

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 814/91 199

DATE OF DECISION 17.9.1992

Smt. Subhadrabai Mishra Petitioner

Shri V.M. Kulkarni Advocate for the Petitioners

Versus

G.M., C.R., Bombay & Others. Respondent

Mrs. Wandile for Mr. P.N. Chandurkar Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. JUSTICE S. K. DHAON, VICE CHAIRMAN.

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Y^{es} Judgement ?
2. To be referred to the Reporter or not ? Y^{es}
3. Whether their Lordships wish to see the fair copy of the N^o Judgement ?
4. Whether it needs to be circulated to other Benches of the N^o Tribunal ?

Smt
Vice Chairman.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT NAGPUR.

O.A.814/91.

Smt. Subhadrabai Mishra,
C/o. Shri Ramkrishna Mishra,
85, Plot Area, Parvati Nagar,
Post Office Parvati Nagar,
NAGPUR.

.. Applicant.

Vs.

1. General Manager,
Central Railway,
Bombay V.T.

2. Financial Adviser & Chief
Accounts Officer,
Central Railway,
Bombay V.T.

3. Divisional Security Commissioner,
Railway Protection Force, Nagpur
Division, Divisional Railway
Manager's Office, Central Railway,
Kingsway, Nagpur.

4. Chief Security Commissioner,
Railway Protection Force,
Central Railway,
Bombay V.T.

.. Respondents.

Coram : Hon'ble Shri Justice S.K. Dhaon, Vice Chairman.
Hon'ble Shri M.Y. Priolkar, Member (A).

Appearances:

Shri V.M. Kulkarni, Counsel
for the applicant.

Mrs. Wandile, Adv. for Mr.
P.N. Chandurkar, Counsel for
the respondents.

ORAL JUDGMENT :

Date : 17.9.1992.

[Per : Hon'ble Shri S.K. Dhaon, Vice Chairman]

The applicant is the widow of one Shri Rammilan
Mishra who was posted as Rakshak at Ajni (Nagpur) Yard.
Her grievance is that she is not being paid family pension.
Hence this application.

2. A reply has been filed on behalf of respondents.
A rejoinder affidavit too has been filed. Counsel for the
parties have been heard.

(b)

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3. The admitted facts are these. Shri Rammilan Mishra, while on duty, came under a moving Engine on 2.7.1965 and suffered a grievous injury on his arm. Initially he was admitted in the Government Hospital and later on discharged. His condition deteriorated. He was again hospitalised on 31.5.1966 and he died on the same day. He was given employment in the Railway Protection Force on 7.6.1963. He was declared medically unfit on 25.3.1966. No order either discharging or removing Shri Rammilan Mishra from service had been passed. No such order has been produced before us.

4. Paragraph 801(1)(i) of the Manual of the Railway Pension Rule 1950 reads as follows:-

"Rule 801(1), a family pension at the rate specified in sub-para (2) or (3) below as the case may be, sanctioned to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who entered service on or after 1st January, 1964 or having entered service prior to that date has opted or is deemed to have opted for this scheme in terms of Railway Board's letter No.F(P)53 PN-1/40, dated 2nd January, 1964, if such Railway servant:-

- (i) dies while in service on or after 1st January, 1964, after completion of not less than one years continuous service, or
- (ii) retires on or after 1st January, 1964 and at the time of his/her death was in receipt of compensation invalid, retiring or superannuation pension."

5. The crucial question of fact to be determined by us is whether Shri Rammilan Mishra died while in service on or after 1.1.1964. It is contended on behalf of respondents that Shri Rammilan Mishra should be deemed to have ceased to be member of Railway Protection Force on the date when he was declared medically unfit and, therefore, he did not die while in service.

(D)

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6. Rule 152 as contained in the Indian Railway Establishment Code, Volume I provides, interalia, that a railway servant who fails in vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies but not incapable of performing other duties, should not be discharged forthwith but should be granted leave in accordance with Rule 2237 A-R. During the period of leave so granted, such a railway servant must be offered some alternative employment on reasonable emoluments having regard to his former emoluments. Further, the extraordinary leave portion of the leave granted in accordance with Rule 2237 A-R should not be cut short purely on account of his refusing the first offer which is made to him, but he must be discharged if he does not accept one or more offers during the period of his leave. It is not the case of the respondents that Shri Rammilan Mishra, on account of the accident, became incapable of performing duties, other than the work assigned to him. It is implicit in Rule 152, if read as a whole, that an order of discharge in the case of Shri Rammilan Mishra was necessary before it could be said that the relationship between him and his employer (Railway) as master and servant come to an end. Putting it differently, Shri Mishra continued to be in the employment of the Railways inspite of the fact that he was found medically unfit to perform the job of a Rakshak. The mere fact that he was declared medically unfit did not ipsofacto result in the termination of service. Therefore, it is to be held that he died while in service on or after 1.1.1964 after completion of not less than one years continuous service.

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7. Statement of Objects and Reasons of the Railway Protection Force Act, 1957 (hereinafter referred to as the Act) ran as follows:-

"The Watch and Ward Department functioning on the Railways have hitherto been handicapped by lack of adequate powers and well-defined status as also of a proper sense of discipline to fulfil their primary functions of protecting railway property and of property entrusted to railways for transport. The Railways have during these years incurred heavy losses on account of theft and pilferage of railway property and of payment of quite a large number of compensation claims preferred against them.

2. The proposed legislation is designated to bring about a radical change in the functioning of this Department, which is being redesignated as the Railway Protection Force, so as to achieve quick and effective results. It enables the personnel of the Force to be brought under a special set of disciplinary rules and confers on them, under certain conditions powers of arrest and search without warrant. Moreover, the Railway Protection Force thus reorganised could provide, in times of need, suitable assistance to the Railway Police who are charged mainly with the responsibility for overall maintenance of law and order in railway premises".

8. The Act was amended by the Railway Protection Force (Amendment) Act, 1985 (Hereinafter referred to as the Amendment Act). The Amendment Act came into force from 18.9.1985. The long title was substituted by the Amendment Act thus:-

"An Act to provide for the constitution and regulation of an armed force of the Union for the better protection and security of railway property and for matters connected therewith."

Section 3(1) of the original Act provided that there shall be constituted and maintained by the Central Government a Force to be called the Railway Protection Force for the better protection and security of railway property. The Amendment Act deleted the expression "Force" and substituted the said expression by "An armed force of the Union". Thus by the amendment introduced in Section 3, the Central Government was empowered to constitute and maintain an armed

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force of the union called the Railway Protection Force. Therefore, a person recruited to the Railway Protection Force on or after the enforcement of the Amendment Act became a member of the Armed Force of the Union. Section 19(1) of the Amendment Act provides, *inter alia*, that the existing force as constituted under the Act immediately before the commencement of the Amendment Act shall, on such commencement, be deemed to be the Force constituted under the Act as amended by the Amendment Act. Sub-section (1) by itself would mean that a member of the existing force on the commencement of the Amendment Act *ipso facto* became a member of the Armed Force of the Union as contemplated in Section 3 as amended. Therefore, Shri Mishra would be deemed to be a member of the armed force when he died. However, Sub-section (2) paints a different picture. The material provisions thereof provide *inter alia* that, notwithstanding anything contained in sub-section (1), any member of the existing force may, within thirty days from the commencement of the Amendment Act, exercise his option by notice in writing to the Director General to retire from service, and an option so exercised shall be final, and a member exercising his option shall be permitted, within thirty days from the date on which he exercises such option to retire from service. Had Mishra been alive on the date of the commencement of the Amendment Act he would have been given an option to take a retirement. If he had failed to exercise the option within the time specified, he would have become a member of an Armed Force of the Union. Section 19 of the Amendment Act clearly goes to show that a member of the existing force would not become a member of the Armed Force of the Union immediately on the commencement of the Amendment Act. He would become such a member after the expiry of a period of 30 days from the date of such a commencement, if he has not

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exercised the option to retire within the said period. Shri Mishra having died, long before the enforcement of the Amendment Act, the question of his exercising option to retire under sub-section (2) of section 19 did not and could not arise. It follows that Shri Mishra before his retirement could not and did not become a member of the Armed Force of the Union inspite of the provisions as contained in sub-section (1) of section 19 of the Amendment Act. Shri Mishra would be treated to be a member of the Force called a Railway Protection Force as contemplated in Section 3 of the Act as ~~an~~ amended.

9. Section 2(a) of the Administrative Tribunals Act, 1985 debars this Tribunal from entertaining any matter relating to a member of the Armed Force. This provision will not apply to the case of Shri Mishra who, as explained above, did not at ~~any~~ stage become a member of the Armed Force as envisaged in Section 3 of the Act as amended by the Amendment Act. This Tribunal, therefore, has the jurisdiction to entertain this application at the instance of the widow of Shri Mishra and consider her grievance on merits that she is being denied the payment of the family pension.

10. The application succeeds and is allowed. The respondents are directed to compute the family pension payable to the applicant under the relevant law and pay the same to her alongwith the arrears within a period of 3 months from the date of the production of a certified copy of this order by her before the relevant authority. The respondents shall thereafter continue to pay the family pension to the applicant month by month regularly. We have no doubt that since considerable time has elapsed and in view of the fact that the Counsel for the applicant has strongly urged that

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the applicant is entitled to be awarded penal interest,
the respondents shall act with the speed and will make
the necessary payments within the time specified by us.

11. There shall be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A).


(S.K. DHAON)
VICE CHAIRMAN.

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