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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 13/7/2000

OA 505/99

Smt. Sumitra Devi Yadav w/o Late Shri Raj Kumar r/o 845/32, Srinagar Road, Dayal ka Para, Old Jadooghar, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Works Manager (C&W), Western Railway, Ajmer.
3. Dy. Chief Mechanical Engineer (C&W), Western Railway, Ajmer.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.S.EAPU, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.P.V.Calla

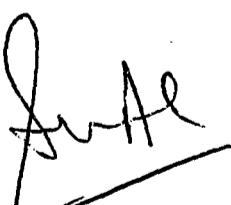
For the Respondents ... Mr.R.G.Gupta

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes a prayer to declare the order of removal from service, in respect of her husband Late Shri Raj Kumar, as illegal and to direct the respondents to consider the case of the applicant's son for appointment on compassionate grounds and also to direct the respondents to pay the unpaid claims of Late Shri Raj Kumar and family pension in favour of the applicant as per rules.

2. In brief the facts of the case, as stated by the applicant, are that Late Shri Raj Kumar, husband of the applicant, was appointed as Group-D employee on regular basis on 8.2.79. Thereafter, he was promoted on the post of Helper Khalasi and designated as Painter. It is stated that while working on the post of Helper Khalasi Shri Raj Kumar expired on 27.5.99 leaving behind his wife, his mother and his son Manish Kumar, who was adopted by the applicant on 26.8.98. It is stated that the applicant submitted an application for providing employment to her adopted son Manish Kumar but the same was rejected on the ground that husband of the applicant, Late Shri Raj Kumar, was removed from the railway service vide order dated 23.9.95 w.e.f. 28.8.95 and thereafter he died. It is also stated that the applicant also served a notice for demand of justice dated 5.6.99 but with no avail. Therefore, the applicant filed this OA for the relief as



mentioned above.

3. Reply was filed. In the reply it is stated that Late Shri Raj Kumar was removed from service vide order dated 23.9.95 w.e.f. 28.8.95, against which no appeal was filed, therefore, the order has become final. Hence no relief of pension and pensionary benefits is admissible to the applicant. It is also stated that no benefit of appointment on compassionate grounds is permissible to the applicant's son as per the extant rules issued by the Railway Board from time to time. It is further stated that Shri Raj Kumar expired after three years of his removal from service. Therefore, on this count also the applicant's son is not entitled to be appointed on compassionate grounds. In view of the reply filed, the respondents have requested to dismiss this OA with costs.

4. Heard the learned counsel for the parties and also perused the whole record.

5. On perusal of the averments of the parties, it appears that applicant's husband was removed from service on the basis of such memorandum of charge-sheet which was never served upon him. The delinquent (Late Shri Raj Kumar) was never intimated positively regarding initiation of departmental proceedings against him although it is said that registered letters were sent to him but whether those letters were refused to accept by the delinquent himself, no evidence/affidavit to this effect was filed by the respondents in support of their contentions. Not only this but copy of the inquiry report holding the delinquent guilty of the charge was also never supplied to the delinquent. Even a notice imposing penalty under Rule-6 of the Railway Servants (Discipline & Appeal) Rules, 1958 (for short, the Rules) has not been served upon the delinquent personally. On perusal of the notice of imposition of penalty under Rule-6 of the Rules (photo-copy produced by the respondents) it appears that the said notice was also not served upon the delinquent but the disciplinary authority on the basis of such an inquiry passed this illegal/void order. Therefore, the order of removal appears to be in violation of the statutory rules and the principles of natural justice and on the basis of such an order, which appears to be void and ab-initio, the applicant could not have been denied the family pension and pensionary benefits and consideration of her adopted son for appointment on compassionate grounds.

6. Admittedly, Late Shri Raj Kumar was a permanent employee of the respondent department. The removal of said Shri Raj Kumar, on the basis of

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illegal and void order, does not disentitle the applicant for claiming family pension, pensionary benefits and appointment for her adopted son on compassionate grounds.

7. In view of the above, this OA is allowed and the impugned order of removal from service of the applicant's husband, Shri Raj Kumar, dated 23.9.95 is set aside as illegal, void and ab-initio and the respondents are directed :

- i) to sanction family pension to the applicant w.e.f. 22.8.95, the date when her husband died,
- ii) to pay her pensionary benefits, due to Late Shri Raj Kumar on the date of his death,
- iii) consider the adopted son of the applicant, Shri Manish Kumar, for appointment on compassionate grounds,
- iv) the whole exercise shall be completed within a period of four months from the date of receipt of a copy of this order.
- v) No order as to costs.


(S.K.AGARWAL)
MEMBER (J)