

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA No. 050/00678 of 2017

Date of order reserved: 29.05.2018

Date of Order : 01.06.2018

CORAM

Hon'ble Shri Jayesh V. Bhairavia, Member [J]

Smt. Binda Devi, Widow of Late Harendra Prasad Ex-Pointsman under D.R.M., E.C. Railway, Samastipur, Resident of Village-Udant Rai ke Bangra, P.O.-/P.S. Thawe, District- Gopalganj (Bihar) PIN- 841428

.....Applicant

By Advocate : Shri N.N. Singh

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali, Pin Code-844101 .
2. The Divisional Railway Manager, East Central Railway, Samastipur, PIN-
3. The D.R. M (OPTG) East Central Railway, Samastipur, PIN-848210
4. The D.R.M. (P) East Central Railway, Samastipur, PIN- 848210.

.....Respondents

By Advocate: Shri R.B. Awasthi.

ORDER

Jayesh V. Bhairavia, M [J]:- The applicant in this O.A prays for a direction to the respondents to make immediate payment of entire retiral benefits including P.F. amount, Family Pension, DCRG, GIS, Leave encashment etc with arrears alongwith 12% compound interest for culpable delay and also prayed for setting aside the letter dated 01.05.2015 (annexure A/5) issued by the A.P.O.

2. The brief facts of the case are as under:-

(i) The husband of the applicant late Harendra Prasad was Pointsman posted at Narkatiaganj under E.C. Railway. He was a regular Railway employee. He was appointed in Railway service on 02.08.1988 and died in harness on 04.07.1996 leaving

behind his widow (the applicant), two minor sons and two daughters. In support of this contention, she has annexed a certificate claimed to have been issued by "Anchal Padadhikar" Mangha, Gopalganj dated 10.05.2012 (Annexure A/2). The applicant applied for payment of family pension and other retirement dues of her late husband after about three months of the death of her husband. Since then she was pursuing the matter continuously but in vain. She then contacted Welfare Inspector in the office of ADRM, Samastipur Division who vide letter dated 30.05.2012 (annexure A/3) requested the applicant to submit application in prescribed forms and inform the Bank A/c Number. She has claimed that she accordingly submitted application and other documents to him in June 2012. Even thereafter no action has been taken by the respondents.

(ii) The applicant, thereafter, approached this Tribunal through OA 806/2014 which was disposed of at admission stage itself vide order dated 18.11.2014 with following observations and directions :-

Para 5:- *"We are of the view that while claim of current family pension may be continuous cause of action, the claim of arrears and payment of other death cum retirement dues does attract limitation. Again the applicant has not annexed any document to show that her husband was a regular employee of Railway. The onus to prove the same lies on the applicant. The authenticity of the letter at Annexure A/3 is also another issue.*

Para 6 *:-In the light of foregoing discussion and taking a lenient view as this is a matter of family pension and death cum retirement dues, we dispose of this OA with direction to the respondents to verify the authenticity/genuineness of the letter annexed at Annexure A/3. If the same is found to be genuine and issued by the office to the applicant, then the claim of the applicant for grant of family pension and other death cum retirement dues of her late husband may be considered as per rules and decided within a period of four months from the date of receipt of a copy of this order. The applicant is also directed to submit documents in support of her contention that her husband was a regular Railway employee posted as Pointsman at Narkatiaganj within a month from the date of receipt of a certified copy of this order. If any death cum retirement dues and family pension are found admissible then the current family pension and other admissible then the current family pension and other admissible dues shall be paid to the applicant within a further period of one month. It is, however, made clear that as there has been long delay and laches on the part of applicant in filing the OA, no arrears of family pension or interest on the other*

dues, if found admissible, shall be paid for a period upto six month after receipt of a copy of this order. However, if the matter is not decided by the respondents within time stipulated in this order and any dues are found admissible, then interest @ 8% simple per annum shall be paid commencing from six months after the receipt/production of a copy of this order."

(iii) Thereafter, the respondents, in compliance of order dated 18.11.2014 passed in OA 806/2014 the respondent authority had considered the claim of the applicant and rejected the same by passing speaking and reasoned order on 01.05.2015 (Annexure A/5) on the following grounds :-

- (a) *"The Hon.ble Tribunal has directed the applicant to submit in support of her contention that her husband was a regular employee posted as Pointsman at narkatiaganj within a month from the date of receipt of a certified copy of this order but the applicant i.e you, has not submitted any documents thereof.*
- (b) *The date of death, as contained in the death certificate is 04.07.1996 while the husband of the applicant was alive on that date as per official record because on 25.07.1996, he has drawn his salary in presence of two witnesses. The applicant is required to clarify it. [proof is enclosed].*
- (c) *The applicant has failed to bring the fact as mentioned in [b] into the Hon.Court which amounts to suppression of fact.*
- (d) *The State Authorities are being requested to verify the contradiction in case of date of death and the irregularity, which is apparent from the above, is required to be rectified as per section 15 of the Registration of Births and Deaths Act 1969.*
- (e) *The husband of applicant, due to his unauthorized absence, has already been removed in 2006 under ex-party departmental proceeding. To extend him opportunity, letters were sent at his address and not only this but also it was notified in the newspaper but neither the husband of the applicant was turned up nor any information of his death was communicated. This fact was also not brought into the Hon. court."*

(iv) On consideration of the order dated 01.05.2015 (signed on 06.05.2015) passed by the respondents, the Contempt Petition i.e. CP No. 050/157/2015 in O.A No. 806/2014 filed by the applicant was ordered to be dropped by this Tribunal vide order dated 27.01.2017 (Annexure A/6).

(v) Thereafter, in response to request/letter dated 10.08.2016 and 04.11.2016 of DRM, E.C. Railway, Samastipur with regard to verification and confirmation of the death certificate dated 04.07.1996 of late Harendra Prasad, the office of District Magistrate vide their communication dated 07.08.2017 addressed to DRM, Samastipur informed that the office of Block

Development Officer had verified the correctness of the death certificate dated 04.07.1996 of late Harendra Prasad and it was observed that the said certificate was issued by the Secretary, Gram Panchayat, birth and death Registrar, Gram Panchayat Raj Bangara as certified by the said Gram Panchayat. On the basis of said confirmation issued by the office of the District Magistrate on 07.01.2017 (Annexure A/7 series refers). Therefore, the applicant had requested the respondent department to reconsider his case but no answer was received on it, hence filed the present O.A on 01.11.2017.

(vi) The learned counsel for applicant submitted that in spite of the registration of death of late Harendra Prasad and the certificate for it i.e death certificate dated 04.09.1996 found to be correctly recorded and issued by the Raj Bangara Panchayat as per the report of District Magistrate. The respondents are under legal obligation to consider the claim of the widow of late Harendra Prasad for family pension.

3. In contra, the respondents have filed their written statement dated 28.03.2018 and denied the contention and averment made by the applicant. The learned counsel for respondents submitted that the grounds stated for rejection of the claim in their order dated 01.05.2015 (signed on 06.05.2015) are true and correct. The respondents had submitted that the late Harendra Prasad, ex-pointsman had drawn his salary on 25.07.1996 in the presence of two witnesses thereafter, he was remained absent unauthorised for a long period and after following due procedures under D&A Rules 1968. The applicant was removed from service in the year 2006 under ex-parte departmental proceedings and therefore family pension as well as retiral benefits are not admissible as claimed by the applicant. The respondents have placed reliance on the abstract of salary register. In

support of their submission that the late Harendra Prasad had drawn his salary on 25.07.1996 and also placed statement of cashier who had paid the salary. Annexure R/1 & R/2 refer. It is further submitted that as per the direction issued by this Tribunal in O.A No. 806/2014, the applicant was failed to submit relevant documents to sustain his claim. That the impugned order was placed before this Tribunal in contempt proceedings i.e CP 157/2015 in OA 806/2014 before this Tribunal and after considering the said compliance and found no infirmity in action taken by the Railway Administration, the contempt proceedings was dropped. Therefore, the applicant is not entitled for any relief. The respondents have further submitted that the applicant submitted her application to claim family pension and other retiral benefits only on 13.03.2012. The husband of the applicant is claimed to expired on 04.07.1996, death certificate was issued on 31.07.2011 and applied for pension and pensioner benefits on 13.03.2012. The said late Harendra Prasad was remained absent unauthorised from the service therefore under the D&A Rules 1968 he was removed from the service in 2006. Therefore, at this juncture, the applicant is not entitled to claim any relief as sought for.

4. In response to the submission made by the respondents and to their written statement, the applicant has filed rejoinder to the written statement dated 23.05.2018. The learned counsel for the applicant additionally submitted that during the pendency of present O.A, the applicant has received information under RTI with respect to regularisation of service of late Harendra Prasad. It is submitted that as per the information provided vide letter dated 26.11.2015/24.11.2015 by the office of the Divisional Personnel cum APIO, East Central Railway, Samastipur, the late Harendra Prasad, pointsman, posted at Narkatiaganj was a Regular employee of Railway. (Annexure A/10 series). It is further submitted that the death certificate of the husband of the applicant was found to be genuine

therefore, the applicant is entitled to receive the family pension as per the provision of Rule 75 of Railway Service Pension Manual 1993. It is further submitted that as per the law laid down by the Hon'ble Apex Court, the issue of claim of pension/family pension/retiral dues being recurring cause of action therefore the respondents cannot deny the claim of applicant. It is further submitted that as per letter dated 09.03.2015 issued by the DRM (P), Eastern Railway, Samastipur addressed to Welfare Inspector whereby it was stated that the settlement dues including family pension of late Harendra Prasad, ex-pointsman, Narkatiyaganj is required to be paid to the applicant in compliance of the order dated 01.12.2014 passed in OA 806/2014 therefore he was directed to submit all the connected papers with respect to family pension of said late ex-employee. (Annexure A/12 refers). It is also submitted that in spite of various applications made by the applicant to the respondents authority and demanded the relevant documents with respect to Disciplinary Proceedings initiated against the husband of the applicant but the same were not supplied on the ground that the case details/records is of more than 20 years old and the same is not available in the office, hence the legitimate right of the applicant to receive the family pension has been curtailed for no fault of her.

5. Having heard the parties and perused the material on records. It appears that the applicant had applied on 13.03.2012 to the respondents for claim of family pension on the ground that she is widow of late Harendra Prasad, pointsman, Narkatiyaganj, who was an employee of Railway and died in harness on 04.07.1996. In response to it, the Welfare Officer, Eastern Railway, Samastipur vide its letter dated 10.04.2012 informed the applicant to submit relevant documents to substantiate her claim. The applicant had submitted a copy of death certificate dated 31.08.2011 issued by the Udant Rai ke Bangara Gram Panchayat, Thawe, District- Gopalganj, as per the said death certificate the date of death of late Shri Harendra

Prasad has been shown as 04.07.1996. On receipt of the said death certificate, the respondents had verified the records of late Harendra Prasad and found that the said late Harendra Prasad had drawn his salary on 25.07.1996 in presence of two witnesses whereas the date of death is stated as 04.07.1996. Due to this discrepancy, the claim of the applicant was kept pending for further consideration. During that period the applicant had filed O.A No. 806/2014 before this Tribunal and sought direction upon the respondents to grant family pension. At the stage of admission itself, this Tribunal, vide its order dated 18.11.2014 directed the applicant to submit appropriate documents in the office of respondents and further directed the respondents to consider the claim of applicant. In compliance to the said order, the respondents have considered the claim of applicant based on the available records and rejected the claim of applicant for family pension by passing speaking and reasoned order on 01.05.2015 on the ground that there is discrepancy in the death certificate of late Harendra Prasad because the said employee had withdrawn his monthly salary for the month of July 1996, the said employee remained absent unauthorisedly for a long time therefore he was removed from the service in the year 2006 after following due procedure under the Disciplinary Rules, the Railway Administration has requested the state authority to verify the genuineness of the death certificate. It is further noticed that during the pendency of consideration of the case of the applicant before the respondent department, the applicant had filed contempt petition bearing CP No. 157/2015 in O.A No. 806/2014, the said Contempt Petition was ordered to be dropped by this Tribunal considering the compliance made by the respondents vide order dated 01.05.2015. It is further noticed that thereafter, in response to letter of respondents with regard to verification of death certificate of husband of the applicant, the office of District Magistrate vide its communication dated 07.08.2017 informed the respondents to the effect that "*the Death Certificate has been issued by the Gram Panchayat, Rai Bangara*" therefore,

the applicant had again approached the respondents to consider her claim for family pension. However, the same has remained unanswered. Therefore the applicant had again approached this Tribunal by filing the present O.A. with a prayer to quash and set aside the order dated 01.05.2015 and for further direction to respondents to grant family pension and other retiral dues with interest.

6. It is further noticed that during the pendency of this O.A, the applicant has received reply under the RTI by the respondents that the applicant was a regular employee posted at Narkatiaganj as pointsman (Kantawala) vide letter dated 24.11.2015. The applicant has also received a copy of letter dated 09.03.2015 issued by Assistant Personnel Officer, addressed to the Welfare Officer, Samastipur, by which directions were issued to submit all the relevant documents of the applicant for the purpose of payment of family pension. The applicant was informed by the respondents vide letter dated 04.04.2018 that the documents asked for with regard to Disciplinary Proceedings initiated against the husband of the applicant is not available in the office as the case papers are 20 years old.

7. In the present case, it is noticed that subsequent to the order dated 01.05.2015 passed by the respondents, the office of District Magistrate had issued certificate with regard to correctness of registration of date of death of late Harendra Prasad vide its communication dated 07.08.2017/04.08.2017 and it is also noticed that the controversy about the status of the applicant with regard to his appointment on regular basis is established in view of the reply furnished by the respondents under the RTI. Under these circumstances, it needs to be verified whether late Harendra Prasad, ex-pointsman, Narkatiaganj has rendered qualifying service to be eligible for pension and the validity of removal of late Harendra Prasad from the service in the year 2006 is also required to be verified because as per record, the death of late employee took place in 1996 and his removal order

was passed in the year 2006. Moreover, based on the subsequent development and materials on record, it is also required to be determined whether the applicant is entitled for family pension and other retiral dues as claimed by her.

8. In view of the overall discussion of the matter, I am of the opinion that, it is a fit case to be remanded to the respondents to consider the case of the applicant afresh in the light of subsequent development as stated hereinabove, after giving due opportunity to the applicant to substantiate her claim also by providing personal hearing. The said exercise be completed within two months from the date of receipt of copy of this order. The O.A stands disposed of accordingly with no order as to costs.

(Jayesh V. Bhairavia) M [J]

/mks/

