

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 541/2000

DATE OF DECISION: 16 /6/2004

Smt. Shakubai Raju Shelke

Applicant

Shri J.M.Tanpure

Advocate for
Applicants

V/s.

Union of India & 2 Ors.

Respondents

Shri V.D.Vadhavkar

Advocate for
Respondents

CORAM:

Hon'ble Shri V.K.Majotra, Vice Chairman
Hon'ble Shri S.G.Deshmukh, Member(J)

(1) To be referred to the Reporter or not? *No*

(2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

(3) Library. *Ts.*

V.K.Majotra
(V.K.MAJOTRA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 541/2003
DATED THE 16th DAY OF JUNE, 2004.

CORAM:HON'BLE SHRI V.K.MAJOTRA, VICE CHAIRMAN
HON'BLE SHRI S.G.DESHMUKH, MEMBER(J)

Smt. Sakhubai Raju Shelke,
widow of late Balu Kalu Shelke,
Ex. Khalasi working under Senior
Section Engineer (SIG/M)
Central Railway, Pune. Applicant

By Advocate Shri J.M.Tanpure

v/s.

1. The Senior Section Engineer,
(Signal and Maintenance),
Central Railway, Pune.
2. Assistant Signal Telecommunication,
Engineer(Maintenance), Central
Railway, Pune.
3. Divisional Signal and Telecommunication
Engineer(Maintenance),
Central Railway, CST, Mumbai. . . Respondents

By Advocate Shri V.D.Vadhavkar

(ORDER)

Per Shri V.K.Majotra, Vice Chairman

The applicant has challenged punishment of removal from service awarded to her husband vide order dated 18/8/1995. Appeal there against were also rejected on 27/11/1991/ He expired on 2/8/1996. Applicant's husband is stated to have remained absent unauthorisedly for a period of 259 days during 1987-88 for which he was proceeded against departmentally and awarded the penalty of removal from service. It has been stated on behalf of the applicant that as the applicant was suffering from leprosy he did not attend the hearings in the departmental enquiry against him and was proceeded ex parte. However, it is contended that applicant's husband had not received the show

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cause notice, charge sheet, enquiry report and even the order of removal from service. The facts of the illness of the applicant's husband were known to the respondents. It is alleged that respondents have violated the principles of natural justice in awarding the penalty to the deceased government employee and that the penalty is also disproportionate to the alleged misconduct. It has been sought that the punishment of removal from service be modified to compulsory retirement and that the applicant should be granted consequential pay and allowances/pension from the date of removal from service of the government service till his death and Family Pension after his death along with interest. Learned counsel of the applicant stated that even if the backwages are not granted, applicant would contend with the Family Pension.

2. Learned counsel of the respondents contended that the OA is badly barred by limitation as the punishment of removal from service was awarded on 18/8/1991 and the applicant was alive thereafter till 2/8/1996. However, the present OA has been made on 25/7/2000 i.e. after 9 years from the date of punishment and four years after the death of government servant. Learned counsel further stated that applicant had received the respondents orders on 23/12/1991 (acknowledgement of the deceased government employee in this regard has been enclosed). Learned counsel maintained that as respondents have not violated any statutory provisions or any rules on the subject, neither the punishment can be reduced nor can any consequential benefit be provided to the applicant.

3. Earlier on vide order dated 18/6/2001 this OA had been disposed of dismissing applicant's challenge to her husband's

removal from service but direction was given to the respondents to make payment of a sum of Rs.14097/- as certain retiral benefits. Applicant had carried the matter to the Hon. High Court of Judicature at Bombay in Writ Petition 3726 of 2003 which was decided on 5/1/2004. The Hon. High Court had held that it was a fit case where the delay ought to have been condoned and the Tribunals order dated 18/6/2001 was set aside requiring the Tribunal to decide the case on merits. It was also accepted by the Hon. High Court that in view of the Full Bench decision of the CAT, a widow of a former employee can file an application on behalf of her husband.

4. It has been contended on behalf of the respondents that applicant was charge sheeted for major penalty vide memorandum dated 19/7/1989. This was acknowledged by him on 18/8/1991. He did not submit a written statement and failed to attend the enquiry on several dates between 20/9/1989 to 30/11/1989. As such the enquiry was held ex parte. The proceedings of the enquiry were sent to the delinquent giving him opportunity to submit his representation under Registere Post A.D. which was acknowledged by the delinquent on 17/1/1991. He did not submit any explanation and the punishment of removal from service was imposed on 30/7/2992. These orders were sent to him on 6/8/1991. These contentions of the respondents have remained unchallenged. We have also perused the records produced by the respondents. They confirm their contentions. No proof has been submitted by the applicant in rebuttal. As such, the applicant has no case for justification of reduction in penalty. However, in view of the fact that applicant ^{seems to have b} rendered a service of about 15 to 17 years, before removal from service and had been suffering from a

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serious disease, it is a case of undue hardship ^h were respondents could relax the requirement of Rule 88 of the CCS (Pension) Rules 1972 and consider applicant's case for family pension under Rule-41 of the Pension Rules of 1972 provided that the deceased government employee had rendered sufficient service for Family Pension. In this connection, reliance is placed on order dated 30/3/2001 in Writ Petition 296 of 2001 Smt. Sumati Kolte V/s. Union of India & Ors. As such, in the circumstances, we direct the respondents to consider the applicant's case for Family Pension under Rule 41 of the Pension Rules of 1972 w.e.f. 26/7/2000 when the present OA was made.

5. The OA is disposed of. No costs.

M.G.Deshmukh
(S.G.DESHMUKH)
MEMBER(J)

abp

V.K.Majotra
(V.K.MAJOTRA)
VICE CHAIRMAN

16.6.04

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

R.P. NO.38/2004
IN
O.A. NO.541/2000

This the 24th day of August, 2004.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI S. G. DESHMUKH, MEMBER (J)**

Smt. Sakhubai Balu Shelke,

... Applicant

-versus-

Senior Section Engineer (Signal and Maintenance),
Central Railway, Pune.

... Respondents

ORDER (BY CIRCULATION)

Hon'ble Shri V. K. Majotra, Vice-chairman (A) :

Through this application, review of order dated 16.6.2004 in OA No.541/2000 has been sought. Among other things, it has been stated that Tribunal had directed the respondents to consider applicant's case for family pension under the provisions of C.C.S. (Pension) Rules, 1972 though Railway Services (Pension) Rules, 1993 are applicable in the matter. This typographical error certainly requires correction. As such, paragraph 4 of the Tribunal's order dated 16.6.2004 be substituted as under:

“4. It has been contended on behalf of the respondents that applicant was charge sheeted for major penalty vide memorandum dated 19/7/1989. This was acknowledged by him on 18/8/1991. He did not submit a written statement and failed to attend the enquiry on several dates between 20/9/1989 to 30/11/1989. As such the enquiry was held *ex parte*. The proceedings of the enquiry were sent to the delinquent giving him opportunity to submit his representation under Registered Post A.D. which was acknowledged by the delinquent on 17/1/1991. He did not submit any explanation and the punishment of removal from service was imposed on 30/7/1992. These orders were sent to him on 6/8/1991. These contentions of the respondents have remained unchallenged.

We have also perused the records produced by the respondents. They confirm their contentions. No proof has been submitted by the applicant in rebuttal. As such, the applicant has no case for justification of reduction in penalty. However, in view of the fact that applicant seems to have rendered a service of about 15 to 17 years, before removal from service and had been suffering from a serious disease, it is a case of undue hardship where respondents could relax the requirement of Rule 107 of the Railway Services (Pension) Rules, 1993 and consider applicant's case for family pension under Rule 65 of the said Rules provided that the deceased government employee had rendered sufficient service for family pension. In this connection, reliance is placed on order dated 30/3/2001 in Writ Petition 296 of 2001 Smt. Sumati Kolte v. Union of India & Ors. As such, in the circumstances, we direct the respondents to consider the applicant's case for family pension under Rule 65 of the said Rules w.e.f. 26/7/2000 when the present OA was made."

2. The other grounds taken in this application are merely an attempt to re-argue the case which does not fall within the scope and ambit of review.

3. The review application is allowed to a limited extent as above.

Necessary corrigendum be issued.

S. G. Deshmukh
(S. G. Deshmukh)
Member (J)

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

/as/

*and on issue
on 21/9/04
1c 18*