

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 414/2009

Date of order : 8.3.2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Dalia Mohanty, aged about 65 years, W/o Late Musa, S/o Saha
resident of Vill – Taras, PO – Jenapur, Dist. – Jajpur , Pin -755010.
.....Applicant

VERSUS

1. Union of India represented through the General member, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist. – Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO/PS- Jatni, Dist. – Khurda.
3. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO/PS- Jatni, Dist. – Khurda.
4. Bridge Inspector, East Coast Railway, At/PO/Dist – Bhadrak.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.M.K.Das, counsel

O R D E R (ORAL)

Per Mr.Gokul Chandra Pati, Member (A)

The OA is filed by the applicant Dalia Mohanty who is the wife of late Musa who was a Railway servant with the prayer for the following reliefs:-

- “(a) It is therefore prayed that under the facts and circumstances of the case narrated above your Lordships would be graciously pleased to direct the respondents to pay the family pension, gratuity and other benefits to the applicant.
- (b) And further be pleased to direct the respondents to pay interest on such claim amount;
- (c) And further be pleased to direct the respondents to depose the representation under Annexure A/3 series.
- (d) And pass any order/orders, direction/directions as this Hon'ble Court thinks fit and proper for the ends of justice.

And for this act of kindness the applicant as in duty bound shall ever pray.”

2. It is the case of the applicant that her husband Late Musa, while working as a Railway employee since 16.2.1972, died on 14.10.1992 (para 4.2 of the OA). But there is no document relating to the service of late Musa attached to the OA except for the copy of two letters received by the applicant in reply to a query under the Right to Information Act, 2005. The respondents have also not

been able to trace any document relating to the service of late Musa for the reason that after long lapse of time, the service records are not available as these are generally kept for a limited number of years. It is the case of the applicant that after untimely death of her husband, she was not allowed the pensionary benefits as per the rules, although her son was allowed compassionate appointment after death of her husband.

3. The respondents, in their counters have vehemently objected on the ground of delay in filing the OA filed although an application (MA No. 1009/2011) with prayer for condoning the delay in filing the OA has been filed separately.

4. We have heard learned counsels for both the parties and also considered the pleadings on record. Learned counsel for the respondents opposed the OA mainly on ground of long delay after death of the applicant's husband. He also objected to the MA No. 1009/2011 on the ground that it was filed after the OA was dismissed in default. No document in support of the service of late Musa is available in support of the applicant's claim.

5. It is seen that the applicant has received two letters (copy at Annexure A/3) from the respondents in reply to the query under RTI. One of the letter dated 20.2.2007 from the respondents (Ann. A/3) reads as under:-

".....From service record of Sri Babaji Mohanty, s/o Musa (Xerox copy enclosed) it is ascertained that he was appointed on compassionate ground vide DRM(P)KUR's OO No. P/R/EA/OT/CL-4 dt. 7.8.87....."

Other letter dated 9.2.2007 of the respondents (Ann. A/3) stated as under:-

"....The applicant in his above application wants the preliminary records basing on which compassionate appointment to her son Babaji has been given. The compassionate appointments are processed by Sr. DPO/HUR....."

From above documents, it is clear that the son of the applicant Sri Babaji was given appointment by the respondents on compassionate ground vide order dated 9.8.1987 i.e. before death of the applicant's husband on 14.10.1992. The fact of the case that the applicant's husband was declared medically unfit and thereafter, his son was given compassionate appointment vide order dated 9.8.1987 appears to be correct. Further, since after the applicant's husband was declared medically unfit, his son was given compassionate appointment, which implies that he was an employee for whom the benefit of compassionate appointment was admissible.

6. Regarding the MA No. 1009/2011 for condoning the delay in filing the OA, vide order dated 21.9.2016 of the Tribunal, the OA was admitted since the matter relates to family pension. In other words, vide order dated 21.9.2016 the OA was admitted after condoning the delay as the matter related to family

pension. From the pleadings, it is clear that the applicant's husband was under the employment of the Railways as Khalasi under the Bridge Inspector from 16.2.1972 to 24.4.1984 when he seems to have been declared medically unfit.

7. Learned counsel for the applicant submitted at the time of oral submission that the applicant is the widow of the deceased employee and she has prayed for family pension for her late husband. Unfortunately, she has not enclosed the documents to substantiate her claims and did not receive the documents from the respondents. However, she wants to file a fresh representation before the authorities for pensionary benefit including family pension in respect of her late husband, which may be considered as a continuing cause of action. He submitted that the applicant's grievance would be redressed for the present if a direction is given to the respondents to consider the fresh representation. Learned counsel for the respondents opposed vehemently on the ground that the MA No. 1009/2011 for condonation of delay was filed by the applicant when the OA was dismissed in default. Hence, it is not maintainable and is to be rejected.

8. We are unable to agree with the argument of learned counsel for the respondents, since the OA was admitted vide order dated 21.9.2016 of this Tribunal and the respondents have not contested this order. Moreover, the demand for family pension is a continuing cause of action for which the delay or limitation will not be a bar. In the circumstances, the MA No. 1009/2011 is allowed and delay in filing the OA is condoned.

9. In view of the submissions of the learned counsel for the applicant at the time of hearing and without expressing any opinion on the merit of the case projected by the applicant in this OA, we dispose of the OA with liberty to the applicant to submit a fresh representation enclosing documents available with the applicant in support of her claim, to the respondent No.2 with a copy to the respondent No. 3 and 4 within one month from the date of receipt of a copy of this order. The respondents/competent authority on receipt of the said representation of the applicant, shall consider and dispose of the same as per law by passing a speaking and reasoned order, copy of which be communicated to the applicant within three months from the date of receipt of the aforesaid representation from the applicant.

10. The OA is disposed of in terms of the directions in paragraph 8 above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

