

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,CIRCUIT COURT SITTING AT BILASPUROriginal Application No 411 of 2004Jabalpur, this the 21st day of April, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Mr. Madan Mohan, Judicial Member

Malti bai, W/o Late Motilal, r/o Near Mahendra,

Bhandar, Pandit Hanuman Mandir, Titurdih, Du

Distt. Durg(Chhattisgarh)

Applicant

(By Advocate – None)

V E R S U S

1. Union of India,
Through its Secretary,
Ministry of Railway, New Delhi.
2. The General Manager,
South Eastern Railway Garden Reach
Kolkata-43.
3. The Divisional Railway Manager,
South Eastern Railway(Now South East
Central Railway, Bilaspur.
4. The General Manager, Personnel,
South Eastern Railway Garden Reach
Kolkata-43.
5. The General Manager, Personnel,
South Eastern Railway(Now
South East Central
Railway, Bilaspur

Respondents

(By Advocate – Shri H.B. Shrivastava)



ORDER

By Madan Mohan, Judicial Member -

By filing this Original Application, the applicant has sought the following main reliefs :-

- "(1) To quash the order as contained in Annexure A-1 by issuing a writ in the nature of certiorari as arbitrary, illegal and void and further direct the respondents to count the period of service of the applicant's husband w.e.f. 26.1.1981 to 12.12.1998 for the purpose of entitlement of family pension.
- (2) To quash the order of compulsory retirement of the applicant's husband as contained in Annexure P-4 as the same has been passed without following due procedure prescribed in the CCA Rules 1965.
- (4) Direct the respondents to consider the representation of the applicant's son for grant of compassionate appointment by issuing a writ in the nature of mandamus.

2. The brief facts of the case are that the husband of the applicant late Shri Motilal Varma was working under the respondents ^{in the} capacity of Box Boy w.e.f. 26.1.1981. He served under the respondents department till his death i.e. on 13.12.98. A charge sheet was issued to him on 12.12.95 for remaining absent from 30.9.95 to 9.12.1995 and he was inflicted a punishment vide order dated 29.3.96(Annexure-A-3) with withholding of one increment for a period of 2 years. He was served with another charge sheet for unauthorized absence from service for a period from 24.12.94 to 22.7.95. Thereafter a major punishment of compulsory retirement from service was imposed on him vide order dated 19.1.1998 (Annexure-A-4). The punishment order of compulsory retirement was imposed without following the due procedure prescribed in Central Civil Services(Classification Control and Appeal) Rule, 1965 and only an amount of Rs. 5049/- towards provident fund has been paid. Due to the said demise of ^{the} husband of the applicant, she preferred an



appeal(Annexure-A-6) to DRM South East Central Railway. However, the respondents have not given any response to the aforesaid appeal of the applicant. Then, the applicant has filed an OA No.48/03 which was disposed of vide order dated 3.3.2003 directing the respondents to decide the appeal of the applicant with regard to entitlement of family pension and also with regard to compassionate appointment to her son. However, the respondents have communicated the impugned order Annexure-A-1 bywhich the representation of the applicant was rejected. Hence this OA..

3. None is present on behalf of the applicant, we are disposing of this OA by invoking the provisions of Rule 15 of CAT(Procedure) Rules, 1987. Heard the learned counsel for the respondents and carefully perused the records.

4. The learned counsel for the respondents argued that the applicant had earlier filed the OA No.48/03 which was disposed of vide order dated 3.3.2003 directing the respondents to decide the representations of the applicant. The respondents fully complied with the direction of the Tribunal and passed a speaking and detailed order dated 20.5.2003(Annexure-A-1). The learned counsel for the respondents further argued that the applicant is not entitled for family pension due to rendering less than 10 years of qualifying service of his husband and according to the definition given in the Railway Services(Pension) Rules, 1993 the period of un-authorised absence in continuation of authorized joining time or in continuation of authorized leave of absence treated as over stay, ~~is~~ not count as qualifying service. The deceased Railway employee Motilal was appointed on regular basis on 23.3.86 and was compulsory retired from service on 19.1.98. During the service period he remained absent from duty in an un-authorised manner for 3 years, 1 month and 20 days as already communicated to the applicant on 20.5.2003. He also argued that the deceased Govt. servant was earlier utilized as



substitute Box Boy or in other Group 'D' service in broken period from 26.7.80 to 26.4.83. Thereafter he was appointed on regular basis from 23.3.86. The learned counsel for the respondents further argued that the deceased Govt. Servant had participated in the enquiry, as is evident from the enquiry proceedings given to him with a show-cause notice (Annexure A-5). The punishment order was passed on 19.1.98 and the delinquent employee died on 13.12.98. There was ample time to file an appeal but he did not file any appeal against the order of compulsory retirement passed by the disciplinary authority and also argued that as the Govt. servant was compulsorily retired from service after conducting the departmental enquiry proceedings. Hence, the applicant's son is not legally entitled for any compassionate appointment. The OA deserves to be dismissed.

5. After hearing the learned counsel for the respondents and on perusal of the records, we find that the deceased Govt. servant was appointed on regular basis w.e.f. 23.3.86 and he was ordered to be compulsorily retired from service on 19.1.98, after conducting the departmental enquiry proceedings against him. He died on 13.12.98 i.e. after lapse of 11 months of passing the punishment order of compulsory retirement. He did not file any appeal against the punishment order while he died on 13.12.98. The present applicant had filed the earlier OA No.48/03 which was disposed of vide order dated 3.3.2003 with a direction to the respondents to consider the representation of the applicant. In this OA, the applicant also did not challenge the order of compulsory retirement passed against her husband dated 19.1.98. So far as the question of family pension is concerned the deceased Govt. servant was appointed on regular basis w.e.f. 23.3.86 and the punishment order of compulsory retirement was imposed on him after conducting the departmental enquiry proceedings, as during the service period the deceased Govt. servant was remained absent from his duties in unauthorized manner for 3 years one months and 20 days. This fact has not been controverted by

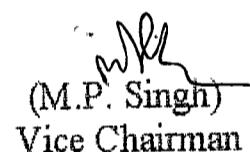


the applicant by filing rejoinder. It is apparently clear that the period of qualifying service of deceased Govt. servant is less than 10 years. Hence, he was not entitled for any pension and the question of family pension does not arise. We find that if the deceased Govt. servant was retired on medical ground or died in harness, then his legal heirs are entitled for compassionate appointment. However, in the present case the deceased Govt. servant was compulsorily retired from service. Hence, the applicant's son is not entitled for compassionate appointment.

6. After considering all the facts and circumstances of the case, we are of the considered view that the OA deserves to be dismissed. Accordingly, the OA is dismissed. No costs.



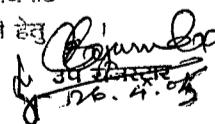
(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

skm

पृष्ठांकन सं. ओ/नवा..... जदलपुर, दि.....
ब दिलिखनि लालो दिलिखनि
(1) सदिख, उत्तर प्रदेश विधायक बोर्ड, जदलपुर
(2) अधिकारी नियुक्ति, दिलिखनि..... के काउंसल
(3) प्रत्यार्थी श्री/श्रीमती/डॉ..... के काउंसल
(4) कंवियाल, रेपुला, जदलपुर व्यायामी
सुविधा एवं अक्षरायक कार्यवाही हेतु



30/4/2005
R.K. Gupta
26.4.05

Shri R.K. Gupta H.C.J.B.P
Shri H.B. Shrivastava H.C.J.B.P



27/4/05