

16

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: _____

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
-----------------------	------------------------

27.10.2009

OA No. 166/2007

Mr. Sandeep Garssa, Counsel for applicant.
Mr. Virendra Dave, Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the OA is
disposed of.


(B.L. KHATRI)
MEMBER(A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 27th day of October, 2009

ORIGINAL APPLICATION No.166/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Smt. Patasi Devi
w/o late Shri Tulsa Ram,
r/o Warispura,
Post Devrala, Via Nua,
District Jhunjhunu (Raj.)

.. Applicant

(By Advocate: Shri Sandeep Garssa)

Versus

1. Union of India through General Manager, North Western Railway, Headquarter at Jaipur
2. The Divisional Railway Manager (Estt.), North-Western Railway, Jaipur Division, Jaipur .
3. The Permanent Way Inspector, North Western Railway, Sikar.

... Respondents

(By Advocate: Shri Virendra Dave)

WZ

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) by an appropriate order or directions quash and set aside the so called impugned termination order dated 24.4.1980 and the respondent Railway Administration may be directed to provide family pension to the applicant from the date of missing of her husband i.e. 29.1.1979 with interest and to provide a suitable compassionate appointment to one family member of the applicant in place of husband of applicant.
- ii) Any other relief which this Hon'ble Tribunal deems fit may also be granted to the humble applicant looking to the facts and circumstances of the present case.
- iii) The Original Application may kindly be allowed throughout with costs.

2. Briefly stated, facts of the case are that applicant is widow of one Shri Tulsa Ram, who is stated to be missing since 29.1.1979. The grievance of the applicant is that the respondents have not provided family pension to her, as such, direction may be given to the respondents to pay family pension to the applicant.

3. Notice of this application was given to the respondents. The respondents have stated that husband of the applicant was appointed in the year 1958 and since the matter pertains to more than 50 years old, therefore, no record is available with the respondents. It is further stated that husband of the applicant was removed from service vide order dated 24.4.1980, as such, applicant is not entitled to any pensionary benefits. The fact that husband of the applicant is missing from 29.1.1979 is disputed by the respondents on the ground that the applicant has lodged a report

to the Superintendent of Police, Jhunjhunu on 9.1.1992 i.e. after a lapse of about 13 years. In order to show that husband of the applicant was removed from service in the year 1980, the respondents have placed reliance on letter dated 3.7.1997 (Ann.A/5) where this fact has been recorded and the applicant was informed that she is not entitled to pensionary benefits.

4. From the material placed on record, it is evident that thereafter the applicant served a legal notice dated 13.3.2006 thereby claiming family pension as well compassionate appointment i.e. after a lapse of about 9 years and also filed OA No.155/2006 which was dismissed as withdrawn vide order dated 17.5.2006. The respondents have also contested the claim on the ground that it is barred by limitation. The applicant has not filed any application for condonation of delay.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. From the facts as stated above, it is clear that husband of the applicant was removed from service on 24.4.1980. Although in the prayer clause the applicant has prayed for quashing the impugned termination order dated 24.4.1980 but the same has not been annexed with the OA. That apart, we have also carefully considered the pleadings and the grounds raised by the applicant in this OA. The applicant has not challenged validity of the termination order on any ground whatsoever. Thus, on the face of these facts when validity of the termination order is not challenged, the applicant is not entitled to any pensionary benefits. Dismissal or

removal of a Government servant from service entails forfeiture of past service, thus not entitling for pensionary benefits as per Railway Services Pension Rules.

7. At this stage, we wish to refer to the decision of the Hon'ble Apex Court in the case of C.Jacob vs. Director of Geology and Mining and Anr., (2008) 2 SCC (L&S) 961 whereby termination was challenged after about 20 years and the department has shown its inability to show record after a long time. The Apex Court held that burden of proof whether the enquiry was conducted was upon the claimant and the court should not give direction to the department to consider the stale claim. It was further held that the department can reject the stale claim on the ground of delay alone without examining it on merit. It was further held that a Government servant whose case does not fall in any of the classes of pension as stipulated in the pension rules is not entitled to pension. As already stated above, in this case, the applicant has not challenged validity of the termination order. Facts remain that husband of the applicant was removed from service which entails forfeiture of past service under Rule 40 of the Railway Services Pension Rules, 1993. Thus, no relief can be granted to the applicant regarding family pension as well as compassionate appointment.

8. Accordingly, the OA is dismissed with no order as to costs.


(B.L.KHATRI)

Admv. Member

R/


(M.L.CHAUHAN)

judl. Member