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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

DA 826/93.

Dt. of Order:8-3-94.

Smt.Kumpati Samadhanamma

...Applicant

Vs.

Union of India rep. by its

1. The General Manager,
Rail Nilayam, SC Rlys,
Sec'bad.
2. The Divisional Railway Manager,
SC Rlys, Vijayawada.
3. The Sr.Divisional Mechanical Engineer/
Loco, SC Rlys, Vijayawada.

...Respondents

Counsel for the Applicant : Shri J.M.Naidu

Counsel for the Respondents : Shri D.Gopal Rao, SC for Rlys

CORAM:

THE HON'BLE SHRI T.CHANDRASEKHAR REDDY : MEMBER (J)

....2.

J.M.Naidu
J.

OA.826/93

Judgement

(As per Hon. Mr. T. Chandrasekhara Reddy, Member(Judl.))

This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to pay compassionate allowance to the applicant and to pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts so far necessary to adjudicate this OA in brief are as follows :

One Mr. K. James, was working as Ex.Fireman 'B'/Under Loco Foreman/Vijayawada. For his unauthorised absence, he was removed from service on 27-6-1972. The said James died on 23-12-1987. The applicant herein is the wife of the said James. At the time of his death the said James left behind him the applicant and three children. The applicant approached the respondents for payment of compassionate allowance. Vide order dated 10-6-1992 the applicant had been informed by the General Manager, Secunderabad, that compassionate allowance is not payable to the applicant and the extant rules do not envisage such consideration as her husband had been removed from service. As ^{against} the said order dated 10-6-1992, the present OA is filed for the relief as already indicated above.

3. Counter is filed by the respondents opposing this OA.

4. We have heard Mr. J.M. Naidu, Counsel for the applicant and Sri D. Gopal Rao, SC for the respondents in detail.

5. It is not in dispute that the applicant's husband, K. James, while working as Ex.Fireman 'B' had been removed

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from service for his unauthorised absence as per orders dated 27-6-1972. There cannot be any doubt about the fact that the applicant's husband had been removed from service as per orders dated 27-6-1972, as a measure of punishment. The said punishment order has not been set aside by any competent authority. The said punishment order had become final. Paras 309 and 311 of the Manual of Pension Rules (MOPR) read as follows :

"Pensionary benefits are not granted to a Railway servant who is removed or dismissed from service or who has resigned before 20 years of qualifying service.

The competent authority removing or dismissing the Railway employee from service may, however, grant compassionate grant and / or allowance which shall not exceed 2/3 of pensionary benefits which would have been admissible to him if he had retired on medical grounds."

6. Even though the applicant's husband had been removed from service, the competent authority had never granted him any compassionate allowance in terms of Rules 309 and 311 of MOPR nor the said James had approached the competent authority when he was alive for payment of compassionate allowance in accordance with paras 309 and 311 of MOPR. So, as James the applicant's husband had never been paid compassionate allowance during his life time, we are unable to understand how the applicant has got a right for payment of compassionate allowance. It may be pointed out that the applicant derives her right for compassionate allowance only through her husband. When the husband of the applicant had not been paid any compassionate allowance it is not open for the applicant herein to claim compassionate allowance. So in view of this position, the OA filed by the applicant is liable to be dismissed.

7. Mr. J.M. Naidu, vehemently contended before us that in 1973 the applicant's husband, K. James had preferred an appeal as against the removal order dated 27-6-1972 and the said

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appeal has not been disposed of till today and in view of this position that it has got to be inferred that the removal order passed against the applicant as having been set aside and so the applicant is liable to be paid compassionate allowance. If the applicant's husband had filed an appeal as contended by J.M. Naidu during his life time, the applicant's husband should have taken steps to get the appeal disposed of. If such an appeal had been preferred by Mr. James the applicant's husband, if the same had not been disposed of within a reasonable time, then the applicant's husband should have approached the High Court of Andhra Pradesh and moved the High Court of Andhra Pradesh under Article 226 of the Constitution of India for issuing appropriate direction to the competent authority for disposal of the said appeal. The Central Administrative Tribunal had been constituted with effect from 1-1-1986 at Hyderabad. The fact that the applicant's husband James died on 23-12-1987 is not in dispute in this OA. After the constitution of CAT at Hyderabad, the applicant's husband had never approached the CAT, Hyderabad, for a direction to the competent authority to pass appropriate orders on the appeal said to have been preferred by the applicant's husband in the year 1973. So, from the silence of the applicant's husband, an adverse inference had to be drawn viz. the applicant's husband had never preferred any appeal as against the removal orders dated 27-6-1972 as contended by Mr. J.M. Naidu, Counsel for the applicant. In any event, we find any amount of laches on the part of the said K. James, as he had not preferred any appeal and even if he had preferred any appeal as against the removal order, in not approaching the appropriate forum for an appropriate direction to get the appeal disposed of. So, in view of the said laches also, it is not open for us

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to interfere with the removal order dated 27-6-1972 passed as against Sri K. James, the applicant's husband herein. The removal orders passed against Mr. James had become final as early as in 1972. As already pointed out, the applicant's husband had no right to receive pension/compassionate allowance and he had never been paid any compassionate allowance. It is not open for the applicant as already pointed out to claim compassionate allowance in this OA.

8. We see no merits in this and the same is liable to be dismissed. Accordingly, the OA is dismissed leaving the parties to bear their own costs.

T. Chandrasekhara Reddy
(T. Chandrasekhara Reddy)
Member (Judicial)

Dated : March 8, 1994
Dictated in the Open Court

Andhra
Deputy Registrar (J)CC

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- To
- 1. The General Manager, Union of India,
S.C.Rlys, Railnilayam, Secunderabad.
- 2. The Divisional Railway Manager, S.C.Rlys, vijayawada.
- 3. The Sr.Divisional Mechanical Engineer,
Loco, S.C.Rlys, vijayawada.
- 4. One copy to Mr.J.M.Naidu, Advocate, CAT.Hyd.
- 5. One copy to Mr.D.Gopal Rao, SC for Rlys CAT.Hyd.
- 6. One copy to Library, CAT.Hyd.
- 7. One spare copy.

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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 (AD)
AND

THE HON'BLE MR. TCCHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADM)

Dated: 8-3-1994

ORDER/JUDGMENT

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

O.A.No.

826/93

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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Central Administrative Tribunal
DESPATCH
18 APR 1994
HYDERABAD BENCH

Handwritten initials and date: 21/4/94