

11

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

14th December, 2010

OA 328/2010
MA 43/2010

Present: Shri P.N. Jatti proxy for Sh. Rajvir Sharma, counsel for
applicant
Shri Hawa Singh, counsel for respondents

Although it is a no adjournment case, on the request of
proxy counsel for applicant, let the matter be listed on 23.12.2010.

[Signature]

(M.L. Chauhan)
Member (Judicial)

mk

23.12.2010

Mr. Rajvir Sharma, Counsel for applicant
Mr. Hawa Singh, Counsel for respondents

Heard learned Counsel for the parties.

For the reasons dictated separately,
the OA is disposed of in view of dismissal of OA
no order is required to be passed in MA No 43/2010
which shall also stand disposed of.

[Signature]
(Anil Kumar)
M(A)

[Signature]
(M.L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 23rd day of December, 2010

Original Application No.328/2009

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

Vidhya Devi Mathur
w/o late Shri Purushottam Lal,
r/o Piplada, Tehsil Piplada,
Distt. Kota (Raj.)

.. Applicant

(By Advoate: Shri Rajvir Sharma)

Versus

1. Union of India
through its General Manager
West Central Railway,
Jabalpur (M.P.)
2. Divisional Railway Manager,
West Central Railway,
Kota.

.. Respondents

(By Advocate: Shri Hawa Singh)

ORDER (ORAL)

The applicant who is widow of late Shri Purushottam Lal has
filed this OA thereby praying for the following reliefs:-

"In conspectus of the above facts, it is prayed to
Hon'ble Tribunal that this Hon'ble Tribunal may graciously be
pleased to call for and examine the entire service record of
the husband of the applicant and



It is further prayed that this Hon'ble Tribunal may kindly be pleased to accept and allow this Original Application and may kindly be pleased to direct the respondents to determine the all retiral benefits and family pension by giving the benefits of Sixth Pay Commission and accordingly they may also directed to pay the same with the interest of 12% per annum.

Cost of Original Application may be awarded to the applicant.

Any other order or direction, this Hon'ble Court may deem fit and proper be also passed in favour of the applicant.

2. The case as projected by the applicant in this OA is that husband of the applicant after completion of training successfully was posted as Parcel Clerk at Junagarh where he worked from 1963 to 1974. It is further pleaded that thereafter husband of the applicant was transferred to Ramganj Mandi in the year 1974. It is also pleaded that husband of the applicant became sick in the year 1975 and could not attend the duty but upto 1975 he was regular in service. The applicant has pleaded that since husband of the applicant has worked for a period of about 12 year and thus completed more than 10 years service, as such, family of the deceased employee is entitled to family pension. It is also pleaded that in similar circumstances benefit has been extended by the department, but no such benefit has been extended to the applicant. It is on the basis of these facts that the applicant has filed this OA for the aforesaid reliefs.

3. It may be stated that husband of the applicant ~~was~~ expired on 29.10.2003 but her late husband never agitated the matter for pensionary benefits for a period of about 28 years after relinquishment of service.

leg

4. Notice of this application was given to the respondents. The respondents have filed reply. By way of preliminary objections, it has been stated that prayer of family pension has been made by the applicant after a long delay of 34 years. It is further stated that the cause of action, if any, has arisen in the year 1975 and on this account alone the OA is required to be dismissed. The respondents have further stated that the present OA is not maintainable for want of jurisdiction as the Administrative Tribunals Act, came into force w.e.f. 22.1.2986 and there is no single document which discloses the cause of action of this Tribunal for adjudication. It is further stated that the present OA deserves to be rejected in view of the provisions contained under Section 21 of the Administrative Tribunals Act, 1985. For that purpose, reliance has been placed upon the decision of the Apex Court in the case of Secretary to Govt. of India vs. Shivram Mahadu Gaikwad [1995 SCC (L&S) 1148] and another decision of the Apex Court in the case of Ramesh Chandra Sharma vs. Udham Singh Kamal, (1998) 8 SCC 304. On merit, it has been stated that husband of the applicant was removed from service w.e.f. 18.4.2000 vide order dated 1.5.2000 and 15.6.2000 as the husband of the applicant was unauthorisedly absent from the duty since 1975 by adopting the procedure in accordance with the law (SF-5 dated 27.2.98). Thus, according to the respondents, no pensionary benefits are payable as per Rule 65 of the pension manual.

4. In the rejoinder, the applicant has stated that the respondents have not annexed copy of the removal order as well

42

as paper of the enquiry with the reply, as such, the averments made by the respondents cannot be considered to be correct.

5. I 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 evident that husband of the applicant who was a railway employee remained absent from duty w.e.f. 1975. It is also not disputed that husband of the applicant died on 29.10.2003. During this long period of 28 years, husband of the applicant did not make any grievance regarding payment of pensionary benefits. That apart, from the stand taken by the respondents in the reply, it is evident that husband of the applicant was removed from service in the year 2000. He neither challenged validity of the termination order nor filed statutory appeal before the competent authority till his death. Thus, in view of the provisions contained in Rule 40 of the Railway Services (Pension) Rules, 1993, the husband of the applicant was not entitled to pensionary benefits as in terms of the aforesaid rules, dismissal or removal of railway servant from a service or post shall lead to forfeiture of his past service. The husband of the applicant has not rendered any service, as his past service has already been forfeited in terms of Rule 40 of Railway Services (Pension) Rules, as such, he was not entitled to pensionary benefits. It may be stated that family pension is an extension of pension and not independent of it and is not a bounty. Pension entitlement depends upon rules so as to held a railway servant entitle for pension and he has to put in minimum

32
by

of 10 years qualifying service, which is *sine-qua-non* for pension. Thus, the applicant is not entitled to any relief.

7. That apart, as per the material placed on record, the husband of the applicant was removed from service after holding regular enquiry. Validity of such removal order has not been challenged by the applicant in this OA either being arbitrary or discriminatory. The only averment made in the rejoinder by the applicant is that the respondents have not annexed copy of removal order and paper of enquiry. In case the respondents have not annexed copy of removal or enquiry papers that does not mean that enquiry against husband of the applicant was never held and order of termination was not passed by the respondents. Be that as it may, so long as validity of the order of termination is not challenged and the same is not quashed by the court, no relief can be granted to the applicant regarding family pension.


8. Further, the Apex Court in the case of C. Jacob vs. Director of Geology and Mining, (2008) 2 SCC (L&S) 961 has categorically held that courts should be circumspect in issuing such direction as it ultimately lead to consideration of case on merits at subsequent stage of litigation, as if, the cause of action stood revived due to fresh consideration. The Apex Court further held that when an order is passed with direction of the court or tribunal, such an order does not revive the stale claim nor amount to some kind of acknowledgement of a *jural* relationship to give rise to a fresh cause of action. That was also a case where service of the petitioner was terminated in the year 1982 and after nearly 18 years,

two representations were submitted to the department on 5.5.2000 and 21.7.2000 requesting for taking him in service. Thereafter, the petitioner filed application before the Administrative Tribunal which gave direction to the department to consider representation of the applicant. In compliance of the order of the Tribunal, a detailed speaking order rejecting representation of the applicant was passed. The petitioner again approached the Tribunal against the order passed by respondent No.1. The Tribunal transferred the petitioner's application to the High Court. The Single judge of the High Court decided the case on merit holding that the respondent Department had failed to establish that procedure of enquiry, as prescribed in the relevant rules, was followed before terminating the petitioner's service. The Single Judge therefore held that the petitioner was deemed to have retired w.e.f. 18.7.1982 and directed sanction of pension to the petitioner. The Division Bench of the High Court has further held that the petitioner had not completed 20 years of qualifying service as on the deemed date of his retirement i.e. 18.7.1982 and, therefore was not entitled to pension. The matter was carried to the Apex Court and the Apex Court held that when a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The Single judge dealt with the matter as if he had approached the court immediately after the termination. All this happened because of grant of an innocuous prayer to consider a representation relating to a stale issue. The Apex Court held that a Govt. servant whose case does not fall under any class of pension is



not entitled to pension. It was under these circumstances, the Apex Court held that the court should be circumspect in issuing such direction as it ultimately leads to consideration of case on merits at subsequent stage of litigation as if the cause of action stood revived due to fresh consideration. Thus, apart from the statutory provisions, as noticed above, which disentitled the husband of the applicant for pensionary benefits on account of his removal from service, the applicant is also not entitled to the relief of granting family pension w.e.f. 1975 after a lapse of about 34 year, as contended by the respondents, in terms of decision of the Apex Court in the case of C.Jacob (supra).

9. Thus, viewing the matter from any angle, I am of the firm view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.



(M.L.CHAUHAN)
Judl. Member

R/