

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No. 544 of 2005 with MA 162 of 08

Date of order : 26.11.09

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [J]

Smt. Shyam Kumari Devi, W/o Shri Krishna Prasad, r/o village Ghatao, P.O. Fakrabad, District - Bhabhua

.... Applicant

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India, through the G.M. E.C. Railway, Hajipur.
2. The General Manager [p], E.C. Railway, Hajipur.
3. The DRM, E.C. Railway, Mughalsarai.
4. The Sr. D.P.O, E.C. Railway, Mughalsarai.
5. The Chief Medical Director, E.C. Railway, Hajipur.
6. The Chief Medical Supdt., E.C. Railway, Mughalsarai.
7. The Sr. DMO, E.C. Railway, Dehri-on-sone, Rohtas.

.... Respondents.

By Advocate : Shri S.K. Griyaghey.

O R D E R

Justice Rekha Kumari, M [J]:- The applicant has filed this OA for appropriate direction to the respondents to treat her husband, Shri Krishna Prasad as retired from railway service on account of being mentally retarded and unfit for railway service, as per medical certificates granted by Sir. Sunder Lal Hospital, BHU, Varanasi as well as B.P. Singh Hospital, Sealdah and grant all settlement dues and other consequential benefits, including unpaid salary for the treatment up-to the date of deemed retirement.

2. The case of the applicant is that her husband is unfit to pursue the

matter, and as such, she has filed the OA on his behalf.

3. Her further case is that her husband , Shri Krishna Prasad was a Gatekeeper at Pushauli Railway Station. On 06.12.99, while on duty, he was seriously injured by some miscreants. He was brought by the staff to railway hospital, Mughalsarai. He remained under the treatment as indoor patient for two years. During this period of hospitalization, he was paid salary from 06.12.99 to 30.10.2000. During treatment, on 06.06.2000, he was referred to Sir Sunder Lal Hospital, BHU, Varanasi where he was declared mentally unfit and further unfit for duty [vide Annexure A/2]. In spite of that certificate, he was referred to the Medical Director, B.P. Singh Hospital Sealdah for re-opinion [vide Annexure A/3]. The said hospital also issued certificate [Annexure A/4], agreeing with the report of Sir Sunder Lal Hospital, BHU, Varansi. Her husband was not paid anything beyond 18 months from 06.12.99. Again on 07.01.2004, her husband was referred to I.M.S. BHU, Varanasi for fresh opinion, and on 30.07.04, the same report was given that the patient was not fit to resume duty [vide Annexure A/6]. The applicant sent a representation dated 23.08.04 [Annexure A/7] for payment of salary, treating her husband as mentally retarded. But contrary to that, her husband was referred to Chief Medical Director, CIP, Kanke, Ranchi for holding a Medical Board. She went to Ranchi with her husband on 20.10.04. The hospital demanded Rs. 25,000/- as fee for test. She was unable to pay the amount, though it was the responsibility of the railway administration. They, hence, returned and informed the position to the respondents through a

representation dated 2.11.04 [Annexure A/10]. But no action was taken on that representation. No further salary, as admissible, was paid to him. Lastly, she submitted her representation dated 22.10.2005 [Annexure A/11] to look into the matter and take necessary action, but no action was taken. Hence, she was compelled to file the present OA.

4. The respondents have filed written statement and additional written statement. Their case, *inter alia*, is that the date of birth Shri Krishna Prasad is 13.5.1946, and so, he retired from service on 31.5.2006, and he has been paid the amount of provident fund, DCRG, GIS pension, commutation and his pension has been fixed and given. He was never declared unfit from railway service by the authority of the medical department, Mughalsarai and any medical board when the report of medical board is a pre-condition for declaring an employee unfit for railway service, and as such, he was not issued any certificate of invalidation/ unfit.

5. Their further case is that the employee was on hospital leave from 06.12.99 to 31.10.2001, and he is entitled to full salary for that period, and he has been paid full salary upto 03.08.01, and his salary for 04.08.01 to 31.10.01 is to be given to him for which steps have been taken.

6. Their case also is that the period from 01.11.01 to 26.01.02 has been treated as general sick period, and he will be given leave salary for this period against leave due at credit, and that from 27.01.02 to 20.02.02 he was not under treatment in railway hospital, and hence the period is counted as absent

from duty, and he is not entitled to any salary for this period. However, the employee has been granted leave salary from 21.02.02 to 15.08.02 on the basis of the medical certificate of general sickness issued by the railway hospital, Dehri-on-sone against his leave at credit, and that leave salary for the period from 01.11.2001 to 26.01.02 and from 27.02.02 to 15.01.02 against leave at credit would be paid to him on necessary representation to be made by him to that effect.

7. The learned counsel for both the sides were heard.
8. In this case, it appears from the certificates [A/1 and A/9] that the husband of the applicant had received serious injuries while on duty for which he underwent extensive repair surgery, and during the course of treatment and recovery, he developed abnormal mental state. The certificate of Sri Sunder Lall hospital, BHU on 22.09.2000 shows that he was admitted there from 12.05.2000 to 22.9.2000 for post traumatic stress disorder, and he was declared unfit for duty. The report of B.K. Singh Hospital, Sealdah dated 03.01.2002 issued by the Consultant / Psychiatry and Senior D.M.O also shows that the doctor found him completely and permanently incapacitated for further railway service of any kind in consequence of Gross Psychomotor Retardation with Urinary incontinence with disorganization of cognitive function. The report of Sir Sunder Lall Hospital, BHU, Varanasi dated 30.7.04 also shows that the employee was not fit to resume duty.
9. In view of the above certificates granted by different doctors giving

the same opinion, there cannot be any doubt that the husband of the applicant was permanently incapacitated on account of injuries sustained and subsequent development during the course of his treatment and recovery. He, of course, was not examined by the Medical Board at Kanke Ranchi, but the explanation given by the applicant as mentioned above appears to be quite plausible, as has not been specifically denied by the respondents. Therefore, the applicant cannot be made to suffer for non-examination by the Medical Board.

10. So, though the husband of the applicant was not examined by the Medical Board, it has to be held in this case that the employee had acquired permanent disability making him unfit for any railway service.

11. Section 47 [1] of The Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 reads as follows:-

" 47. Non-discrimination in government employment - [1] no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee , after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale.:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, which is earlier."

12. A similar provision has also been made in 1999 by amendments in the Indian Railway Establishment Code Vol. I 5th Edition in rule 304.

13. It is evident that the respondents did not act in accordance with the above provisions of the Act, and the Instructions of the Railway Board depriving the employee of the service benefits provided therein, including salary.

14. This OA is, thus, disposed of with this direction to the respondents that on the basis of the above medical certificates, treating the employee as completely incapacitated for further railway service, they would take action in accordance with the above Act and Instructions of the Railway Board contained in E [NG]1/96/RE3/9 (1)], dated 29.04.99 and pass a speaking order within two months from the date of receipt of copy of this order and make payment of all arrears due within a month thereafter. If the payment is not made within the above period, the employee would be entitled to interest at the rate of 9 per cent per annum from the expiry of the above period till the date of actual payment.

15. The applicant is also directed to make available a copy of this OA along with certified copy of this order to the concerned respondent at the earliest for prompt disposal of the matter.

16. The OA is allowed in the manner indicated above. No order as to the costs.

Rekha —
[Rekha Kumari] M [J]

/cbs/