

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
CCPA 32/2007
[OA No. 656 of 2005]**

Date of order : 27th November, 2009



C O R A M

**Hon'ble Mrs. Rekha Kumari, Member [Judicial]
Hon'ble Mr. Sudhir Kumar, Member [Admve.]**

Smt. Prabhawati Devi, widow of late Vindhya Chal Mishra, resident of Village - Raibarwa, P.O. - Dharampur Sethi, District - Champaran.

..... Petitioner

Vrs.

1. Shri S.K. Vij, General Manager, E.C. Railway, Hajipur [Vaishali].
..... Respondents/Opposite Parties.
2. Shri V. Shrihari, Divisional Railway Manager, E.C. Railway, Samastipur.
..... Respondents/Opposite Parties.

Counsel for the applicant : Shri S.K. Singh

Counsel for the respondents : None

Counsel for the respondents of O.A. No. 656/2005 :
Shri B.K. Sinha, ASC

O R D E R

Sudhir Kumar, Member [A] :-

This contempt petition has been filed by the petitioner alleging dis-obedience of the orders passed by this Bench on 28.10.2005 in O.A. No. 656 of 2005. In that order passed 

by this Bench, the O.A. had been disposed of by directing as follows :-

"The D.R.M., E.C. Railway, Samastipur to record an order as envisaged in the afore quoted circular dated 31.12.1986 and other dates exercising his discretion in the manner as provided in the aforesaid circular by recording speaking order within three months of the receipt of a copy of this order. The applicant will also submit a copy of the certified copy of this order with a copy of the application with annexures to the aforesaid official within fifteen days of the receipt of certified copy of this order."

2. The petitioner has stated that she has approached the concerned authorities and Opposite Parties/Alleged Contemners several times, and assurances were given to her verbally on the matter under consideration, but that they have knowingly and deliberately dis-regarded the orders of this Tribunal. The petitioner had named Shri S.K.Vij, General Manager, E.C. Railway, Hajipur [Vaishali] [Respondent No.1], and Shri V. Shrihari, Divisional Railway Manager, E.C. Railway, Samastipur [Respondent No.2] as .

alleged contemners.

3. On 24.10.2007, after hearing the Id. counsel for the petitioner on the issue of maintainability, notices had been issued only to the Respondent No.2 as to why contempt proceedings should not be initiated against him for non compliance of the aforesaid order. No notice was ordered to be issued against the Respondent No.1, Shri S.K. Vij, and for all practical purposes, he has not been made a party before this Tribunal in this Contempt Petition.

4. The Respondent No.2 also did not appear through any advocate or himself, and only the departmental Standing Counsel continued to appear in this contempt case, as if it is an original application, against the department, and not a contempt case against Respondent No.2 Shri V. Shrihari. Ultimately, a show-cause reply also came to be filed on behalf of the departmental respondents of O.A. No. 656 of 2005, which also was not sworn in the form of an affidavit by the Respondent No.2, but was filed on behalf of the the X.

Respondents through an affidavit sworn to by one Shri Nagendra Nath Pathak, Divisional Personnel Officer, E.C. Railway Samastipur, who is not a party before this Tribunal. As a result, the whole case was throughout being heard without appearance of either of the two Opposite Parties/Alleged Contemners named in the contempt petition.

5. In the show cause reply filed by the said Shri Nagendra Nath Pathak, who is not a party before this Tribunal in the contempt petition, it was stated that firstly the contempt petition was time barred, as it was filed after the statutorily allowed time period of one year after the passing of the impugned order dated 28.10.2005, and the representation of November, 2005. Secondly, it has been stated that when the deceased railway employee died in harness on 14.12.1993 as Time Scale Khalasi under Asstt. Engineer/Narkatiaganj, the petitioner had initially requested for appointment of her brother in law, and ^{only} thereafter did she apply for her own appointment on compassionate W.

ground, which request was duly processed. Her request was turned down by the GM, N.E. Railway, on 6.1.1998, and the same was communicated to her vide letter dated 27.1.1998. Two grounds had been taken while rejecting her request for such appointment in the said order dated 6.1.1998 [Annexure-R/1]. Firstly, that her date of birth was doubtful, and secondly, that the widow did not have any minor and dependent children whom she has to take care of and she herself must be in receipt of the family pension, and there was, therefore, no justification for giving compassionate appointment to her on the basis of the direction passed by this Bench of the Tribunal in O.A. No. 656 of 2005. The D.R.M., Samastipur had, on 14.12.2007, passed a speaking order which was produced at Annexure-^R/3 pages 12 and 13 ru. and forwarded to the petitioner through letter dated 17.12.2007 [Annexure-R/4]. The D.R.M. Has again reiterated the findings as follows :-

"While going through the application of Smt. XL.

Prabhawati Devi, reports of Welfare Inspector of railways, various documents submitted by the applicant and case file, the following points emerge :-

[a] As per Welfare Inspector report, she is illiterate, while she has submitted 5th Standard passed certificate from a school.

[b] She puts in her LTI in her application and other documents while it is expected that a 5th Std. passed person would generally and normally sign. In the file there is only one application [addressed to DRM] dated 28.11.2005 where she put signature.

[c] There are discrepancies and inconsistency in her declaration of her own date of birth. While she declares her age as 35 years as on 30.11.1994 and also on 11.01.1995, her date of birth in the school certificate, her age as on 30.11.1994 will be 31 years 10 months as on 10.1.1995 will be about 32 years.

¶ There is no mention of any child or liability in the report of Welfare Inspector for the purpose of her appointment. This is also seen in the file that while at one place in the pass declaration the ex employee declares as having one daughter aged 09 years in 1992, but while filling up forms for compassionate appointment in 1994 the applicant Smt. Pravawati Devi ¶.

does not declare her daughter's name in the details of her dependents duly witnessed by the concerned Section Engineer. Again in the O.A. 656 of 2005 filed before Hon'ble CAT, she has mentioned her daughter's name as dependent.

¶ "All these and cast doubt on the bonafides and intention of the applicant. Her representations and submissions carry inconsistencies and give the impression that she desire to get a job somehow in railways including by invoking emotions and sympathy."

6. In view of these circumstances, the D.R.M. has, after re noting the inconsistencies and facts and circumstances, held that he found insufficient ground and logic to recommend her case for consideration and exercise of powers by the General Manager to grant her compassionate appointment.

¶ 7. A reply ^{to} the show cause was filed by the petitioner in which she denied communication of the orders dated 6.1.1998 communicated to her vide letter dated 27.1.1998 as claimed by the Respondent Department's officers. She has

said that she has one daughter and she is not getting family pension also and she is passing her days in a very pitiable condition. She further assailed the report of the Welfare Inspector on the basis of which the speaking order of the D.R.M. was supposedly passed. She claimed that the existence of her daughter was given much earlier, and that privilege passes were issued to her on 14.3.1992 and 14.3.1993. The petitioner further said that the speaking order of the D.R.M. is not based on facts and the same deserves to be rejected.

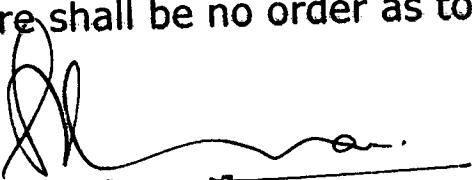
8. During the course of arguments, the above arguments were also advanced on behalf of the petitioner very forcefully, but in a contempt petition, we cannot go into the details of the merits of the case. What is to be seen by us is only as to whether the direction dated 28.10.2005 in O.A. No. 656 of 2005 issued to the D.R.M., E.C. Railway, Samastipur, to record a speaking order as envisaged in the relevant Railway Circular, has been fully complied with or not.

not, and whether the contentions raised by the petitioner had been met with fully or not, with proper application of mind.

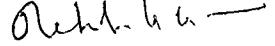
9. We find that in the speaking order [Annexure-R/3] there has been a proper application of mind by the DRM, Samastipur, while arriving at his conclusions, though the result may not have been to the satisfaction of the petitioner. In that sense, the order of this Tribunal passed on 28.10.2005 in O.A. No. 656 of 2005 stands technically fully complied with, albeit with delay.

10. However, since none of the two Opposite Parties/Alleged Contemners have ever put in appearance before this Tribunal, and the whole proceedings have been defended on their behalf by the departmental juniors only, there is no case which we find against Respondent No.2, Shri V. Shrihari, the DRM, E.C. Railway, Samastipur, against whom notice was ordered to be issued, to haul him up for such delay in passing the speaking order. Q.M.

11. In the result, this contempt petition is rejected and the notice issued against Respondent No.2 is discharged. There shall be no order as to costs.



[Sudhir Kumar]
Member [Admve.]



Rekha Kumari —
[Rekha Kumari]
Member [Judicial]

mps.