

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 194 OF 2006

[Patna, this *Friday*, the ~~29~~²⁷ Day of January, 2010]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [JUDL.]

Smt. Indu Rekha Roy, Wife of Late Rishikesh Roy, Ex-ASM/NFK resident of village – Janidih, P.O.: Ghogha in the District of Bhagalpur [Bihar].

.....APPLICANT.By Advocate :- Shri Ashutosh Jha.

Vs.

1. Union of India through the General Manager, Eastern Railway, Fairly Place, Kolkata.
2. Divisional Railway Manager [Settlement], Eastern Railway Divisional Office, Malda Town [West Bengal].
3. Divisional Personnel Manager [Eastern Railway], Divisional Office, Malda Town [West Bengal].
4. Divisional Commercial Manager [Eastern Railway] Divisional office, Malda Town [West Bengal].
5. Senior Divisional Personnel Officer [Eastern Railway] Divisional Office, Malda Town [West Bengal].

.....RESPONDENTS.By Advocate :- Shri N.K.Sinha, ASC.O R D E R

Justice Anwar Ahmad, M[J] :- This OA has been filed by Smt. Indu Rekha Roy, widow of Rishikesh Roy, ASM, against the order dated 04.04.2005 [Annexure-A/4] passed by the respondents dismissing the representation of the applicant saying that family pension has rightly been fixed, and for a direction to the respondents to revise the pension and family pension in accordance with the 5th Pay Revision, together with interest.

2. Learned counsel for the applicant submits that husband of the

applicant, namely, Rishikesh Roy, was appointed as ASM on 29.02.1964 and posted in S.E.Railway. Later on, he was transferred to Eastern Railway and joined at Kalyanchak in HWE Division [now, MLDT Division] on 08.06.1970. On account of his irregular transfer at different stations within a very short period of time, he became aggrieved and filed a Title Suit No. 58 of 1980 in the Civil Court of Bhagalpur against the order dated 18.04.1980 transferring him from Ghogha Railway Station to Sakrigali Ghat Rly. Station. The suit was decreed vide Annexure-A/5 and he joined at New Farakka Rly. Station as ASM on 04.09.1996 but he expired on 15.09.1996. The learned counsel for the applicant submits that the Addl. Munsiff who decided the Title Suit [Annexure-A/5] held that the plaintiff is entitled to payment of all emoluments relating thereto. He submits that an appeal was filed by the respondents and the appeal was dismissed. He, therefore, submits that the period of absence from 04.07.1980 to 03.09.1996 be treated as on duty and the said period be also treated as qualifying period for pension and, accordingly, the pension and the family pension be fixed in accordance with the recommendations of the 5th Pay Revision, but the respondents treated this period as extra-ordinary leave and did not treat this period as qualifying service for pension. He further submits that the husband of the applicant died on 15.09.1996 whereas the family pension was granted after a long delay of eight years from 23.04.2004, and hence interest be awarded for late payment of pension for the aforesaid period. In support of his contention he referred to a decision passed in **State of Kerala & Ors. Vs. M.Padmanabha Nair [(1985) 1 SCC 429]**. He, therefore, submits that the OA be allowed and the



relief claimed for be granted.

3. Learned counsel for the respondents, on the other hand, submits that Rishikesh Rai, husband of the applicant was transferred from Gogha to Sakrigalighat in the year 1980. He did not join there and filed a Title Suit in the Civil Court, Bhagalpur. The Suit was decided on 12.12.1985 [Annexure-A/5]. Thereafter the applicant joined at New Farakka Rly. Station as the ASM on 04.09.1996 and he died on 15.09.1996. He submits that against the judgment of the Additional Munsiff passed in the Title Suit filed by the husband of the applicant [Annexure-A/5], the respondents filed a Title Appeal No. 22 of 1986 and that appeal was decided on 05.08.1995 by the 5th Additional Sessions Judge, Bhagalpur. He submits that the appeal was allowed and the judgment of the Additional Munsiff was set-aside. He, therefore, submits that the question of treating the period of absence from 04.07.1980 to 03.09.1996 as on duty did not arise. He submits that as it relates to a long period of unauthorised absence, the matter was referred to the Railway Board and the Board issued instructions dated 14.08.2001 [Annexure-R/4] that it has been decided with the approval of the President that the entire period of absence, i.e., from 04.07.1980 to 03.09.1996 of Late Rishikesh Roy, ex-ASM/NFK may be treated as extra-ordinary leave as a special case and the period of extraordinary leave will not count as qualifying service for pensionary benefits. Accordingly, the aforesaid period was regularised as extraordinary leave which will not be counted as qualifying service for pensionary benefits. So, the pension of the deceased was fixed in accordance with the recommendations of the 5th Pay Revision excluding the



period of absence from 04.07.1980 to 03.09.1996. Family pension was accordingly fixed vide Annexure-A/1 and the representation of the applicant was, therefore, rejected vide Annexure-A/4.

4. So far as the claim of payment of interest is concerned, the learned counsel for the respondents submits that on account of long period of absence of the husband of the applicant, the matter was referred to the Railway Board for instructions and after receipt of the instructions the applicant was requested to fill up the proper form but the applicant delayed in filling up the form and submitting the same and thus, caused delay in fixation of family pension. So he submits that there is no fault on the part of the respondents, and hence the applicant is not entitled to any interest on the late fixation of family pension. In support of his contention, he referred to the correspondence made by the respondents with the applicant and he refers to Annexures-R/5 to R/9 in this regard. He, therefore, submits that the decision referred to by the learned counsel for the applicant for grant of interest is not applicable in the facts and circumstances of the present case.

5. The husband of the applicant had filed the Title Suit No. 59 of 1980 for a declaration that the order passed by the respondents on 08.04.1980 transferring him from Ghogha to Sakrigalighat Railway Station is collusive, malafide, punitive, inoperative and not binding on the plaintiff. The Additional Munsiff decreed the suit. While appraising the evidence he held that the plaintiff is entitled to all emoluments relating thereto. There is no such issue in the suit and there is no such relief asked for by the plaintiff. This is just a passing remarks. Above all, this judgment of the Additional Munsiff in

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appeal has been dismissed. The Appellate Court held as under :-

“As laid down by their lordship of the Supreme Court in AIR Supreme Court, page 1056 “The Court or Tribunals are not appellate forums to decide on transfer of officer on Administrative grounds. The wheels of Administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper place. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundations. When, as in this case, the transfer order is issued on administrative grounds the court can not go into the expediency of posting an officer at a particular place.

In view of this lordship's observation of the Supreme Court of India this court can not interfere in the transfer matter of the respondent unless it is shown that it was mala fides or by extraneous consideration. This appeal is, therefore, disposed of accordingly and the respondent is directed to take proper step for joining his place of posting, i.e., Sakrigali Ghat within two months of this order by filing a copy of this order to the appropriate authority.”

Thus, the Appellate Court has dismissed the judgment of the Additional Munsiff. The contention of the learned counsel for the applicant that the appeal against the judgment of the learned Munsiff was dismissed is not correct and on the contrary the judgment of the learned Munsiff was dismissed by the Appellate Court.

6. Considering the facts and circumstances of the case, rival submissions made and discussions made above, I am of the view that there is

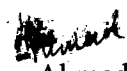


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no merit in the OA.

In the result, this OA is dismissed with no order as to cost.


[Anwar Ahmad]/M[J]

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