

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 700/95/199

Date of Decision: 17-2-1997

Smt. Anandibai A. Bhoir

Petitioner/s

Mr. C. M. Jha

Advocate for the  
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Mr. N. K. Srinivasan

Advocate for the  
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member(A)

Hon'ble Shri

- (1) To be referred to the Reporter or not ? ☒ X
- (2) Whether it needs to be circulated to other Benches of the Tribunal ? ☒ X

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
M(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

O.A.700/95

Monday, this the 17th day of February, 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Smt. Anandibai A. Bhoir,  
W/o. Atma Ram Govind Bhoir,  
Ex. Mali A.E.N.(H) Bombay Central  
residing at post-vedhi Tal. Palghar,  
Dist. Thane

By Advocate Shri C.M. Jha

.. Applicant

-versus-

1. Union of India  
through  
General Manager,  
Western Railway,  
Churchgate,  
Mumbai - 400 020.

2. Divisional Railway Manager,  
Western Railway,  
Bombay Central,  
Mumbai - 400 008.

By Advocate Shri N.K. Srinivasan

.. Respondents

The application having been heard on 17th February, 1997  
the Tribunal on the same day delivered the following:

- : O R D E R :-

(Per M.R. Kolhatkar, Member(A))

In this O.A. the facts are as below:

The applicant is a widow of the deceased railway  
employee who was employed as a Mali. He<sup>is</sup> stated to  
have been removed from railway service on 6-1-87  
and later died on 29-3-1988. The record relating to  
the circumstances of the removal viz. the nature  
of charges etc. is not available. There<sup>is</sup> only an  
entry in the service book "Removed from service  
with effect from 6-1-1987 vide AEN(W1)PL's  
letter No.E/308/2/32 dt. 17-12-1986." The applicant  
made representations to the respondents for grant  
of family pension on 9-11-93 to which a reply was

given on 6-12-1993 at page 10 of the O.A. <sup>that</sup> mentioning the qualifying service of the deceased employee was 8 years and 21 days and "since he has not completed the required qualifying service as required by the rule, Family Pension cannot be granted." It is seen from the communication that his service period does not include leave without pay of 6 years 4 months and 24 days. If it is included his total service at the time of removal would have been 14 years 4 months and 24 days. There is a death certificate in the service book in which the reason for death is given as "prolonged illness." Counsel for the applicant has produced a certificate dt. 11-7-1996 which shows that the applicant was under treatment of the Doctor during the year 1986 to 1987 and that he was mentally depressed. This certificate appears to have been procured in connection with the O.A. and not being a contemporaneous certificate and not much value can be attached to it. However, it can be used as circumstantial evidence to draw an inference <sup>that</sup> the applicant was not well, that he was in the habit of remaining absent from duty because of his illness and that even the reason for removal from service may be prolonged absence rather than any serious charge. The applicant had applied for appointment on 24-10-1991 and it appears that she was given temporary employment from 23-3-92 for three months as a waterwoman on daily wages. It is clear that the railway administration had offered this employment to the applicant taking into account the overall circumstances of the applicant rather than in terms of <sup>any</sup> rule. The reliefs sought by the applicant are that the respondents may be directed to grant family pension in favour of the applicant, that the

respondents may be directed to consider the case of the applicant for compassionate appointment and the ex-parte removal order of her husband be quashed and set aside and he should be considered to be on duty while he died.

2. Counsel for the applicant relied on the case of Chandra Deo Singh vs. U.O.I., (1989)9 ATC 133 in which on several grounds including the ground that ~~an~~<sup>was</sup> an ex-parte enquiry ~~was~~ held against railway employee, when he was under the treatment of a railway doctor ~~the enquiry and penalty were~~ held bad. In my view the applicant in this case has not produced any material to show that her husband was under the treatment of a railway doctor and the enquiry was held exparte. As mentioned earlier all the records in this connection ~~are~~ destroyed. Counsel for the applicant then relies on D.K.Yadav v. M/s. J.M.A. Industries Ltd., JT 1993(3) SC 617 in which the Hon'ble Supreme Court had set aside the termination order of a factory employee on the ground that Article 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Arts. 14 and 21 and since such a procedure was not followed the Hon'ble Supreme Court set aside the award of the Labour Court and order of reinstatement with backwages restricted to 50% was passed. Here again I find it difficult to apply <sup>the</sup> ratio of the case to the facts of this case because facts are not identical and the records have been destroyed. It is clear, however, that applicant deserves consideration at the hands of the employer of her deceased husband for the reasons which ~~were~~ detailed in the application of the applicant to the DRM at Ex. 'C'. As observed above, it was ~~apparently~~ in view of this application that the

applicant was given temporary relief by way of casual employment for three months. I am therefore of the view that <sup>same</sup> ~~the~~ attitude which was in evidence in the action of the railway administration in providing her temporary employment must also come into play in relation to any direction that this Tribunal may give. In this connection my attention was ~~drawn~~ drawn to CCS Pension Rule 41 relating to compassionate allowance which would have its corresponding provision in the railway pension rules. The same is reproduced below :

"41. Compassionate allowance

- (1) A Government servant who is dismissed or removed from service shall forfeit his ~~and~~ and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension ~~and~~ or gratuity or both which would have been admissible to him if he had retired on compensation pension.

- (2) A compassionate allowance sanctioned under the proviso to sub rule (1) shall not be less than the amount of Rupees three hundred and seventy five per mensem. "

The Govt. of India's decision under this rule indicates that when the officer's service has been dishonest, there can seldom be any good case for a compassionate allowance. Poverty is not an essential condition precedent to the grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him.

3. Learned counsel for the respondents submits that the wife is not entitled to the relief of compassionate allowance unless the same was granted to the deceased employee. But taking into account of the fact that her husband was apparently ailing for a very long time and died in penury leaving behind a widow and one son without any means of livelihood and considering that but for the fact that the applicant's husband had been shown as being on 6 years 4 months and 3 days' leave without pay, the applicant's husband had a substantial length of service (14 years) and that in the absence of any record it is difficult to find out whether any of the quantum of leave without pay could have been covered by medical certificate etc. I am of the view that the railway administration may consider the case of the applicant as if her husband had applied for such a compassionate allowance when he was removed from service and consider the case of the applicant on merits considering the facts and circumstance of the case and taking into account the considerations noted above as supporting the case for taking a sympathetic view. The applicant may within one month of the date of communication of the order make an application to the respondents for considering her case in terms of this judgment and the respondents may consider the same within three months from the date of receipt of the application. There will be no order as to costs.

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*NIP to let kar*  
(M.R. KOLHATKAR)  
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

C.P.No.69/97 in OA.NO.700/95

Monday this the 30th day of March, 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri P.P.Srivastava, Member (A)

Smt. A.A. Bhoir

By Advocate Shri C.M. Jha ... Applicant

V/S.

Union of India & Ors. ... Respondents

Tribunal's Order

This is a contempt petition filed by the applicant alleging that the respondents have violated the order passed by this Tribunal dated 17.2.1997 in OA.NO. 700/95. Respondents have filed reply opposing the contempt petition. Heard the learned counsel for both sides.

2. By the order dated 17.2.1997 in OA.NO.700/95 this Tribunal directed the respondents to consider the case of the applicant sympathetically within a particular time limit. Now the respondents have considered the case of the applicant but did not grant her the relief and rejected her request by the impugned order dated 2.9.1997.

According to the applicant, since the respondents have not granted the relief, the order of the respondents amounts to violation of the order passed by this Tribunal.

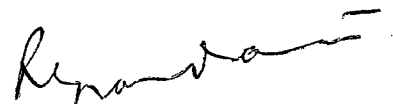


3. This Tribunal only directed the respondents to consider the representation of the applicant sympathetically and pass appropriate orders within a particular time limit. Now in the impugned order the respondents have given some reasons as to why the relief cannot be given to the applicant. In our view, the impugned order is in compliance of the order passed by this Tribunal, though the order may not satisfy the term of the applicant. If the applicant is not satisfied with the reply dated 2.9.1997 and if she is entitled to any relief in law, she is to agitate the same by filing a fresh OA according to law. But we are satisfied that there is no illegality in the order passed on 2.9.1997 with reference to the order passed by this Tribunal on 17.2.1997. Hence, in our view, no case is made out for contempt proceedings.

4. In the result, Contempt Petition is rejected. However, this order is without prejudice to the applicant to approach the competent authority or appropriate forum according to law. No costs.



(P.P. SRIVASTAVA)  
MEMBER (A)



(R.G. VAIDYANATHA)  
VICE CHAIRMAN

mrj.

(C)

order/Judgment despatched  
to Appellant/Respondent(s)  
on 24/4/98

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