

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 03rd day of **JULY 2018**.

ORIGINAL APPLICATION NO. 1383 OF 2012

HON'BLE MR JUSTICE VISHNU CHANDRA GUPTA, MEMBER (J).
HON'BLE MR GOKUL CHANDRA PATI, MEMBER (A).

1. Smt Bimla Devi Widow of Late Ramji Lal, Agrawal, R/o 32, Nanakganj, Sipri Bazaar, Behind Arya Samaj Temple, District-Jhansi.

.....Applicant.

VERSUS

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager (P)/Divisional Personnel Officer, North Central Railway, Jhansi.
3. Divisional Railway Manager, North Central Railway, Jhansi.

.....Respondents

Advocate for the Applicant : Shri Rakesh Verma

Advocate for the Respondents : Shri Prashant Mathur

ORDER

(Delivered by Hon'ble Mr Justice Vishnu Chandra Gupta Member-J)

This Original Application has been filed by the applicant seeking the following reliefs:-

- (a) *To issue a writ, order or direction in the nature of certiorari calling for the service records and other connected records of the deceased husband of the petitioner, quashing the evasive and mischievous impugned order dated 23.05.2012, passed by the Respondent No. 2 (Annexure A-1 to Compilation No. 'I' of this petition.*
- (b) *to issue a writ, order or direction in the nature of Mandamus directing the respondents herein to regularize the intervening period from the date of removal from service i.e., 24.09.1976 to the date of deemed retirement at the age of 58 years i.e., 31.07.1995 and to count the same towards qualifying service together with the service from the date of initial appointment i.e., 02.09.1958 in term of Rule-1344 (FR-54(A)-1) of the Indian Railway Establishment Code Vol. II and to pay the petitioner all retiral benefits such as amount of Provident Fund, commutation,*

leave encashment, Group Insurance and Gratuity of the deceased husband of the petitioner together with interest thereon at the appropriate rate, within a period as may be fixed by this Hon'ble Tribunal.

- (c) to issue a writ, order or direction in the nature of Mandamus directing the respondents herein to pay the arrears of monthly pension of the deceased husband of the petitioner due from 01.08.1995 (deceased husband having deemed retired with effect from 31.07.1995) and further to grant family pension to the petitioner with effect from 19.06.2012 (deceased husband having died on 18.06.2012) with arrear thereof with interest thereon at the appropriate rate, within a period as may be fixed by this Hon'ble Tribunal.
- (d) to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.
- (e) to award cost of the petition in favour of the petitioner."

2. Before further proceeding with the case, the applicant's counsel made an endorsement to the effect that except the claim of family pension other relief are not claimed and are not pressed.

3. Now, the brief facts of the case as stated in the Original Application are that husband of the petitioner namely Ramji Lal Agarwal working as Fitter was dismissed from service vide order dated 24.09.1976. Aggrieved by the order of removal from service, the husband of the applicant filed a civil suit bearing number 2 of 1978, claiming the setting aside of the removal order and for reinstatement with full pay and allowances. The original suit was allowed and the order of removal was set aside. The operative part of the order passed by the Munsif's Court dated 04.09.1980 reads as under:-

"वादी का वाद विरुद्ध प्रतिवादी सव्यय डिक्री किया जाता है। तथा यह निर्णीत किया जाता है कि प्रतिवादी द्वारा वादी को दिनांक 24 .09 .76 का नौकरी से निकालने का आदेश अवैध है । तथा वादी को रेलवे कि सेवा में कार्य करने का हक

बनता है । वादी अपने नौकरी से निकालने के समय से आज तक अपना वेतन भत्ता पाने का अधिकारी होगा ।”

4. Aggrieved by the order passed in the earlier suit, the respondents preferred an appeal before the first appellate court, which was allowed by order dated 01.02.1982 and the order of the Munsif's Court was set aside and the order of dismissal from service was restored and the suit was consequently dismissed. Aggrieved by the order by the first appellate court, a second appeal was filed by the applicant in the Hon'ble High Court which was allowed by order dated 03.11.2011. The operating portion of the order dated 03.11.2011 passed by the Hon'ble High Court reads as under:-

"However, the relief as asked for in the plaint cannot be granted as appellant has cross the age of superannuation more than 15 years before. Now the appellant can only be compensated in terms of money. On the suggestion of the court learned counsel for the appellant after consulting his client on telephone has agreed for acceptance of Rs. 1,25,000.00 in full and final satisfaction of his claim.

Accordingly, second appeal is allowed. Judgment and decree passed by the Lower appellate court is set aside. Judgment and decree passed by the trial court is affirmed with the modification/variation that the plaintiff appellant is held entitled to Rs. 1,25,000.00 as damages/compensation for illegal termination of his services."

5. After passing of the order in the second appeal, this Original Application has been filed on 26.09.2012. Before proceeding with the matter, we appreciate the gesture shown by the counsel for the applicant by not pressing the other reliefs which in the light of the order passed by the Hon'ble High Court cannot be granted. As such in view of the endorsement made by the applicant's counsel, the claims in this OA

except with regard to the grant of family pension are rejected and OA is dismissed to that extent.

6. So far as the grant of family pension is concerned, the relationship of the husband and wife in between the deceased employee and the applicant is not denied by the respondents. The fact that the order of removal of the husband of the applicant was set aside was also not denied. Hence, in view of the above, the claim of family pension which has not been decided yet by the respondents, is not appreciable.

7. So far as the family pension is concerned it is governed by a set of rules framed by the Railways known as Railway Pension Rules, 1993. Rule-75 of the aforesaid rules provides that after death of a Railway Servant his or her spouse would be entitled for family pension. The perusal of rules also reveals that even if the Railway Servant has completed one year continuous service, the person entitled for family pension would get the same. The family pension is a benefit conferred under the statute, which cannot be taken away by any authority except in accordance with law. Here, in this case, the fact that the applicant was dismissed from service is not available to the respondents for denying the pension.

8. Hence, in view of the above and keeping in view the fact that the claim of the family pension of the applicant has not been decided by the

respondents, mandamus is issued against the respondents to decide the claim of the applicant for grant of family pension by passing a speaking and reasoned order under intimation to the applicant within a period of one month from the date of receipt of certified copy of this order.

9. In case, family pension is granted, the same will be payable to the applicant from the next date of the death of employee, the husband of the applicant, with simple interest at the rate of 7% per annum.

10. With the above direction the OA is disposed of. No order as to cost.

(GOKUL CHANDRA PATI)	(JUSTICE VISHNU CHANDRA GUPTA)
MEMBER-A	MEMBER-J

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