

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI
CIRCUIT BENCH NAGPUR

ORIGINAL APPLICATION NO.2141 OF 2013

Dated this the Friday, the 10th day of November, 2017

CORAM:- HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)

Smt. Chhaya Wd/o Madhukar Vandhare,
Aged - 51 years
Occ : Nil,
r/o C/o Shri Babanrao Shashtrakar,
Naik Road, Mahal,
Nagpur 440 002.

...Applicant

Versus

- 1) Union of India,
Through General Manager,
Central Railway,
Mumbai CST 400 001.
2. Divisional Railway Manager,
Central Railway,
Nagpur 440 001.

...Respondents

Appearance :-

Shri A.B. Bambal, learned Advocate for the applicant.

Shri Alok Upasani, learned Advocate for the respondents.

O R D E R

OA filed on 17.09.2015

OA reserved on 02.11.2017

OA pronounced on 10.11.2017

The applicant, who claims to be widow
of the deceased employee Madhukar Vandhare,

who was serving with the respondent No.2 as Khalasi, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8.1. Call for the records of the case from the Respondents.

8.2. Quash and set aside the impugned order dt. 15.07.2013 (Ann. A. 1), issued by Respondent No.2, rejecting the claim of family pension of applicant.

8.3. Direct the respondents to grant family pension to the applicant six months from the date of registration of report with police dt. 20.04.97 (Ann. A.2) of missing of her husband and pay arrears thereof with interest @12% p.a.

8.4. Further direct the respondents to pay arrears of other admissible dues such as DCRG, leave salary, P.F. etc. with interest @ 12% p.a.

8.5. Any other relief deemed fit and proper in the circumstances of the case may kindly be granted.

8.6. Allow the application with cost.”

2. The applicant's husband was working as Khalasi with the respondents No.2 at Ajni, Nagpur. In the month of May 1993, he left the house and never returned back. Although FIR was lodged with the police on 20.04.1997 (Annexure A-2) and missing news was also broad-casted on All India Radio his whereabouts could not be traced. This led the applicant to submit a representation

dated 13.08.2012 (Annexure A-6) to the respondent No.2 for grant of family pension treating that her husband has expired while in service. In response to it, the respondent No.2 sought certain information from the applicant regarding her status as married wife of the deceased employee, the particulars of the family etc. The requisite information was supplied on 03.09.2012 (Annexure A-7) along with copies of the requisite documents.

3. However, vide impugned communication dated 15.07.2013 (Annexure A-1), the respondents regretted the claim on the ground that no record concerning the service rendered by the deceased employee is available with them nor regarding her status as the widow of the deceased employee. It is stated that on account of continuous absence of the deceased employee, he was charge-sheeted and since he did not appear, the Enquiry Officer submitted a report to the Disciplinary Authority. However, since order

passed by the Disciplinary Authority is not available, he might have been removed from service on account of unauthorized absence from 03.09.1993 onwards. The applicant is, therefore, not entitle to any relief.

4. The reliefs sought are based on following grounds :-

“1. Husband of applicant was railway employee since he was issued Charge Memo dt.18.01.95 (Ann. A.11), hence claim cannot be rejected on this ground.

2. No prudent wife will lodge a false complaint about missing of her husband immediately. She shall wait some period to him to return. Having received report about missing of her husband since May 1993, from applicant on 07.07.97 (Ann. A.3), ex-parte enquiry against the non-existent person is illegal. Further presumption by respondents, that the employee might have been removed from service as a result of ex-parte enquiry & rejecting the claim of family pension is illegal.

3. Railway Board's order dt. 19.0986 (Ann. A.13) stipulates that administration need not wait for 7 years (Evidence Act) and President's pleasure has been communicated to disburse P.F., etc immediately and after one year DCRG, family pension. Period of 1 year is reduced to six months vide order dt. 13.07.10 (Ann. A.14).

4. Respondents still have unpaid settlement dues of the applicant, hence records cannot be said to be destroyed & are to be constructed & family pension & other dues deserve to be granted in terms of Board's order dt. 18.07.08 (Ann. A.14).”

5. Along with OA, MA No.2119/2013 is

filed for condonation of delay of 14 years 5 months in approaching this Tribunal on the ground that the applicant being destitute and illiterate lady and was not aware about her legitimate rights the delay occurred. It is only on getting proper advice, she represented on 13.08.2012. However, it was rejected by the respondents. It is also stated that non grant of family pension is the continuing cause of action and hence delay if any is liable to be condoned.

6. On notice, the respondents appeared and by a common reply dated 26.10.2015 resisted the OA, in which all the adverse averments, contentions and grounds raised therein are denied. The status of the applicant as the widow of the deceased Railway employee is also denied. He stated that the applicant (without admitting her status as the widow) is not entitled to any relief since her husband might have been removed from service for his prolonged and unauthorized absence from duty. It is also

stated that the FIR regarding missing of deceased employee was lodged after four years on 20.04.1997 and thereafter the representation in the year 2012, which reveal that applicant has not raised a *bona fide* claim.

7. The OA is also barred by limitation since not filed within a period of one year from the date of accrual of cause of action, for which no cogent reasons are given. It is stated that the deceased employee remained absent from duty with effect from 27.05.1993. There is nothing on record to show that Police machinery took steps to search out / locate the deceased missing employee and in spite of steps taken he could not be traced. It is denied that the applicant has ever informed the respondents regarding missing of deceased employee vide letter dated 07.07.1997, since no such letter is available with the respondents. The OA is, therefore, liable to be dismissed.

8. It is stated that service particulars of the deceased employee are not available with the respondents, since it is 20 years old matter. Further, the documents produced by the applicant are not enough to process her claim for family pension. It is stated that the applicant was well aware of the fact that in view of imposition of the penalty of removal of deceased employee from service, the applicant is not entitled to any family pension. No satisfactory evidence has been produced to establish the fact that the applicant is the widow of the deceased employee. It is not shown that the applicant was dependent on the deceased employee and hence she is not entitled to claim family pension. The OA is, therefore, liable to be dismissed, on this ground also.

9. The applicant then filed rejoinder to the reply on 19.10.2015 in which all the adverse averments and contentions made in the reply are denied. Reliance was also placed on DOPT's OM dated 25.02.1986 on the subject

of grant of family pension to the families of Railway employees, who retired or died before 01.01.1964 or are otherwise not covered by the Family Pension Scheme of 1964.

10. On 02.11.2017, when the matter was called out for final hearing, heard the oral submissions of Shri A.B.Bambal, learned Advocate for the applicant and the reply arguments of Shri Alok Upasani, learned Advocate for the respondents.

11. I have carefully gone through the entire case record of documents relied upon by the applicant in support of her claim.

FINDINGS

12. The only controversy involved for resolution of this Tribunal in the present OA is whether the applicant is entitled to get the family pension since her husband was found missing from May 1993 and could not be traced.

13. Before proceeding to consider the

applicant's claim on merit, this Tribunal would like to consider the objection raised by respondents regarding limitation to file the present OA. It is needless to say that in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985, the aggrieved person can approach this Tribunal within a period of one year from the date of accrual of cause of action. In the present case, admittedly, the deceased employee was missing from May 1993. Since he did not report on duty, he was charge-sheeted in the year 1995 for unauthorized absence. However, the order passed by the Disciplinary Authority imposing penalty of removal / dismissal from service is not available with the respondents and hence it cannot be said that he has been removed from service. Even the Service Book or record is not available with the respondents. The missing report / FIR was lodged in the year 1997 i.e. after four years from the date when the deceased employee was missing.

14. As per the Railway Boards letter dated 19.09.1986 a provision is made for grant of settlement dues to eligible family members of railway employees, who have suddenly disappeared and whose whereabouts are not known and it is not necessary to wait for a statutory period of seven years to lapse as prescribed in the Evidence Act to hold that such employee is deemed to have died. This period is restricted to one year as per the aforesaid Railway Board's letter, solely with the object that the family members left by such suddenly disappeared employee do not suffer financial crisis. After waiting for a period of one year, the claim for family pension can be settled, provided other conditions mentioned therein are satisfied.

15. Since the applicant has lodged missing FIR on 20.04.1997 only thereby making the Police machinery aware of missing of her husband, we may infer that he could not be traced even after one year. Hence, the cause

of action accrued to claim the family pension on 20.04.1998. However, it appears that the respondents were not made aware about missing of deceased employee and hence, they proceeded to hold the Disciplinary Proceeding against him for his unauthorized absence. The representation was submitted for grant of family pension only on 13.08.2012. However, considering the fact that claim for family pension gives rise to continuing cause of action from month to month and considering the fact that the applicant was illiterate lady, the delay in approaching this Tribunal is liable to be condoned, especially when the respondents considered the said representation and passed the impugned order thereon on 15.07.2013. The applicant, thereafter, approached this Tribunal within a period of one year from the date of receipt of copy of the said impugned order. For this reason also, the OA cannot be said to be barred by limitation, although cause of action to approach this Tribunal has arisen on 20.04.1998. The only consequence of

approaching this Tribunal at belated stage for getting the family pension is that claim will be restricted to a period of three years only prior to filing of the OA.

16. In any case from the above discussion, although there is delay on the part of the applicant in approaching this Tribunal by way of present OA, the same is liable to be condoned. It is accordingly condoned. This being so, the OA needs to be decided on merit.

17. Now turning to the merits of the claim, it is astonishing that neither the applicant nor the respondents possesses the service particulars of the applicant or any record concerning it. Even the respondents are not sure if the applicant is removed / dismissed from service, by way of a penalty imposed in a disciplinary proceeding for unauthorized absence instituted against him.

18. It is true that on the representation

made by the applicant certain documents are sought from the applicant namely :-

- “1. Attested copy of FIR lodged with the Police in 1993 on or after 03/09/1993 since when he has been missing.*
- 2. Proof of your marriage with Shri Madhukar Vandhare.*
- 3. Your age proof.*
- 4. Proof of your residential address,*
- 5. Ration Card,*
- 6. Photo Identity Card,*
- 7. Family particulars of the employee,*
- 8. Your affidavit issued by Executive Magistrate.”*

19. In response to the above letter, the applicant has forwarded the following documentary proof to the respondents vide letter dated 20.11.2012 (Annexure A-9). The particulars of the documents submitted are as under :-

- “b) Copy of Invitation card of my marriage (Patrika) with Shri Madhukar.*
- c) Copy of my school leaving certificate for age proof.*
- d) Copy of Aadhar Card in my favor for residential proof.*

e) Copy of certificate with photo identity issued by Special Executive office N.M.C.

f) Copy of Ration Card.

g) Copy of School Leaving Certificate of Ku. Manisha (Daughter), of Master Akshay (Son), Master Pranay (Son) & of Rohit (Son) as details of family particulars. These are also available in ration card.

h) Copy of my Affidavit issued by Executive Magistrate. (Original will be submitted when required at final stage)."

20. The foremost important document is regarding proof of marriage of the applicant with the deceased employee which gives rise to a claim for family pension. The employee is deemed to have died in the year 1998 i.e. after lapse of one year from the date of lodging the missing report, although he left the house in May 1993 and did not then turn up. However, applicant's status as his widow is denied for want of service record, in which a person is nominated to receive retiral benefits on death of employee. In this case, the said important evidence is not available.

21. As stated earlier, the respondents

have disputed status of the applicant as widow of the deceased employee. However, they could not support this contention in absence of original service record / book of the deceased employee in which the name of the nominee is recorded to receive the retiral benefits. The burden, therefore, lies on the applicant to establish her status. The applicant also could not produce any conclusive and convincing evidence in this behalf such as photocopy of the extract of front page of the service book / record of the deceased employee showing her name. It appears that no steps were taken by the respondents to reconstruct the service book / record. In fact, it is very astonishing that the original service book / record of the deceased employee is not properly preserved by the concerned officials of the respondents. It is needless to say that service book / record of employee is of paramount important, since it contains all the details right from entry into service, date of birth, entry regarding pay scales,

promotions, various kinds of leave sought, penalty imposed in a disciplinary proceeding, name of the nominee etc. However, in absence of original service record and corresponding cogent proof from the applicant, except the documents produced, this Tribunal is of the opinion that the respondents are right in saying that the applicant failed to establish her status as the widow of the deceased employee.

22. In fact when the proof regarding marriage is sought, the best evidence will be Marriage Registration Certificate issued by the Competent Authority, which is absent in this case. Even the date of joining the service by the deceased employee and the date of her marriage with him is not stated in the OA. The applicant being virtually illiterate lady, her marriage must not have been registered. There is also no evidence that information regarding her marriage with the deceased employee was given to the local authority. Even the copies of the Voters

list pertaining to the Municipal area where the applicant resides is not produced to show that her name is recorded in the Voters list as wife of deceased employee nor the Voters Identity Card issued by the Election Commission is produced as a conclusive proof that the applicant is the married wife of the deceased employee. Further, considering the fact that the applicant kept mum after missing of her husband till she lodged the representation on 13.08.2012 raises some doubt about genuineness of her claim for family pension.

23. From the above discussion, it is obvious that the impugned order by which the claim for family pension has been rejected cannot be said to be illegal, arbitrary or improper since the applicant failed to establish her status as the legally wedded wife of the deceased employee. Although it cannot be said that in absence of any record to show that the deceased employee has been removed from service and on that count the

applicant is not entitled to family pension. It is true that the deceased employee has been referred as husband of the applicant in the impugned order. However, in absence of cogent and conclusive proof regarding her status as married wife of the deceased employee, the impugned order cannot be faulted.

24. In the result, no relief can be granted to the applicant. The OA, therefore, fails and it is accordingly dismissed. However, with no order as to costs.

Place : Mumbai

Date : 10th November, 2017

(Arvind J. Rohee)

Member (Judicial)

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