

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 538/2015

Dated this the 31st day of January, 2018.

CORAM:- HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

1) Smt. Asha Shantaram Pawar, aged 52 years
W/o Late Shri Shantaram Raghunath Pawar
Khalasi (C & W), LTT Mumbai ...Applicant
(By Advocate Shri G. B. Kamdi)

Versus

1) Union of India,
through The General Manager,
Central Railways, CSTM, Mumbai - 400001

2) The Divisional Railway Manager,
Central Railways, CSTM, Mumbai - 400001.

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ORDER R

The applicant is the wife of a former Railway Employee who was compulsorily retired w.e.f. 25.10.2005 and after her husband was expired in 2011 on 30.08.2011, she filed this application for payment of pension and pensionary benefits including all provident fund credits allegedly lying in her husband's account at the time of termination from service. The reliefs

sought by the applicant as as under:

“A) This Hon'ble Tribunal be pleased to call for the records and proceedings relating to the orders of removal from service and reinstatement last such orders being dated 18.10.2005 and 18.12.2006 passed by the respondents and declare that:-

- i) the deceased husband of the applicant is entitled to pension and pensionary benefits with effect from 29.12.2006 in terms order dated 18.12.2006 passed by the Appelate Authority; and
- ii) the applicant is entitled to family pension from 30.08.2011(the date of birth of her deceased husband

B) This Hon'ble Tribunal be pleased to direct the respondents to pay to the applicant:

- i) The amount of Provident Fund standing to the credit of the deceased husband of the applicant as on 29.12.2006.
- ii) Arrears of pension and pensionary benefits admissible to the deceased husband of the applicant from 29.12.2006 to 30.08.2011 with interest @ rate of 21% p.a.
- iii) Family Pension and arrears of family pension from 30.08.2011 till date with interest @ rate.

C) This Hon'ble Tribunal be pleased to direct the respondents to consider the periods i)from 05.10.1984 to 1985 and (ii)18.10.2005 to 29.12.2006 when he was kept away from duty due to illegal and unlawful orders of the respondents which work out about 6 years and 6 months) and for the purpose of pension and pensionary benefits;

D) Such other orders as may be deemed necessary in the facts and circumstances of the matter.

E)Cost of application be provided for;”

2. The facts of the case are that the applicant's husband Shri Shantaram Raghunath Pawar, who was born on 05.09.1965, entered Railways service as a Casual Labour at the age of 17 on 13.06.1983, allegedly based upon the production of a forged casual labour card. He was terminated on 05.10.1984, apparently without any inquiry and then filed WP No. 932/1985 in the High Court. After giving opportunity to the respondents, the Hon'ble High Court quashed the termination and ordered his reinstation with all benefits. Thereafter, a chargesheet was filed on 09.07.1986, inquiry was held and based on the Inquiry Report, confirming that the applicant's husband had produced a forged casual labour

card to secure the job as Khalasi, he was removed from service by order dated 19.05.1989. This was confirmed on appeal by order dated 05.09.1989. This order of removal was heard by this Bench of the Tribunal in O.A. No. 841/1989 and decided on 03.10.1991 in favour of the employee on the ground that the Inquiry Report had not been furnished to him for him to submit his defence. After further orders of this Tribunal on 27.06.1993, communicated on 14.07.1993, the plea of respondents that they had filed an SLP was not accepted and they were asked to reinstate the employee within four months and by paying three months salary within one month of the orders and further subject to the respondents' right to make necessary adjustments in the event the applicant had worked for gain during the relevant period. Accordingly, the applicant was reinstated in service on 23.12.1993 as Khalasi. The SLP filed by respondents succeeded in the Hon'ble Apex Court by which the orders of the CAT were set aside on the ground that CAT had referred to a subsequent order of the Apex Court which could have only prospective effect. Therefore, the Hon'ble Apex Court upheld the order of removal of the applicant's husband on 19.05.1989. Respondents admit, however, that they did not disturb the order of reinstatement by which the applicant's husband came back to service on 23.12.1993.

Following this, for unauthorized absence of 77 days, disciplinary action was taken against applicant's husband and he was removed from service by orders dated 18.10.2005 taking effect from 25.10.2005. On his appeal dated 01.12.2006, orders were passed by the Appellate Authority on 18.12.2006 modifying the penalty of removal from service to that of compulsory retirement with full pensionary benefits w.e.f. 29.12.2006. It would also appear from settlement forms sent to the DRM by the Sr. Section Engineer(C&W), Central Railways on the issue of family identity card for retired and widow and declaration form for settlement, the date noted for compulsory retirement was 29.12.2006.

3. Subsequent to this, the applicant claims to have filed documents for pension on 2007 without result. The husband of the applicant expired in 2011 and claim for pension and provident fund contributions has been revived in an application made at that time.

4. The applicant has claimed that her husband has put in more than 16 years of service excluding the period from from 05.10.1984 to 1985, from 26.05.1989 to 22.12.1993 and 18.10.2005 to 29.12.2006 when he was illegally prevented from attending his duty and this period amounts to an additional 6 years and 6 months. Therefore, she claims that her husband's 22 years service makes him entitled for pensionary benefits and

for grant of PF dues standing to his credit. Respondents have not replied to her despite approaching them several times. On the aspect of delay, she argues with reference to a catena of cases and that on the issue of pension and pensionery benefits, no limitation applies which is the declared law on the subject as settled by the Hon'ble Apex Court. She argues that the respondents are estopped from making the claim that her husband was illegally continued in service despite orders of Hon'ble Supreme Court and that they cannot take advantage of their own errors by denying pension and benefits to which he and his family were eligible.

5. Respondents contend the need to condone the delay in filing this claim which has been filed nearly 9 years after compulsory retirement and for family pension, four years after the employee expired.

6. In respect of the merits of the petition, respondents reiterate the facts that have been summarized above. They argue that the applicant obtained appointment to the post at the initial time by producing a forged certificate and by fraud. The right to salary, pension and other service benefits are entirely statutory in nature in public service in their view, and therefore, since his appointment to the said post was void and *non est* in the eyes of law, the applicant's husband and subsequently, the applicant has

no right to pension and other monetary benefits that flow from the state. They cite the case of the decision by the Hon'ble Apex Court in R. Viswanath Pillai vs. State of Kerela & Ors in CA No. 89/2004 decided on 07.01.2004 where the applicant obtained appointment to a post meant for reserved candidates by producing a false caste certificate. He was denied pension on the ground that his appointment was void and *non est* in the eyes of law. The judgment concludes:

“Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false caste certificate.”.

They point out that the applicant's husband was not sanctioned or paid pension during his life time and therefore, she can have no claim. They emphasize that the applicant's spouse obtained appointment by fraud and his removal was confirmed by the Hon'ble Apex Court in his judgment. However, despite this order by which the services of the applicant's husband should have been terminated or discontinued, he was continued in service and eventually he was compulsorily retired for a different issue in 2005/2006. Specifically on the issue of pension, they argue that rule 75 of the Railway Service Pension Rules, 1993 provide that family of the deceased employee is entitled for pension if the employee was entitled or was in receipt of pension. They assert that as argued above, this was not the case

and the husband of the applicant was not entitled accordingly. Therefore, the applicant is also not entitled. With regard to her husband's provident fund due they state that the employee's contribution is paid only when he completes the settlement papers although they do not specifically deny her entitlement to payment of amounts standing to his credit.

7. In her rejoinder, apart from urging various aspects mentioned previously, the applicant argues that the respondents did not take any action based on the orders of the Hon'ble Apex Court of 18.09.1995 and did not issue any further orders to give effect to the punishment orders of removal issued in 1989. The respondents thereafter, issued a punishment order of compulsory retirement only in December 2006 and therefore, they submit, that the first order essentially became infructuous. In view of this position, applicant argues continuity of service and consequent eligibility for pension. During the final hearing, the learned counsel for applicant urged various aspects set out above including the issue of the need to condone delay since it was not a bar to consider the application on its own merits. Respondents argued that while they reinstated the employee in 1993, they are unable to find records to know what transpired especially after orders of the Hon'ble Apex Court in

1995. They cite the non-availability of pay slip, provident fund account details and the service records to indicate whether the applicant's husband was a regular employee or on MRCL basis. They say that passes (PTO) are issued both to regular and MRCL employees and cannot be a claim to regular employment. The issue is relevant because the period of service as MRCL labour is counted only for 50 per cent of service for the purposes of pension. Therefore, even the period between December 2003 to December 2006 after excluding the absent period of 77 years would only account to a little more than 5 years of service.

8. On reference back to learned counsel for applicant, it appears that they do not also have any details of the provident fund ID by which the employee's claim could be traced and dues, if any, settled. The only papers that have been produced by this applicant which relate to service of the employee other than the orders of punishment are the request for issue of I-Card by the wife and son forwarded by the Sr. Section Engineer (C&W), Central Railway and a declaration form for settlement dated 12.02.2007 from the Railway Employee, also forwarded by the SSE (C&W), Central Railway to the DRM, Central Railway. Neither form contains any details of ID etc.

9. At the outset, it is clear that on the issue of

delay, the distinct case of recurring wrongs has been settled by the Hon'ble Apex Court. The cases of pension and pensionary benefits are a continuing cause of action and will not be subject to the rules of limitation. With regard to provident fund, the moneys concerned belong to the employee and the employer holds these sums in trust. Therefore, the employer is obliged to refund the money to the employee or his legal heir when so requested along with requisite documents in support. Therefore, limitation does not apply in the present situation.

10. Reviewing the service period of the employee, the record submitted and agreed by both parties suggest that he was appointed even as a minor at the age of 17 on 13.06.1983 as a casual labour. Then his forgery was detected, respondents took action and removed him from service after following proper procedures on 26.05.1989. Prior to this, from 05.10.1984, when he was dismissed without any inquiry upto 1985 when he was reinstated by the High Court, he was not in service. This order of removal of service was quashed by the CAT but it was reinstated by the Hon'ble Apex Court in its order of 18.09.1995. Since no stay was granted by the Apex Court, the respondents implemented the orders of the CAT and reinstated the employee on 12.12.1993. Thereafter, he continued in service until his removal

in 2005 which was modified to compulsory retirement in 2006. From the above, it is clear, that the Hon'ble Apex Court finally decided the rights of the applicant and his appointment was agreed to be without any basis and the Court upheld his removal from service. Therefore, the applicant's husband's service prior to December 1993 was washed away entirely along with service benefits by that day. The Hon'ble Apex Court also quashed the orders of the CAT that led to his reinstatement. In fact, apart from his forged labour card, and the quashed order of the CAT, the applicant had no basis to gain a right of entry in Railway Service in 1993 which also did not take the regular route of employment exchange or any other method of regularization, and was, hence, clearly irregular. To a certain extent, it may be right to argue as has been done by learned counsel for applicant that the previous charge of entry in service with the forged labour card had been settled by the orders of the Hon'ble Supreme Court. Therefore, at the time of reentry in 1993, the forgery issue ceased to be relevant. However, at this point of time, the entry of the employee was not through regular means. Subsequently, it appears that no effort has been made to regularize his service, nor does it seem that the employee made any efforts in this direction. Therefore, neither the employee, his family

nor the respondents are able to produce any details of his service card, PF ID or service book which would enable the determination of his status with regard to regular service or as an MRCL. If he was an MRCL, then the period of service from December 1993 to 2005/2006 would only amount to about 5 years which makes him ineligible for pension. It is also possible that if he had approached the authorities in the regular way through the construction wing where he was employed, the fact of there being an Apex Court order against him could have been exposed and he would have suffered immediate termination. Therefore, it was in the employee's interest to keep the entire matter hidden and not open for investigation. It is also noted that in the settlement form signed by the employee, no mention was made of any particulars that could relate to his claim to provident fund or other benefits. Yet, it is possible that there had been contributions to the provident fund made in the name of the employee but this would have to be revealed by production of pay slips, if any available with the applicant and she has failed to do so even at the time of filing this OA. Without PF account details or any service records, no calculation is possible nor disbursement.

11. In the circumstances, this application has no merits. Yet, in case the applicant is able to produce

some evidence by way of PF ID or pay slips that could assist the respondents in tracing amounts that could accrue to her, she is free to locate them and produce them before the respondents at the earliest. In the circumstances, there shall be no order as to costs.

(R. Vijaykumar)
Member(A)

gm.