

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Monday 28th day of January Two Thousand And Ninteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

THE HON'BLE MR. P.MADHAVAN, MEMBER (J)

M.A. No.310/00047/2019

In And

O.A. 310/00080/2019

1. Kavati Prasannakumari, Widow, F/A 49 years,
(W/o. Late K. Jayarao, Ch. Office Supdt.
Shop-20/Shell, ICF)(Empl. No. 785291);
2. Kavati Ajayakumar, M/A 31 years
(S/o. Late K. Jayarao, Ch. Office Supdt.
Shop-20/Shell, ICF)(Empl. No. 785291)

(both 1 & 2 are residing at NI.7-97,
Adinarayanapuram, Epuru Palem Post,
Chirala Village & Mandal, Prakasam Dt.A.P)
.....Applicants both in MA & OA

(By Advocate: M/s. Dr. P.S. Vijayakumar)

Versus

1. The General Manager,
Integral Coach Factory,
Chennai;
2. The Principal Chief Personnel Officer
Integral Coach Factory, Chennai;
3. The Chief Works Engineer,
Integral Coach Factory, Chennai.

...Respondents both in MA & OA

(By Advocate:)

ORAL ORDER

[Pronounced by Hon'ble Mr. R. Ramanujam, Member (A)]

Heard. M.A. for permission to join together to file a single OA is allowed.

2. The applicant has filed this OA seeking the following relief:-

“ to call for the connected records from the respondents and on perusal, to quash/set aside the order issued by the Respondents under Lr. No. PB/S/DAR/785291/UA dated 25.07.2018 as well as Lr. No. PB/S/DAR/785291 dated 08.12.2018 thereby release all the terminal benefits of Late K. Jayarao, husband and father of the 1st and 2nd applicants respectively with interest @12% per annum including family pension with effect from 16.05.2018 to the first applicant as Late K. Jayarao died in harness and consequentially direct the respondents to appoint the second applicant on compassionate grounds in a suitable post at Integral Coach Factory as the applicants are living under penurious circumstances.”

3. The case of the applicant is that the late employee, Mr. K. Jayarao, of whom the applicants are the legal heirs died on 16.05.2018. The deceased employee had been unable to attend the office during the period 10.05.2017 to 28.06.2017 for which the disciplinary authority had imposed a penalty of 'removal from service' with effect from 17.01.2018. Late K. Jayarao preferred an appeal to the appellate authority on 1.2.2018. During the pendency of the appeal, the appellant died. However, by an order dated 25.7.2018, the competent authority modified the penalty of removal from service into one of 'compulsory retirement from service.

4. Learned counsel for the applicant would argue that since the appeal filed by the deceased government employee was pending at the time of his death, the order of the disciplinary authority removing him from service would not be deemed to have attained finality and as such he should have been deemed to be in service and died in harness on 16.5.2018. Accordingly, his family should be held to be entitled to terminal benefits of a person who died in harness as also the benefit of compassionate appointment to a dependant member of the family.

5. Learned counsel for the applicant seeks to rely on the order passed by this Tribunal in O.A. 1128/2011 dated 08.1.2014 wherein relying on certain precedent cases, it was observed that the disciplinary proceedings till the passing of the order of penalty and the appeal and revision proceedings were part of a continuum. Accordingly, the penalty of removal from service was set aside in the said case and benefits like pension, gratuity etc flowing from the setting aside of the penalty of removal from service was granted to the legal heirs of the applicant. Reliance is also placed on the order of the Allahabad Bench of this Tribunal in O.A. 486/2010 dated 10.05.2018 wherein the respondents were directed to consider to release the retiral benefits as well as family pension treating the disciplinary proceedings as abated and as if no punishment was ever awarded to the deceased employee.

6. We have considered the submission at the admission stage. It is clear from the Anneuxre-A/13 impugned order dated 25.7.2018 that the appellate authority had modified the penalty of 'removal from service' to 'compulsory retirement from service'. No mention was made of the date from which it

would take effect. However, since no date is mentioned it was perhaps intended to take effect from the very date from which the order of removal from service took effect. The fact that the appellant had died during the pendency of the appeal was known to the appellate authority. Evidently, the order passed by the appellate authority does not go into the issue of interpretation of the RBE 115/2000 dated 19.06.2000 wherein it was 'clarified' that disciplinary proceedings should be closed immediately on the death of the charged railway servant. In the judicial precedents relied upon by the applicant herein, the disciplinary proceedings have been interpreted to be pending till the finalization of the appeal and revision proceedings which have been treated as part of a continuum and the order passed by the disciplinary authority had been set aside.

7. It is seen that the applicant had made Annexure A/14 representation dated 16.08.2018 to the first respondent seeking payment of pension and other terminal benefits as also compassionate appointment for her son, which does not appear to have been considered till date. There is no reference to this representation in Annexure-A/13 impugned order either passed by the appellate authority. The first respondent is the competent authority under the rules to consider the matter in 'revision' either on his own motion or otherwise.

8. Under the aforesaid circumstances, we are of the view that the applicant could be permitted to supplement her representation made to the 1st respondent dated 16.08.2018 with copies of the judicial precedents relied upon within a period of two weeks from the date of receipt of copy of this

order. On receipt of such supplementary representation, the first respondent shall in exercise of his powers of revision under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 consider the matter in accordance with law and pass a reasoned and speaking order within a period of two months thereafter.

9. O.A. is disposed of accordingly. No costs.

(P. MADHAVAN)
MEMBER (J)

(R. RAMANUJAM)
MEMBER (A)

28.1.2019

Asvs.