

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01594/2016

Dated Wednesday the 6th day of June Two Thousand Eighteen

PRESENT

HON'BLE SMT. B. BHAMATHI, Member (A)

Mrs. Victoria Aruldooss,
Plot No. 14, Victoria Garden,
Paventhaler Bharathidasan Salai,
Madipakkam,
Chennai 600091.Applicant

By Advocate M/s. C.Daniel & Gladys Daniel

Vs

1. The Secretary Railway Board,
Federation of Railway
Officer's Association Office, 256-A,
New Delhi 110001.
2. The General Manager's Office,
Southern Railway – Personnel Branch,
Chennai 600003.
3. The Dean,
Perambur Railway Hospital,
Police Salai, Ayanavaram,
Chennai 600023.
4. Mr. Adlin Mannah,
W/o. Late Dr. Anil Lionel,
No. 603/2, Railway Quarters,
Police Salai, Ayanavaram,
Chennai 600023.Respondents

By Advocates Mr. Y. Prakash (R1-3)
Mr. L. Chandrakumar (R4)

ORAL ORDER**(Pronounced by Hon'ble Smt. B. Bhamathi, Member(A))**

Heard learned counsel for the applicant. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To set aside the order dated 22.07.2016 passed by the 2nd respondent and direct the respondents 1-3 not to sanction the terminal benefits of the applicant's deceased son Dr. Anil Lionel to the 4th respondent and also not to give compassionate appointment to the 4th respondent pending disposal of the investigation into the death of Late Dr. Anil Lionel who wa an employee of the 3rd respondent and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”

2. The applicant is the mother of the deceased Railway employee, Dr. Anil Lionel. She has alleged the 4th respondent herein who is her daughter in law for abetting the murder of the deceased employee. It is submitted that the 4th respondent made representations for payment of terminal benefits and also compassionate appointment. The applicant made a representation on 28.06.2016 for stopping the payment of terminal benefits to the 4th respondent to which she received the impugned reply dated 22.07.2016 stating that as on date, no one was charged with the offence of murdering the railway servant or for abetting such offence and there was no bar in arranging the settlement benefits in favour of the 4th respondent. The applicant had filed a WP 3633/2016 before Hon'ble Madras High Court with a prayer for a direction restraining the 2nd respondent therein not to issue legal heirship certificate to the 4th respondent herein until the investigation into the death of deceased employee attains finality. The said

WP is pending before Hon'ble High Court. During the pendency of this WP, the applicant had filed a Cr. O.P. No. 15108 / 2016 for transferring the case registered against the death of her son to the file of Inspector of Police, CBCID which was allowed vide order dt. 21.08.2017. As such, the criminal case is under reinvestigation. Learned counsel for the applicant submits that since the criminal case filed against the 4th respondent is pending, the settlement benefits cannot be paid to her.

3. The respondents 1 to 3 have filed reply contesting the claim of the applicant. It is submitted that the 4th respondent made representations for payment of settlement dues and compassionate appointment along with copy of legal heirship certificate. The applicant made representations to the department to stop payment of settlement dues to which she was responded vide impugned order dated 22.07.2016 that there was no provision to stop the settlement benefits in the absence of any criminal proceedings pending against the 4th respondent. However, it is also submitted that in terms of Rule 72 of Railway Services (Pension) Rules, 1993 if a person, who in the event of death of a railway servant while in service is eligible to receive gratuity in terms of Rule 71, is charged with offence of murdering the railway servant or for abetting in the commission of such an offence, his claim to receive his share of gratuity shall remain suspended till the conclusion of the criminal proceedings instituted against him. As such, since a Criminal case was filed against the 4th respondent, no settlement

benefits were arranged to her. As per the order dt. 21.08.2017 in Crl. O.P. No. 15108 of 2016, the criminal case against the 4th respondent is transferred to the file of CBCID, Chennai and the said criminal case is still pending. It is in such circumstances that notwithstanding the impugned order the dues and benefits prayed for are yet to be settled.

4. The 4th respondent (wife of the deceased employee) has filed her reply contesting the claims of the applicant. It is submitted that the charges alleged by the applicant against her for abetting murder of the railway employee have not been proved as on date. She is not named in the FIR. Learned counsel for the 4th respondent produces a copy of the order dt. 21.08.2017 and submits that the Crl. O.P. No. 15108 of 2016 was allowed and the case was directed to be transferred to the CBCID, Chennai. As such, the matter is pending with the CBCID. As per Rule 72 (2) of the Railway Services (Pension) Rules also no charge has been made out against R4, which is why the impugned order dated 22.07.2016 was passed. Now the official respondents are acting contrary to the stand taken in the letter dated 22.07.2016 without any basis and in violation of Rules. As per Rule 75(6) of the Railway Services (Pension) Rules, 1993, the widow of the deceased railway employee is entitled to the settlement benefits in the first place. It is alleged that the applicant wants to delay the payment of settlement benefits and for this reason, she had approached the Hon'ble High Court. As such, the applicant has no locus standi for filing this OA.

5. In the course of oral argument learned counsel for the official respondents admits that notwithstanding the impugned order dated 22.07.2016 (which is actually in favour of R4) they have not yet released the settlement benefits as on date and no decision regarding the same has been taken since the criminal proceedings against the 4th respondent have not concluded. He also admits that there is no charge made out against R4 and no charge is pending. R4 is not named in the FIR, even though reinvestigation has been ordered by the Hon'ble High Court. However, on conclusion of the said criminal case pursuant to the action of the Hon'ble High Court for reinvestigation, an appropriate decision regarding the payment of settlement benefits shall be taken as per rules.

6. Heard the learned counsels and perused the records.

7. Going by the above submissions of the parties, it is evident that the order dated 22.07.2016 was in favour of R4, which is challenged by applicant in this OA. However, the official respondents taking into account the criminal case pending reinvestigation have apparently changed their minds and have not implemented the stand taken in 22.07.2016 without a formal denial order rejecting R4's claim for the same settlement benefits that applicant is praying for. This means that even after the impugned order is issued in favour of R4, still they are denying benefits of this order to R4 in this OA. They have taken no decision after 22.07.2016 and are taking a "cat on the wall" position in this OA. This is not legally permissible. The

official respondents have to take a conscious decision taking into account the facts, circumstances and rules involved in this matter and not leave it to the Tribunal to adjudicate, since they do not want to take a stand in the matter. To this extent, OA itself is premature.

8. Hence, I deem it appropriate to direct the competent authority to take an appropriate decision in this matter, in accordance with law under intimation to the applicant and R4. Either applicant in this OA or R4, whoever is aggrieved depending upon the order to be passed shall be at liberty to approach this Tribunal for remedy if they have any grievance with the said order.

9. OA is disposed of with the above direction. No order as to costs.

(B. Bhamathi)
Member(A)
06.06.2018

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