

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2622/2017

Reserved on: 15.05.2018
Pronounced on: 16.05.2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Smt. Rajwati (Aged 53 years)
W/o late Shri Harish Chandra
(Ex Asstt. Personnel Officer)
DRM/N.Rly Moradabad

Res:- Prem Bhawan, Chow Ki Basti,
Line Par (Near Jarat)
Line Par, Moradabad (UP). ...Applicant

(By Advocate: Shri S.K. Azad)

Versus

Union of India through

1. Secretary, Railway Board,
Ministry of Rly.,
Rail Bhawan, New Delhi.

2. General Manager,
Hd Qrs Office / N.Rly
Baroda House, New Delhi.

3. Divisional Railway Manager,
Northern Railway,
Moradabad (UP).

...Respondents

(By Advocates: Sh. V.S.R. Krishna)

ORDER

The applicant in this OA is seeking the following reliefs:-

“8.1. The Hon’ble Tribunal may graciously allow this OA and direct the respondent to quash and set aside the impugned order dated 01.09.2005, 24.08.2006, 14.12.2016 and 28.12.2016, dismissing applicant’s husband late Shri Harish Chandra from service recommending compassionate family pension to

applicant under Rule 65 of RS Pension Rules 1993 (instead of full family pension) and rejecting C.G. appointment to applicant's son and treat the intervening period from 12.01.2002 to 12.06.2008 as deemed continuing in service with all consequential benefits including pay and allowances for said period, DCRG, GIS, leave encashment and family pension.

8.2 Direct the respondent to consider the C.G. appointment of one son of the applicant.

8.3 Direct the respondent to pay 18% interest on all the delayed payment from the time the same fell due till final payment is made.

8.4 Cost of suit Rs.50000/- be awarded against the respondents and paid to the applicant.

8.5 A compensation of Rs.50000/- towards hardship and mental agony suffered by the applicant and her children may also be awarded against respondents.

8.6 Any other relief which the Hon'ble Tribunal may deem fit and justifiable in the interest of justice may also be granted to the applicant."

2. A perusal of the papers in this OA reveals that most of these issues were adjudicated in another OA No.897/2006 filed by the applicant which was heard by the Allahabad Bench of this Tribunal. The reliefs claimed by the applicant in that OA were as follows:-

- i. *This Hon'ble Tribunal may be pleased to quash both the dismissal order dated 01.09.2005 passed by Shri K.K. Sharma, Jt. Secretary (E&P), Railway Board communicated by D.R.M., Moradabad vide his letter dated 12.09.2005 and the appellate order dated 24.08.2006 passed by K.K. Sharma, Jt. Secretary Railway Board to the first amendment application dated 21.08.2007 and communicated vide DRM Moradabad letter dated 01.09.2006 as illegal, bad, perverse and without jurisdiction with all consequential benefits to the applicants.*
- ii. *The Hon'ble Tribunal may further be pleased to treat the entire period from suspension (January, 2002) till death (!2.06.2008) of late Harish*

Chandra as on duty and pay the entire amount of salary and other allowances, including all retiral benefits with interest to the applicants.

- iii. The Hon'ble Tribunal be also pleased to direct the respondents to appoint one of the sons of late Harish Chandra on compassionate ground.*
- iv. Grant any other further relief as this Hon'ble Tribunal may think fit and proper in the circumstances of the case.*

3. It is clear from perusal of the reliefs claimed by the applicant in these two OAs that relief no.8.1 and 8.2 of the instant OA were already prayers in the earlier OA filed by the applicant before the Allahabad Bench of this Tribunal. The Allahabad Bench of this Tribunal has clearly considered these prayers in paragraph 23 of its order and dismissed the prayer of quashing the dismissal order as also treating the entire period of suspension as part of service and further payment of entire amount of salary and other allowances. The operative part of the order reads as under:-

“23. In view of the facts and circumstances stated above, it is clear that no case has been made out for quashing the dismissal order dated 01.09.2005 as it has been passed under due process and no illegality is made out. Similarly, no case for allowing the entire period of suspension to be treated as part of service and further payment of entire amount of salary and other allowances is made out. Accordingly, these reliefs are denied.”

However, on the issue of pensionary benefits, the Allahabad Bench of this Tribunal directed the respondents to take a decision on the same and communicate the decision to the applicant.

4. In view of the above facts, clearly the applicant cannot agitate the issues of dismissal or treatment of suspension period or payment of salary etc. in this OA being hit by principles of *res judicata*.

5. As regards the third prayer about sanction of pensionary benefits under Rule 65 of the Railway Servants Pensionary Rules, 1993, it was brought to my notice that the respondents have not passed any final order as yet. The applicant is, thus, at liberty to move a Miscellaneous Application for execution of the order dated 29.09.2016 passed by the Allahabad Bench of this Tribunal in OA No.897/2006 rather than coming before the Principal Bench of this Tribunal in a fresh OA.

6. At the time of oral hearing, the applicant stated that the case of compassionate appointment was considered by the respondents and rejected the same despite positive recommendations made by DRM in this regard. Although the applicant has not mentioned this as a prayer in the OA, yet she has orally submitted that this order may be quashed.

7. Having gone through this order, I find that the compassionate appointment has been denied to the applicant on the ground that the deceased employee, whose

son is seeking compassionate appointment, was dismissed from service and under the rules dismissed employee's children or spouse cannot be given compassionate appointment and the applicant has not been able to explain as to how this order is against the law. The only argument she placed before me was that the compassionate appointment in favour of her son was recommended by the DRM. However, such a situation does not alter the rule position and, therefore, it will be difficult to interfere in the order passed by the respondents with regard to compassionate appointment of the son of the deceased employee Harish Chandra.

8. The applicant placed before me an order of the Tribunal in the case of ***Ex. Ct. (Exe.) Shiv Charan vs. Govt. of NCT of Delhi & Ors.*** [OA No.1791/2009 decided on 12.03.2010] and stated that this order fully covers the case in hand.

9. I have seen this order which deals with the issue of reinstatement of the applicant therein as a consequence of his release from incarceration and the applicant was directed to be deemed as continuing in service uninterrupted. However, in the present case, this issue has already been adjudicated by the Allahabad Bench of

this Tribunal and, therefore, at this stage, it is not possible to take into consideration this order when the issue of dismissal and the treatment of period of suspension stand adjudicated by the Allahabad Bench of this Tribunal.

10. In view of the above discussion, the instant OA stands disposed of in aforementioned terms in preceding paragraphs. No costs.

(Uday Kumar Varma)
Member (A)

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