

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.

O.A. No. 391/90

Dt. of Decision : 4.11.93.

Y. Janaki, W/O. Late Y. Gopi,
aged about 35 years, R/o
Vijayawada, Krishna District.

.. Applicant

Vs

1. The Additional Divisional Railway
Manager (C) South Central Railways,
Vijayawada, Krishna District.
2. The Senior Divisional Mechanical
Engineer (L) South Central Railway,
Vijayawada, Krishna District.
3. The Loco Foreman, S.C. Railway,
Vijayawada, Krishna District.
4. The Divisional Railway Manager,
S.C. Railway, Vijayawada,
Krishna District.

.. Respondents

Counsel for the Applicant : Mr. K.R. Srinivas

Counsel for the Respondents : Mr. N. R. Devaraj, Addl CGS

CORAM:

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY : MEMBER (JUDL.)

O.A. No.391/90

Dt. of Decision : 4.11.93.

O R D E R

X As per HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.) X

The applicant is the widow of Late Y. Gopi, who died on 30.11.1986. The prayer of the applicant is that the order of compulsory retirement which was passed against her husband as a major penalty be set aside and that she be declared entitled to all the consequential benefits related to salary, pension, gratuity etc.,

2. Sri Y. Gopi joined S.C. Railways on 10.12.71. On a charge of absence without leave, disciplinary proceedings were initiated against him, which culminated in the penalty of removal imposed upon him vide order dt. 24.9.82. Aggrieved by the same Sri. Y. Gopi filed a writ petition (No. 132/83) which, upon transfer to this Tribunal, was heard as T.A. No. 418/86. The said T.A. was disposed of with a direction to the appellate authority to reconsider the appeal and pass a speaking order. Before the said order could be passed as Sri. Y. Gopi died. The appellate authority on a reconsideration of the entire matter passed an order dt. 7.4.89 by which he converted the original penalty of removal to that of compulsory retirement with effect from 30.9.1982. The appellate authority further directed that the period from 14.1.1980 to 25.9.1982 should be treated as leave due.

3. At the out set the question that comes up for our consideration is whether the widow could lawfully challenge the order of compulsory retirement passed against

her husband. A similar question came up before the High Court of A.P. in T.N. Venkatanathachari (deceased) by legal representatives Vs State of A.P. by Secretary Education Department 1969 S.L.R./88. The relevant portion of the judgement is reproduced below.

The learned Government Pleader has relied on the said decision as on all fours with the facts of the present case. Here also, the writ petitioner sought a relief which was purely personal to him which involved his continuance in service. Even if the prayer in the writ was granted by the Court, the allegations against him were not wiped out, and no fresh proceedings could be initiated against the petitioner who is dead. The cause of action, which was purely personal to the writ petitioner would not survive to his legal representatives and the legal representatives, who must be deemed to be third parties cannot be persons aggrieved who could seek reliefs under Article 226 of the Constitution alleging infraction of their personal or individuals rights.

4. The cause of action in the present case also can be said to be purely personal to Late Y. Gopi and would not survive to his legal representatives, and the legal representatives, who must be deemed to be third party cannot be persons aggrieved who could file this application under Section 19 of the Administrative Tribunal Act 1985.

5. Notwithstanding the fact that the applicant herein cannot challenge the validity, of the penalty of compulsory retirement imposed upon her husband, the submission made by the learned counsel for the applicant that the applicant had not received any benefits on account

of the compulsory retirement of her late husband deserves consideration. Late Y. Gopi served for more than 10 years before he was compulsory retired from service with effect from 30.9.82. Thereafter he died on 30.11.86. According to Rule 31 of the Manual of Railway Pension Rules (MRPR), which is analogous to Rule 40 of the C.C.S.(Pension) Rules 1972, the competent authority who imposed the penalty of compulsory retirement is required to consider the case of the employee for the purpose of granting him pension or gratuity or both at a rate not less than two thirds and not more than full pension or gratuity or both admissible to him, on the date of compulsory retirement.

6. In view of the above this application is disposed of with the following directions to the respondents:-

1) The respondents shall examine the entitlement of pension/gratuity in respect of the deceased employee as would be admissible to him on the date of compulsory retirement. The amount thus fixed, if any, shall be paid to the legal representative.

2) As the period of absence of Sri Y. Gopi was to be treated as leave due to him under the orders of the DRM dt. 7.4.1989, the same shall be calculated as per the rules applicable from time to time, taking into consideration, the leave due to the employee and pay the same to the legal representative.

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7. The above directions shall be the complied with within a period of three months from the date of communication of this order.

T. Chandrasekhara Reddy
(T. CHANDRASEKHARA REDDY)
MEMBER (JUDL.)

A.B. Gorti
(A.B. GORTI)
MEMBER (ADMN.)

Dated : The 4th November 1993.
Dictated in Open Court.

A. S. 9/11/93
Deputy Registrar (Judl.)

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Copy to:-

1. The Additional Divisional Railway Manager(C) South Central Railways, Vijayawada, Krishna District.
2. The Senior Divisional Mechanical Engineer(L) South Central Railway, Vijayawada, Krishna District.
3. The Loco Foreman, S.C.Railway, Vijayawada, Krishna District.
4. The Divisional Railway Manager, South Central Railway, Vijayawada, Krishna District.
5. One copy to Sri. K.R. Srinivas, advocate, 1-1-405/5A, Gandhinagar, Hyd.
6. One copy to Sri. N.R. Devaray, SC for Rlys, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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O.A. 391/90

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 4/11/-1993

ORDER/JUDGMENT:

M.A./R.A./C.A. No.

O.A. No.

in
391/90

T.A. No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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