



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1057/2017

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

Smt. Gita Sanyal, wife of Late Heramba Kumar Sanyal aged about 81 years, husband of the present applicant being Ex-Assistant Guard, Northeast Frontier Railway at Alipurduar Junction, Alipurduar, West Bengal and the Applicant is residing in Aurobinda Nagar Complex(C/O Tapas-Kr. Sanyal) P.O.-Alipurduar Court, P.S.-Alipurduar, Dist. Alipurduar, West Bengal, Pin-736122

.....Applicant

1. Union of India, serving through the General Manager, North East Frontier Railway, Maligaon Railway head Quarters, Guwahati-781011, Assam;
2. FA & CAO(Pension), North East Frontier Railway, Maligaon Railway headquarters, Guwahati-781011, Assam

.....Respondents

For the applicant : Mr. J.R. Das, counsel

For the respondents : Mr. B.P. Manna, counsel

Heard on :10.01.2019

Order On : 8.3.2019

ORDER

Heard Id. counsel for both sides.

2. In this O.A. the applicant has sought for the following reliefs:-

"i) An order directing the respondents to cancel, rescind, withdraw or set aside the purported speaking order dated 22.10.2014 containing false, contradictory and baseless statements as also the purported letter dated 27.05.2013 being self contradictory and malafide;

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ii) An order directing the respondents to pay all the arrears so due and payable to the applicant following a total review of the career of her husband and regularise the same vis-à-vis recalculate and re-fix her family pension accordingly;

iii) An order directing the respondents to grant all the pensionary benefits in favour of the applicant with due arrears thereto taking into consideration the promotion, regularisation of suspension period with due increments of her husband, late H.K. Sanyal and pay due interest thereon @ as decided by this Hon'ble Tribunal;

iv) An order directing the respondents to produce entire records of the case as also showing details of consideration of the applicant before the Hon'ble Bench at the time of adjudication for conscionable justice;

v) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. The M.A. that was preferred to seek condonation of delay, was allowed on 14.11.2017. Hence we proceed to hear out on merits.

4. It transpires from the pleadings of the parties that the applicant had approached this Tribunal earlier in O.A.No.498 of 2014, which O.A. was disposed of with a direction upon the respondents to consider and dispose of a representation dated 13.09.2013 in accordance with law by a speaking order within 2 weeks, keeping all the points open for adjudication. Pursuant thereto, a speaking order was issued on 22.10.2014 which is extracted hereunder:-

"Sub : Speaking order in compliance with Hon'ble CAT/Cal's order dated 06.08.14 in O.A.No.350/00498/14 Gita Sanyal -vs.-NFR

Undersigned perused the above order/judgment dated 06.08.14 passed by Hon'ble CAT/Cal and your representation dated 13.09.13 regarding promotion to Guard/C in favour of your husband w.e.f. March/1974 with other consequential benefits (At Page 35 of above OA) and other documents relevant for disposing of the said representation.

From your representation dated 13.09.13, it appears that your husband had submitted appeal to DRM(O)/APDJ dated 14.12.98 for regularisation of only suspension period which was admittedly already paid to you and the same was also communicated to you vide this office letter of even No. dated 27.05.13 (Annexure A/8 to above O.A.). Your husband never claimed for the said promotion, because no promotion was due in his favour.

It is also informed that Late Heramba Kr. Sanyal was never promoted to Guard/C and as such re-fixation of Service benefits does not arise.

It is further informed that any document relating to his service cannot be available after about more than 24 yrs of PPO dated 31.05.91 as provided under

preservation and destruction of old records rule of GM(P)MLG's No.E/191/26 Pt.VII(C) dated 17.5.2000.

In view of the above facts and circumstances, the claim of promotion to Guard/C w.e.f. March 1974 in favour of your husband & thus the alleged consequential benefits are not tenable. Accordingly, the said representation dated 13.09.13(page 35 to OA) stands disposed off.

(Abhishek Ranjan)
Sr. Divisional Personnel Officer
Alipurduar Junction.

5. The applicant being the widow of the deceased employee has represented to the Senior Divisional Personnel Officer, N.F. Railway, Alipurduar Junction against the speaking order on 28.04.2015 in the following manner:-

".....Please see O.O.at Ref.4.above and consider whether your order is reasoned. Based on same Office Order, when all other promotees could get the promotional benefits, my husband ought to have got the similar benefits. In his said appeal at Ref.2 above, he requested for regularisation of the suspension period. It is implied that the same railway administration which extended the benefits to other promotees in same office order, would act similarly, more so, when the said judgment copy was also submitted by my husband during his life time. It was for the administration to implement its own order.

That, your statement in para 3 is not based on fact.

That, your information in para 4 is contrary to what has been stated by the Hon'ble MR to Hon'ble MLA, Alipurduar."

6. The respondents in their reply have categorically stated that upon acquittal from the criminal proceedings vide Additional Sessions Judge, 1st Court, Jalpaiguri on 19.11.1988, the entire suspension period of the husband of the applicant was regularised and consequential benefits were paid to him and he retired from service on 31.12.1988. The cited Shri Bhim Krishna Sarkar was promoted to Guard 'C' along with the applicant's husband vide office order dated 15.03.1974 purely on ad hoc basis. He was at Sl.No.2 whereas the applicant's husband was at Sl. No.9 in the list. Shri Bhim Krishna Sarkar retired on superannuation as Assistant Guard in 1982. That Annexure R/3 shows that after lapse of four months as mentioned in Railway Board's letter dated 23.02.1974, all the persons who were promoted on ad hoc basis to the posts of Guard 'C', were

automatically reverted back to the posts of Assistant Guard. Therefore, her claim is not tenable.

6. We considered the materials on record and we discern the following:-

It is evident from the pleadings of the parties and the materials on record that in fact, the husband of the applicant, namely, Heramba Sanyal was promoted to Guard 'C' on purely temporary ad hoc measure in the scale of Rs.130-225 vide order dated 15.03.1974. While nominating his wife for the purpose of gratuity/ death-cum-retirement gratuity in the year 1988, he referred himself as Assistant Guard, APDS and not as Guard 'C'. Therefore, it is evident that the contention of the respondents stand substantiated that the employee himself had never agitated or sought for benefits as Guard 'C'. He accepted his substantive posting as Assistant Guard and, therefore, his widow cannot be permitted to seek benefit of promotion with effect from 1974, after so many years, on behalf of her husband who had retired way back in 1988 *moreso*, when no other junior has been granted such promotion.

7. The claim of the applicant being thus misconceived and hopelessly time barred, cannot be entertained at this distant date. Further, it is trite, axiomatic and settled law that repeated representations cannot revive a dead cause of action and a dead cause of action cannot be allowed to rise as a phoenix from the pages of history. The claim being untenable the O.A. deserves to be dismissed.

8. Accordingly the O.A. stands dismissed. No costs.

(Bidisha Banerjee)
Judicial Member