

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00856/15
&
M.A No.180/001031/2015

Wednesday, this the 20th day of June, 2018

**Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member**

Leela Rajan, aged 58 years
W/o. late N.Rajan (Retd. Travelling Ticket Inspector)
Southern Railway, Trivandrum Central)
Residing at Jose Villa, Mangad P.O
Kollam-691 015 Applicant

(By Advocate – M/s.Varkey and Martin)

V e r s u s

1. Union of India represented by
General Manager, Southern Railway
Park Town, Chennai-600 003
2. The Divisional Railway Manager
Southern Railway
Trivandrum – 695 014
2. The Senior Divisional Finance Manager
Southern Railway
Trivandrum – 695 014
3. The Senior Divisional Commercial Manager
Southern Railway
Trivandrum -695 014
4. The Divisional Commercial Manager
Southern Railway
Trivandrum – 695 014 Respondents

(By Advocate – Mrs.P.K.Radhika)

This application having been heard on 13.6.2018, the Tribunal on 20.6.2018 delivered the following:

ORDER

Per: Hon'ble Mr.U.Sarathchandran, Judicial Member

Applicant is the widow of the late Shri.N.Rajan, Travelling Ticket Inspector. In the disciplinary proceedings initiated against him Shri.N.Rajan was awarded punishment of compulsory retirement by the Appellate Authority. Applicant states that her husband who died on 5.5.2014 was not given the right salary and pension due to him at the time of his compulsory retirement which had resulted in reduction in her family pension based on his last presumptive pay. She states that though her husband was suffering from mental illness the authorities of the respondent Railways did not consider him for the benefits under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995as per which mental illness is a disability. She further states that as her husband was non-communicative to her regarding his service matters, she was not aware of the disciplinary proceedings initiated against him. Only on his death when she approached the bank for claiming family pension, she came to know about the basis of calculation of her family pension and also that the pay actually due to her husband at the time of his compulsory retirement and the presumptive pay due to him at the time of his death were not paid to him. She alleges that authorities of the respondent Railways initiated disciplinary proceedings against her husband which resulted in compulsory retirement was with the idea of dis-entitling him the benefits due to the aforesaid Act as he was a mental ill person. The relief she seeks in this Original Application is as under:

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a) Declare that the disciplinary action taken against the applicant's husband N.Rajan was unjust, illegal and without jurisdiction and; quash Annexures A-14 penalty advice and A-15 appellate order.

b) Declare that the applicant is entitled to reimbursement of her husband N.Rajan's salary and allowances fromm1.1.2006 to 5.5.2014 and direct the respondents accordingly.

c) Declare that the applicant is entitled to receive pensionary benefit arrears due to her husband N.Rajan; to draw a family pension

based on his last presumptive pay as on 4.5.2014; quash A-17 and direct the respondents accordingly and; to issue a fresh PPO

- d) Award costs of and incidental to this application
- e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case. "

2 This Original Application was resisted by the respondents on account of the delay, laches, estoppel and non-joinder of necessary parties. The respondent Railway disputes the statement of the applicant that the applicant's husband had mental illness as he had never been found unfit in the medical classification of the post held by him. Neither the applicant nor her husband had ever raised any objection against the order of compulsory retirement, nor did her husband file any revision petition against the order of compulsory retirement passed by the appellate authority. The applicant's husband was admitted in the Railway hospital, Pettah, Thiruvananthapuram for treatment of abdominal pain and not for mental illness. While undergoing treatment, he went outside and consumed alcohol and created nuisance in the hospital causing inconvenience to the patients, which resulted in his arrest by the Railway Protection Force and judicial custody. This has resulted in the disciplinary proceedings against him in which the Disciplinary Authority imposed a punishment of removal from service. On the appeal made by the employee the order of punishment was modified as compulsory retirement. Respondents pray for rejecting the Original Application.

3. The respondents resisted the Miscellaneous Application filed by the applicant for condonation of delay also.

4. A rejoinder was filed by the applicant pointing out that Annexure A-14 order of the appellate authority reducing the punishment to compulsory retirement was with granting of full pension and gratuity and hence Shri. Rajan was entitled to all the amounts due to him by way of salary and pay revisions. It is further submitted by the applicant that in response to the applicant's representation dated

30.1.2015, she received the impugned Annexure A-17 PPO antedated 13.3.2014.

According to the applicant it could not have been issued on that day foreseeing the death of Shri.N.Rajan on 5.5.2014 and fixing his pension from 24.9.2012 to 5.5.2014 and his family pension from 6.5.2014. Applicant states that counting from the date of submission of Annexure A-16 representation or from the date of receipt of Annexure A-17, the Original Application has been filed within the period of limitation.

5. We have heard Shri.Varkey, learned counsel for the applicant and Smt.P.K.Radhika, learned standing counsel for the respondent Railways. We have perused the records produced by both sides.

6. For the reasons stated in M.A 180/001031/15 we are inclined to condone the delay. Accordingly, the M.A is allowed.

7. At the outset itself we wish to focus our attention on Annexure A-15 order of the Appellate Authority on the appeal filed by Late Shri.N.Rajan against Annexure A-14 order imposing penalty of removal from service from 30.3.2007. The relevant portion of the order by the Appellate Authority issued on 16.7.2017 reads:

“ I have carefully perused the appeal statement of the employee, and I do not find any fresh points therein meriting reconsideration of the Penalty Advice. However, in consideration of the lengthy service of approx 30 years put in by the employee, I am inclined to adopt a lenient view on a purely humanitarian angle. I therefore, order that the Penalty of removal from service imposed on the employee be modified as Compulsory retirement from service, with eligibility for maximum permissible benefits. The penalty advice stands modified accordingly.

Accordingly the Penalty of Removal from Service w.e.f 30.3.2007 imposed by DCM/TVC vide No.V/C.415/DAR/2/Major/2006 dated 30.3.2007 is modified to that of Compulsory Retirement w.e.f 30.3.2007 **with full Pension & Gratuity**

You may prefer revision petition if any, before

ADRM/TVC i.e, the prescribed revisionary authority within 45 days, from the date of receipt of this advice for a revision of your case.

(K.MANOJ)
Senior Divisional Commercial Manager “

8. It is worthwhile to note that compulsory retirement was ordered with effect from 30.3.2007 **with full pension and gratuity**. Therefore, no doubt, applicant's husband is entitled to all financial benefits including revision of pay and pension. According to the applicant, even if he was not promoted, he would have drawn pay and pension in the grade of Rs.5000-8000/PB-2 Rs.9300-34800 + Grade Pay Rs.4200/- . The revised pay consequent to the 6th CPC to which the applicant's husband would have been entitled has been stated by the applicant as follows:

“1-1-2006 Rs.5450/Rs.10140+4200+allowance

1-7-2006

30.3.2007 Rs.10570 + 4200 = 14770 :

His pension would have been Rs.7385 and family pension would be Rs.4431. “

9. The subsequent incremental growth of pay which would have had a cascading effect in his pension and family pension has been illustrated by the applicant as follows:

1-7-2007 Rs.11020 + 4200 + allowances

1-7-2008 Rs.11480 + 4200 + allowances

1-7-2009 Rs.11950 + 4200 + allowances

1-7-2010 Rs.12440 + 4200 + allowances

1-7-2011 Rs.12940 + 4200 + allowances

1-7-2012 Rs.13460+ 4200 + allowances

1-7-2013 Rs.13990 + 4200 + allowances:

5-5-2014 Pen Rs.9095: FPN Rs.5457 “

10. According to the applicant as on the date of his husband's death, his

pension would have been Rs.9095/- and family pension payable would be Rs.5457/-. She contends that Annexure A-17 revised pension payment order issued on 13.3.2014 in response to Annexure A-16 representation does not reflect the correct amounts due. We feel that as the Appellate Authority modified the punishment awarded by the disciplinary authority to compulsory retirement as per Annexure A-15 order was with full pension and gratuity, the applicant ought to have been given the benefits of 6th CPC pay revisions till 30.3.2007 and also its consequential effects in his pension whenever it became due.

11. The learned counsel for the respondent Smt.P.K.Radhika sought some more time for getting instructions. We did not allow that prayer because it appears to us that the revised PPO issued vide Annexure A-17 did not take into account of the fact that the applicant's husband was entitled to full pension and gratuity which in turn means that he was entitled to receive the pay revisions due before the date of his compulsory retirement, whenever it became due.

12. In the circumstance, while not interfering with Annexure A15 order of compulsory retirement of Shri..Rajan, we direct the respondent Railway to re-calculate the pay of the applicant's husband as indicated in Annexure A-14 penalty advise dated 30.3.2007 and to revise the same as on 30.3.2007 in terms of the 6th CPC pay revision, re-calculate his pension and also to pay the arrears due to him to the applicant. The respondents are further directed to re-calculate the family pension due to the applicant from 5.5.2014 in terms of the revision of the pay and pension due to her husband as indicated above. The arrears of pay and pension due to the applicant's husband shall be disbursed to the applicant within 2 months from the date of receipt of a copy of this order after obtaining undertaking by her that she would disburse the due share to the other legal heirs of the deceased Shri.N.Rajan and on executing an indemnity bond in favour of the Railway that in the event of any claim by such legal heirs on the aforesaid

amount, she would indemnify the Railway. The respondents shall issue revised PPO indicating the revised family pension and the arrears of the family pension and shall also disburse the same within the aforementioned time limit. Ordered accordingly.

13. The Original Application is disposed of as above. No costs.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**
SV

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

List of Annexures

Annexure A-1 - True copy of Registration Card No.55505 dated 23.2.2006 issued by S.H.Hospital; Paynkulam

Annexure A-2 - True copy of SH Hospital IP charge receipt No.059602 dated 1.3.2006

Annexure A-3 - True copy of SH Hospital IP charge receipt No.0510033 dt.15.3.2006

Annexure A-4 - True copy of SH Hospital IP charge receipt No.06283 dated 11.4.2006

Annexure A-5 - True copy of SH Hospital IP charge receipt No.062649 dated 7.7.2006

Annexure A-6 - True copy of SH Hospital IP charge receipt No.063210 dated 28.7.2006

Annexure A-7 - True copy of Registration Card ID 6,9,20,116 dated 20.9.2006 issued by P.R.S Hospital, Killipalam, Trivandrum

Annexure A-8 - True copy of Registration Card No.M0610/223 dated 23.10.2006 issued by MITRA Mental Health Institute Moongodu, Trivandrum

Annexure A-9 - True copy of Death certificate No.DOI20167-1405177 dated 27.11.2014 issued by Corporation of Thiruvananthapuram

Annexure A-10 - True copy of Pension Payment Advice No.0604206711 dated 20.8.2007

Annexure A-11 - True copy of VI CPC revised PPA No.P.500/TVC/PEN/6711 dated 13.12.2013

Annexure A-12 - True copy of Annexure I, II & III to memorandum No.V/C.415/DAR/2/Major/06 dated 14.2.2006

Annexure A-13 - True copy of Enquiry report dated 6.11.2006

Annexure A-14 - True copy of Penalty Advice No.V/C.415/DAR/2/Major/2006 dated 30.3.2007 issued by the 5th respondent

Annexure A-15 - True copy of Appellate Order No.V/P.227/A/2007/47/Comml. Dated 16.7.2007 issued by the 4th respondent

Annexure A-16 - True copy of applicant's appeal dated 30.1.2015

Annexure A-17 - True copy of letter No.P.500/TVC/PEN/0604206711 dated 13.3.2014 issued by the 3rd respondent

Annexure A-18 - True copy of Medical certificate dated 25.9.2015 issued by Dr.K.L.Jacob

Annexure R-1 - True photocopy of the Drunkenness certificate issued by the Government Hospital, Trivandrum

Annexure R-2 - True photocopy of the certificate given by the Jail Superintendent, District Jail, Trivandrum

Annexure MA-R1 - True photocopy of Annexure -IV of pension form

Annexure MA-R2 - True photocopy of Annexure-V of pension form

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