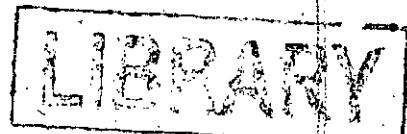


CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA



O.A. 495 of 2017

Order dated: 14.02.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Smt. Urmila Verma,  
Wife of Late Birendra Kumar Verma,  
C/O. Sri Binoy Singh,  
Residing at No. 708/C, Doulatpur,  
Railway, Colony,  
P.O. - Janalpur,  
District - Munger,  
Bihar, pin no. 811214.

..... Applicant.

Versus

1. Union of India  
Service through the General Manager,  
Eastern Railway  
Fairlie Place,  
Calcutta - 700 001.
2. General Manager,  
Eastern Railway  
Fairlie Place,  
Calcutta - 700 001.
3. Controller of Stores,  
Eastern Railway,  
Janalpur.
4. District Controller of Store,  
Eastern Railway,  
Janalpur - 811 214.
5. Assistant Controller of Store-II,  
Eastern Railway Jamalpur.  
G.Sr.01, Majumder, EI/Hgrs,  
Eastern Railway,  
Calcutta,  
Fairlie Place,  
Calcutta - 700 001,  
Engineering Officer.

..... Respondents.

BB

For the applicant : None

For the respondents : Mr.S.K. Das, Counsel

**ORDER (Oral)**

The matter is taken up Single Bench in terms of Appendix VIII of Rule of practice, and no complicated question of law is involved.

2. Since none appeared for the applicant, Rule 15(1) is invoked.

3. This original application has been preferred by a widow to seek the following reliefs:

*"In view of the facts mentioned hereinbefore applicant prays before this Ld. Tribunal for direction upon the respondents to make payment of pension and pensionary benefit so also the applicants widow the family pension, since the purported termination of the employee as well as family pension since husband employee of the petitioner died with interest, as well as arrears and employment of the widow applicant and/or his any son as termination has been converted into compulsory retirement due to death of the husband employee of the petitioner as ordered the applicant is entitled to get the same."*

4. This is the second journey of the applicant to this Tribunal, by way of O.A.

She had earlier preferred O.A. 536 of 2002 which was disposed of on 28.3.2008.

The orders issued in earlier O.A., being O.A. 536/02, disposed of on 28.03.08, reads as under:

*"Heard Mr. P.C. Das, Ld. Counsel for the applicant and perused the pleadings. Heard the Ld. Counsel at length. We find that a Bench of this Tribunal has already condoned the delay in their order dated 11.1.2008 and that having not been assailed, it has attained its finality.*

2. We carefully perused the impugned order dated 28.12.1995 at Annexure 'Z-1' which reveals that on an office note some order has been passed by the concerned authority which amply reveals that it is not a proper order of the appellate authority. The charged employee died in the

year 1998. At this stage we do not want to reopen the matter after a long lapse of time. But after careful consideration we find that the impugned penalty of removal is disproportionate to the misconduct. Accordingly we modify that to one of compulsory retirement which shall entitle the said employee for pension and pensionary benefits so also the applicants widow the family pension. In Accordance with the rules

2. The O.A. is accordingly disposed of. No costs."

5. In compliance of the said order, an order dated 17.11.08 was issued by Sr. Material Manager modifying the penalty of removal to that of compulsory retirement, extracted infra:

"3.0 In the lights of the above the order dated 28-12-95 for removal from service of B.K. Verma Ex-Khalasi Helper T.No-19096 be modified as Compulsory Retirement allowing pension/pensionary benefits to B.K. Verma Ex-Employee so also the widow the family pension in accordance with the rules.

4.0 The above may be complied immediately towards implementation of Hon'ble CAT/Kot's judgement of 28-03-08.

Senior Material Manager  
Eastern Railway/Jamalpur"

6. Consequent to such modification, payments were released favour of the widow, vide order dt. 24.8.09 (Annexure A-5) as under:

"i) That as Lt. Verma's qualifying service was 06 yrs. 07 months 14 days only, as per rule he/she is not entitle for Pension/ Family Pension. As such no PFO was issued.

ii) That followings have been paid to his widow Smt. U. Verma

1. Service Gratuity	-	Rs. 7085/-
Retirement gratuity	-	Rs. 3543/-
Total	-	Rs.10628/-
<u>Deduction Made</u>		
Society Loan	-	Rs. 3123/-
Bi-cycle Advance	-	Rs. 233/-
Over payment of Wages.	-	Rs. 2757/-
Total	-	Rs. 6113/-

Hence payment made = 10628 - 6113

= Rs. 4515/-

2) P.F. - Rs. 3668/-

3) *Group Insurance* - - - *Rs. 1196/-*  
*Vide OA 007 No. 09234 dt. 31.4.09.*  
 iii) *That all payments as mentioned above admissible in accordance with rule have been made to the widow Smt. Urmila Verma, W/o. Late Birendra Kr. Verma in compliance of Ld. CAT/Kol, and Hon'ble High Court/ Kolkata's Orders.*

Therefore, evidently family pension was denied to her.

7. Aggrieved with the denial of Family Pension, CPC 37 of 13 came to be filed by the widow alleging that payable pension of her husband was not released.

8. The CPC was entertained and following order was issued on 31.3.16:

*"The order has been passed by the authorities declining the claim of the family pension which has been brought on record. Exemption has been prayed for appearance of the General Manager on the ground that on account of Rail accident in Kanpur a report has been sought by the Railway Ministry from the General Managers of all concerned Division. Therefore, the exemption application has been made. The order has been complied with regarding the family pension."*

2. Hence, we are of the view that the order has been substantially complied with. However, liberty has been granted to the applicant if he is dissatisfied he may challenge the order by filing a fresh application.

3. The contempt petition is accordingly disposed of. The MA is also disposed of.

9. Pursuant to and emboldened by the liberty, as aforesaid the present O.A. has been preferred.

10. The respondents by way of their reply have categorically refuted and denied the claim of applicant. They have stated as under:

a) Late Birendra Kumar Verma, husband of applicant was a Group 'D' employee joined in Rly Service on 09.11.1982 and removed from service on 22.06.1989 for his misconduct and subsequently died on 01.10.1998.

b) Aggrieved by such removal Late B.K. Verma filed a case being OA No. 541 of 1992 before CAT/Calcutta and Hon'ble Tribunal quashed the punishment order by order dated 22.09.1995 and remanded to Appellate Authority to pass appropriate order which was complied with vide order No.

29.12.1995. Thereafter, Late B.K. Verma filed revision petition to CWMJMP who confirmed the punishment on 22.10.1997.

c) After the death of above ex-employee his wife and present applicant filed OA No. 536 of 2002. Hon'ble Tribunal passed order dated 28.03.2008 and modify the removal order of respondents to one of compulsory retirement finding the removal order as disproportionate to the misconduct. In compliance of above Hon'ble Tribunals' order a memorandum dated 04.11.2016 were issued releasing all retirement benefits as admissible as per direction of Hon'ble Tribunal. Since the employee completed only 6 years 7 months and 14 days of service no pension was granted.

d) Further the applicant filed on CPC being No. 37 of 2013 and Hon'ble Tribunal observed that the order has been complied with regarding the family pension and order has been substantially complied as such the said CPC was dropped with liberty to the applicant to file a fresh application if she is dissatisfied. Copy of said order is attached in page no. 30 of O.A.

Hence, this instant application filed by the applicant seeking pension and pensionary benefits "family pension and employment of a c widow applicant and/or her any son".

In support of their contention that the employee was not eligible to earn pension when he died, Ld. Counsel would place the following provision which explicitly lays down conditions when family pension would become payable. The provision reads as under:

"75. Family Pension Scheme for railway servants, 1964 : (1) The provision of this rule shall apply :-

- (a) To a railway servant entering service in a pensionable establishment on or after the 1<sup>st</sup> January, 1964, and
- (b) To a railway servant who was in-service on the 31<sup>st</sup> December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees, 1964, contained in the Railway Board's letter No. F(P) 63 PN-1/40, dated the 2<sup>nd</sup> January, 1964 as in force immediately before the commencement of these rules.

Note :- The provisions of this rule has also been extended from 22nd September, 1977, to railway servants on pensionable establishments who retired or died before the 31<sup>st</sup> December, 1963 and also to those who were alive on that date but had opted out, of the 1964 Scheme.

- (2) Without prejudice to the provisions contained in sub-rule (3), where a railway servant dies -

(a) after completion of one year of continuous service, or

(b) Before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service;

(c) After retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 53;"

The Ld. Counsel would vociferously contend that since the employee did not earn pension as on the date of death, his family would not be entitled to family pension.

11. We heard the learned counsels and perused the materials on record.
12. We note that family/widow pension becomes payable to the family of Railway employee even upon completion of one year service of the employee, in the event the employee dies in harness, whereas a serving employee earns pension only upon completion of 10 years of regular service and in the event such an employee passes away without earning pension upon his retirement his family does not earn family pension in view of absence of specific rules to that effect.
13. In the present case irrefutably and inarguably the employee first retired before completing 10 years of service and therefore as non pensionable employee he passed away.

The question is whether, the applicant having retired from service as a non-pensionable employee his widow is rendered in/ eligible to family pension in view of specific bar imposed by the rules extracted supra and in absence of specific provisions permitting her to earn family pension.

We would discern that the Rule 64 of Railway Pension rules specific and explicitly lays down the following:

**"64. Compulsory retirement pension. – (1) A railway servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity, or both admissible to him on the date of his compulsory retirement.**

**(2) Whenever, in the case of a railway servant the President passes an order (whether original, appellate or in the exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.**

**Explanation. – In this sub-rule, the expression "pension" includes "gratuity".**

**(3) A pension granted or awarded under sub-rule (1) or, as the case may be, under sub-rule (2), shall not be less than three hundred seventy five rupees per mensem.**

Therefore even compulsory retirement pension is to be released only if the employee rendered pensionable service as on the date of his compulsory retirement, the O.A. decided earlier did not mandate release of family pension against the rules.

14. In view of the legal provisions enumerated supra, the O.A. stands dismissed. No costs.

15. However, in the event, applicant comes across any Railway Board's circular/law etc. that would permit her to seek family pension, she would be at liberty to seek the same by way of appropriate application.

(Bidisha Banerjee)  
Judicial Member

drh