

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH ,CUTTACK**

ORIGINAL APPLICATION NO. 260/00188 of 2017
CUTTACK THIS THE 19th DAY OF April, 2017

CORAM
HON'BLE MR. R.C.MISRA, MEMBER (Admn.)

.....

Ashamoni Majhi,
aged about 59 years,
W/o late Duryodhan Majhi,
At- Pithapur, Annapurna Lane,
PO- Buxibazar, Dist.- Cuttack.

.....Applicant.

(Advocate : M/s D.R.Swain, M.M.Swain)

VERSUS

1- Union of India represented through Secretary, Railway Board, Rail Bhawan, New Delhi – 110001.

2- General Manager, East Coast Railway, Railsadan, Samantavihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

3- Senior Divisional Railway Manager, East Coast Railway Manager, East Coast Railway, Khurda Road, Khurda.

4- Senior Divisional Operation Manager, East Coast Railway Manager, East Coast Railway, Khurda Road, Khurda.

.....Respondents

(Advocate: Mr. T.Rath)

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ORDER

R.C.MISRA, MEMBER (ADMN.) :

Heard Mr. D.R.Swain, Ld. Counsel for the applicant, and Mr. T.Rath, Ld. Standing Counsels appearing for the Railways, on the question of admission.

2. The applicant, in this O.A., is the wife of one Duryodhan Majhi, who was working as an Assistant Guard in the Railways. He

was convicted in a criminal case and was removed from the service on 12.05.1989. He expired on 13.07.2001. The applicant made a claim for Family Pension, Gratuity and other retirement benefits as admissible in the case of her deceased husband. On account of the fact that the dues were not disbursed to her, she approached the Tribunal by filing O.A. No. 649/2009, which was disposed of 20.10.2011 allowing the claim of the applicant in part, i.e. only with regard to the Gratuity. This order of the Tribunal dated 20.10.2011 was challenged by the applicant by filing a Writ Application in Hon'ble High Court of Orissa bearing W.P.No. 2585/2012. This Writ Application was disposed of on 29.01.2014 holding that the applicant is entitled to get Compassionate Allowance along with the other retirement and death benefits in case of the ex-employee. Even though, the applicant duly communicated the orders of the Hon'ble High Court to the authorities, they did not release the benefit of Compassionate Allowance and Family Pension. The full amount of Gratuity was also not released. The applicant made a representation to the Respondent authorities for release of the benefits as per the decision of the Hon'ble High Court of Orissa. Even thereafter also, the amount was not disbursed compelling the applicant to file a Contempt Case bearing No. 275/15 for compliance of the orders of the Court. However, after getting notice, the Respondents released an amount of Rs. 11,160/- as Gratuity ignoring the claim of Family Pension and Compassionate Allowance. The Hon'ble High Court has dropped the Contempt Application No. 275/15 on 18.01.2017. After

disposal of the Contempt Application by the Hon'ble High Court, the applicant has again approached the Tribunal alleging that the amount released by the Respondents is much less than the amount admissible to the applicant in this case. It is further alleged by the applicant that her husband was serving the Railways for 26 years and is entitled to more than Rs. 1 lakh. The applicant, thus, has made a prayer that the Respondents may be directed by the Tribunal to release the full Pension and Gratuity and other consequential retirement benefits to the applicant that she is entitled to.

3. Countering the claims made by the applicant, Mr. T.Rath, Ld. Standing Counsel for the Railways, has submitted that in compliance of the orders of the Hon'ble High Court of Orissa claims as due and admissible have already been paid to the applicant hence she has no further claim on the Respondents-department. He has also raised point of law that this subject has already been adjudicated and decided by the Hon'ble High Court of Orissa on appeal from the orders of the Tribunal and, therefore, the present application is hit by the principle of res judicata. Alleging non-compliance of the orders of the Hon'ble High Court by the Respondents, the applicant had also moved the Hon'ble High Court with a Contempt Petition. This petition having been dropped by the Hon'ble High Court, there is no further reason to reopen this case in the Tribunal. Therefore, the Ld. Standing Counsel for the Railways has argued that the present O.A. is not maintainable before the Tribunal.

4. I have heard Ld. Counsels for the parties, in extenso, and also perused the records in the matter.

5. The applicant had filed an earlier O.A. bearing No. 649/2009 before this Tribunal, which was disposed of by an order dated 20.10.2011. On perusal of this order, it is found that the Tribunal after hearing the matter on merit decided not to interfere with the orders of the authorities relating to release of retirement dues. It is to be noted here that the Tribunal declined to interfere with the punishment of removal from service as well as the orders of the Respondent-authorities regarding payment of retirement benefits except for his own contribution such as PF and CGEGIS. Tribunal was aghast to note that the authorities hold the PF and CGEGIS of the applicant's husband on the ground of non-vacation of quarters. The Tribunal also deprecated the lethargy shown by the authorities in not taking any action to take back the possession of the quarters from the applicant and also, consequently, to disburse the pending dues after recovering the penal rent from the applicant, if required. Finally, the Tribunal while dismissing the O.A. directed the Respondents to release the GPF and CGEGIS dues in favour of the successors and nominees of the ex-employee within a period of 45 days from the date of receipt of the order. It is evident from this order that the Tribunal did not pass any order to interfere with the decision of the Respondent-authorities not to disburse pension and other retirement dues to the applicant.

6. I have also perused the orders passed by the Hon'ble High Court of Orissa in Writ Petition No. 2585/2012, which the applicant filed challenging the order dated 20.10.2011 passed by the Tribunal in O.A.No. 649/2009. The Hon'ble High Court disposed of this Writ Petition by an order dated 29.01.2014. The Hon'ble High Court has noted that the applicant filed the Writ Petition by challenging the orders of the Tribunal on the ground that she has not been provided the full relief as she has prayed for. The Hon'ble High Court in its order has dealt extensively with the Rule 9 of the Railway Service (Pension) Rules, 1993, which deals with the rights of the Hon'ble President to withhold or withdraw pension. It has also been observed by the Hon'ble High Court that Rule 65 of the said Rules deals with Compassionate Allowance and stipulates that in a case where the employee is dismissed or removed from service, the authorities can sanction Compassionate Allowance not exceeding 2/3 of the Pension or Gratuity or both, which would have been admissible to applicant's husband if he had retired on compensation pension. For according such sanction, the authorities have to be satisfied that the case deserves special consideration. On considering the merits of the case, the Hon'ble High Court observed that this is a fit case where the Tribunal should have directed payment of Compassionate Allowance to the petitioner, who is widow of the deceased employee. The Hon'ble High Court, in addition to the relief granted by the Tribunal, directed the Railways to pay

Compassionate Allowance to the petitioner as per the provisions of Rule 65 of above said Rules within a period of two months from the date of communication of the order. Alleging that the orders of the Hon'ble High Court of Orissa were not complied with, the applicant moved the Contempt Petition bearing No. 275/15, which were heard by the Hon'ble High Court and decided on 18.01.2017. On perusal of this order dated 18.01.2017, it is observed that opposite parties in the Contempt Petition, i.e. General Manager, E.Co.Railways, and others in compliance of the direction of the Hon'ble High Court had sanctioned Compassionate Allowance equal to 2/3 amount of Gratuity as per the provision of Rule 65 of the Railway Services (Pension) Rules, 1993. Finding that there was no willful or deliberate violation of the orders, the Contempt Petition was, accordingly, dropped.

7. It is, therefore, evident from the facts as stated above that the matter has reached its finality after the Hon'ble High Court disposed of the Writ Petition giving certain directions to the Railway authorities and, subsequently, dropped the contempt proceeding by observing that the orders of the Hon'ble High Court have been complied with by the Railway-authorities.

8. Ld. Counsel for the applicant argued that he has approached this Tribunal for deciding the quantum of payment under Compassionate Allowance. But, I have noted that this matter also has been decided by the Hon'ble High Court and, having noted that

Compassionate Allowance amounting to 2/3 of the Gratuity has been disbursed to the applicant, the C.P. were dropped.

9. In my opinion, therefore, the present application is not maintainable being hit by the principle of res judicata. The matter having been finally decided by the Hon'ble High Court, I find no further scope to entertain this application in the Tribunal. Accordingly, the O.A. is rejected not being maintainable. No costs.

(R.C.MISRA)
MEMBER (Admn.)

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