

(Reserved on 03.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This the 09th day of **May, 2018**.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/00655/2012

1. Smt. Kiran Jha, a/a 59 years, w/o Late M.M. Jha
2. Adarsh Jha, a/a 33 years, s/o Late M.M. Jha.
3. Akash Jha, a/a 29 years, s/o Late M.M. Jha
Resident of Flat No. 1, Krishna Apartment, Auckland Road, Allahabad.

.....Applicant.

VE R S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Nawab Yusuf Road, Civil Lines, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Nawab Yusuf Road, Civil Lines, Allahabad.
4. Senior Divisional Electrical Engineer (Operating), North Central Railway, Nawab Yusuf Road, Civil Lines, Allahabad.

.....Respondents

Advocate for the applicants : Shri T.S. Pandey

Advocate for the Respondents: Shri Prashant Mathur

O R D E R

The OA has been filed for following main reliefs:-

“a. Issue a writ, order or direction in the nature of Certiorari quashing the order dated 22.11.2011 (Annexure-I) with the further order or direction in the nature of mandamus commanding the respondents to pay the entire salary of Late applicant for the period from 8.5.2006 to 20.9.2007 of supernumerary period when he had been discharging his duties at Kanpur within a stipulated period of time with interest @ 12 % per annum.

2. The original applicant of this OA, while working as Senior Electric Driver under the respondents, was medically de-categorised on 29.08.2002. He was then screened for alternative employment and he claims that he was entitled to be posted as crew controller. He was first posted as Trains clerk and then he was posted as crew controller at Kanpur on 27.11.2002. Thereafter, he was charge-sheeted, in which he was removed from service by the disciplinary authority. On his appeal against the order of punishment, the appellate authority, vide order dated 26.05.2005 (Annexure A-6) modified the punishment to stoppage of two increments. Then he represented on 1.08.2005 for his posting, which was issued as crew controller at Kanpur vide order dated 2.08.2005 (Annexure A-8). Then on 30.06.2008, he was posted as Office Superintendent (in short OS). Then, on his representation, he was posted as crew controller, Allahabad vide order dated 9.09.2008. Then again on 31.03.2009, he was posted as OS at Kanpur (Annexure A-19). Applicant moved a representation dated 20.04.2009.

3. After death of the original applicant on 8.11.2015, his legal heirs were substituted in the OA.

4. In their counter reply, the respondents have submitted that the late applicant was initially appointed as Electrical Driver (Goods) in Grade Rs. 5500-9000 and he was sent for medical examination where he was found unfit as a result of which he was seized to hold the post of Electric Driver (Goods) w.e.f. 01.05.2001 (Annexure CR-1). Thereafter, late

applicant was kept on a supernumerary post of Traction Loco Controller vide order dated 29.08.2002 (Annexure CR-2) but he did not report for duty. Hence, he was marked absent w.e.f. 17.09.2002 and payment of salary was stopped. Subsequently, on application moved by the late applicant, the Divisional Railway Manager, Allahabad passed the order dated 27.11.2002 (Annexure CR-3) to post him as Crew Controller at Kanpur where the late applicant did not join and continued to remain absent. He also filed O.A No. 354/2002 which was dismissed by this Tribunal vide order dated 26.10.2004 against which he filed Writ Petition No. 10842/2005 before Hon'ble High Court, Allahabad. It is stated that late applicant did not perform duty from 17.09.2002 to 02.08.2005 and from 28.05.2006 to 20.09.2007. He was also absent from duty w.e.f. 17.11.2002 till the date he joined at Kanpur on 03.08.2005. Late applicant was served with the major penalty chargesheet for his absence from duty and on conclusion of the disciplinary proceeding, he was removed from service vide order dated 10.01.2005 which, however, was modified by the appellate authority vide order dated 25.05.2005 into stoppage of increments for two years permanently and also ordered him to join duty as Crew Controller at Kanpur. Aggrieved, the applicant filed O.A No. 1102/2005 and another O.A No. 13/2006 challenging the order dated 02.01.2006 and 13.01.2006 by which late applicant was asked to report for training at regional training centre , Chandausi. Both the O.As were decided by the Tribunal vide order dated 28.03.2007 where the appellate order as well as other orders were upheld. It is the contention of the respondents that since late applicant did not join his duties on the

supernumerary post, as per the instructions of Railway Board dated 11.12.2000, he was not entitled for payments for the intervening periods.

5. In the Rejoinder against the counter reply, it has been stated that once the applicant under permanent order posting him as Crew Controller at Kanpur was already in existence and late applicant had been discharging his duties accordingly the fresh order for training was contrary to rules.

6. Heard learned counsel for the applicant, who reiterated the facts of the case and stated that it was illegal on the part of the respondents for the period from 8.5.2006 to 20.9.2007 and during this period, the deceased employee had discharged his duties as crew controller at Kanpur as per the order dated 2.8.2005. He drew my attention to the order dated 26.05.2005 of the appellate authority, who concluded that there was no misconduct as alleged in the charge-sheet, for which the punishment was modified to stoppage of two increments.

7. Learned counsel for the respondents submitted that deceased employee had filed a number of OAs on different pleas in this Tribunal. After his medical de-categorization, he was to be given a regular alternative posting with recommendation of the Screening Committee of Officers as per the existing rules and pending regular posting, he was temporarily adjusted as crew controller, Kanpur. Then, he was given

regular posting as Chief Trains Clerk, for which he was asked to report for training. Instead of reporting for training, he filed the OA No. 13/2006, which was dismissed by this Tribunal vide order dated 28.03.2007 (Annexure CR-7 to the Counter), rejecting the plea of the late employee to be adjusted permanently as crew controller. Similarly, other O.As filed by the applicant have also been dismissed. He, therefore, submitted that the applicant has no case in the O.A.

8. The claim of the applicants is for payment of salary with interest for the period from 8.05.2006 to 20.09.2007 when the deceased employee had discharged his duty as Crew Controller. In para 4(xvi) of the OA, it is stated that during this period, the deceased employee had worked as crew controller at Kanpur in compliance of order dated 2.8.2005 (Annexure A-8). The said order dated 2.8.2005 stated that the deceased employee was directed to join as crew controller at Kanpur w.e.f.2.8.2005. He continued to work at Kanpur till 9.09.2008, when he was transferred to Allahabad as crew controller. In reply to para 4(xvi) of the OA, the para 36 of the counter reply did not specifically contradict the contention in the OA that the deceased employee had attended to duty as crew controller at Kanpur during the period in question and no document to prove otherwise was furnished by the respondents. On the other hand, the applicants have furnished the order dated 2.8.2005 of the respondents, which clearly shows that the deceased employee had joined duty as crew controller with effect from 2.8.2005 after his punishment of removal from service was modified by the order dated

26.5.2005 of the appellate authority (Annexure A-6 to the OA) modifying the punishment to stoppage of two increments.

9. In view of the facts as discussed above, I am of the view that the deceased employee had attended the duty as a crew controller at Kanpur for the period from 8.05.2006 to 20.09.2007 and there is nothing on record to show that there was any period of unauthorized absence on the part of the deceased employee from 8.05.2006 to 20.09.2007 to substantiate the stand of "no work no pay" of the respondents for this period.

10. Accordingly, this OA deserves to succeed and hence, the OA is allowed, the impugned order dated 22.11.2011 (Annexure A-1) is set aside and quashed in respect of the entitlement of the deceased employee for salary for the period from 8.05.2006 to 20.09.2007 and the respondents are directed to release the salary and allowances payable to the deceased employee for the period from 8.05.2006 to 20.09.2007 alongwith the interest at the rate of 9% per annum from the date of his representation i.e. 28.04.2011, which was rejected by the order dated 22.11.2011, till the date of actual payment to the applicants. Further, the respondents are directed to comply this order within three months from the date of receipt of a copy of this order. No costs.

**(GOKUL CHANDRA PATI)
MEMBER- A.**

Anand...