.e. for more than 03 years. There is no document on record that the applicant had ever claimed family pension before preferring her representation on 15.09.2009 (Annexure-A-3). Thus, the instant OA is not only devoid of merit but it is highly time barred. Even after his death, the applicant did not approach the appropriate forum for claiming family pension for about 20 years and she filed this OA only on 24.12.2009 for sanctioning of family pension to her.

12. In view of above, we are of the considered opinion that the applicant is not entitled to the retiral benefits and family pension as the husband of applicant was removed from service vide order dated 8.1.1987 after considering his conduct, which had led to his conviction. Thus the judgment dated 10.12.2013 in O.A. 64 of 2006 is inapplicable to the instant O.A.

13. Accordingly, O.A. is dismissed. No order as to costs.


(Dr. Murtaza Ali)

Member (J)


(Ms. Jayati Chandra)

Member (A)

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