

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 700 of 2001

Dated this Tuesday the 17th day of September, 2002.

Smt. Kalawati Namdeo Bansode & anr. Applicant.

Shri Y.J. Master

Advocate for the
Applicant.

VERSUS

D.R.M. Central Rly. & anr. Respondents.

Shri R.R. Shetty

Advocate for
Respondents.

Coram: Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ?


(B. N. BAHADUR)
MEMBER (A).

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ORIGINAL APPLICATION NO.: 700 of 2001.

Dated this Tuesday the 17th day of September, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

1. Shrimati Kalawati Namdeo Bansode,
Residing at - Kastan Chawl,
At & Post Tal. Daund,
Dist. Pune.
 2. Mr. Chagan Namdeo Bansode,
Residing at - Kastan Chawl,
At & Post Tal. Daund,
Dist. Pune.
- ... Applicants.

(By Advocate Shri Y. J. Master)

VERSUS

1. Divisional Railway Manager,
Central Railway,
Sholapur,
Maharashtra State.
 2. Union of India THROUGH
General Manager,
C.S.T. Central Railway,
Mumbai.
- ... Respondents.

(By Advocate Shri R. R. Shetty).

O R D E R

PER : Shri B. N. Bahadur, Member (A).

This O.A. is filed by two Applicants, Applicant No. 1 being the widow and Applicant No. 2 being the son, of late Shri Namdeo Vitthal Bansode. Late Shri N. V. Bansode was working under Respondent No. 1 at Daund as Y.K.C. His file No. is stated to be YKC/LF/DD No. 1357 II. He had worked with the

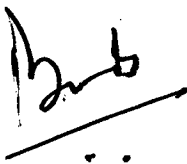


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Railways for about 20 years, it is averred. It is also stated that he was a regular and honest employee with no adverse Confidential Reports but because he had been keeping ill, he had remained absent and according to Applicants, he had submitted Doctor's certificate for illness but since the department took the view that he was unauthorisedly absent, he was removed from service.

2. The Applicants further state that the said Shri Namdeo Vittal Bansode thereafter preferred a mercy appeal, and thereupon he was ordered to be taken as MRCL (Gangman) under PWI/URI on 13.02.1989. It is asserted that he did join the job on 13.02.1989 and also worked for 3 or 4 days. However, on 17.02.1989 he went away somewhere and has not been traceable. After waiting seven years since, the police and Railway Department could not help the Applicant in tracing the said employee and the Municipal Council of Daund ultimately issued a Death Certificate on 25.08.1997 to the effect that the said Shri Namdeo Vittal Bansode died on 17.02.1989.

3. The Respondents have filed a Written Statement of reply, where first the objection regarding multiple relief is taken namely - pension/retiral dues for Applicant No.1, and compassionate appointment for Applicant No.2. However, we find that the Tribunal had, indeed, decided this issue on 22.10.2001



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to the effect that only first the relief will remain i.e. pension and settlement dues to Applicant No.1. The second is given up by Applicant.

4. The Respondents state that Applicant's husband was, indeed, working as Yard Khalasi (Y.K.C.) and was appointed as such on 03.03.1971. He was unauthorisedly absent from duty for which a major penalty charge sheet was issued on 19.09.1986. After due procedure, this resulted in imposition of penalty of removal from service vide order dated 30.12.1986 (Exhibit R-1). The appeal against this order was confirmed on 13.04.1987 (Exhibit R-2). But on mercy appeal made by Mr. N.V. Bansode, the A.D.R.M., Solapur, considered it and decided to appoint Mr. N.V. Bansode as MRCL (Gangman) which, it is asserted, is a fresh appointment (Exhibit R-3).

5. The Respondents further assert that Applicant's husband never attended duty or reported for duty and the claim made in the O.A. is erroneous. The order was, apparently acknowledged by Applicant's husband on 19.04.1989 which acknowledgement appears fictitious with reference to Death Certificate which shows death from 17.02.1989. Hence, the question of giving pensionary benefits does not arise. As far as Shri Bansode's service prior to removal order is concerned, the service stands forfeited. It is further stated that fuller records are not traceable.

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6. We have heard the Learned Counsel on both sides, namely, Shri Y.J. Master for the Applicant and Shri R. R. Shetty for the Respondents.

7. The brief chronological position in respect of Shri Bansode can be recapitulated as follows :

Appointed as KYC	...	03.03.1971.
Charge sheet issued	...	19.09.1986.
Removed from service	...	30.12.1986
Appeal rejected	...	13.04.1987
Mercy Application approved	...	13.03.1989/17.04.1989

At the outset we must state that the contention that the document (Copy at Exhibit R-4) cannot be believed or is fictitious, cannot be taken as correct. It is a document produced/issued in normal course and Respondents have no basis in stating that it is fictitious. However, the weakness in this case is that even assuming that this was served on the Shri Bansode, the missing Government Servant, and even assuming that the contentions of the Applicants that Shri Bansode had joined for a few days, is correct the point made by the Learned Counsel, Shri R.R.Shetty, was that this was not a case of appeal or revision being allowed but a mercy petition being allowed and even assuming these facts to be correct, the fact is that Shri Bansode was given, what was a fresh appointment, and that too, as MRCL, as would be clear

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from the order dated 13.03.1989/17.04.1989. It is true that he was appointed as monthly rated Casual Labourer and if it is to be taken as fresh appointment, no relief, as sought, can be granted. This is the correct position. As regards the dismissal, it is seen that all procedure leading upto the finalisation of appeal was completed much before the date from which Shri Bansode is missing, which can for arguments sake be taken to be around April, 1989 (and not strictly 17.02.1989). Even going by some instructions which have been cited in other cases regarding consideration to those who are missing vis-a-vis dismissal, this may not be a case where they will be applicable. Under the circumstances, no direction or relief can be provided upon the facts that emerge.

8. I am nevertheless constrained to observe after carefully considering the facts, as admitted, that this is a rather sad case. An employee is dismissed, may be for valid reasons, but once he has been provided re-appointment, even though fresh appointment, has become the victim of circumstances where he is missing and has to be granted a status of technically dead. The situation for the Applicants is, indeed, sad. It is to be noted here that right in the beginning the point about defect of seeking multiple relief was remedied by the Applicants, as recorded in the Roznama dated 22.10.2001 where it was stated and decided that the Applicant in this O.A. will only press for the



relief of pension and settlement of dues of her husband and that the Applicant No. 2 will be free to file a separate application for relief regarding compassionate appointment.

9. It is hoped that the Respondents will consider the situation in which the family is placed and based on facts and merits of the case of compassionate appointment will nevertheless consider what benefits can be provided within applicable rules. These are observations and are not directions.

10. Subject to the above ^{observations, *Bnb*} this O.A. is hereby dismissed with no order as to costs.

Bn Bahadur

— (B. N. BAHADUR)
MEMBER (A).