

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.1201/2017

Dated Tuesday, the 29th day of January, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

Sonaiammal

H2, Subramaniyapuram

Harijana Colony

Madurai – 11.

... Applicant

By Advocate M/s Ratio Legis

Vs

1. Union of India rep. by

The General Manager

Southern Railway

Park Town, Chennai 600 003.

2. The Divisional Personnel Officer

Madurai Division

Southern Railway, Madurai – 16.

... Respondents

By Advocate Mr. A. Abdul Ajees

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the impugned order No. U/P.353/OA/508/12 dated 23.09.2016 made by the 2nd respondent and to quash the same and further to direct the respondents to consider the request of the applicant to grant family pension in terms of Rule 75 of the Pension Rules with all the attendant benefits and to pass such other order/orders .”

2. It is submitted that the applicant's husband who was an employee of the respondents was declared medically unfit on 26.07.1988 and was consequently terminated from service w.e.f 01.08.1988. Subsequently he died on 09.08.1988. The applicant, though granted compassionate appointment following her husband's death, was not given the family pension due to her.

3. The applicant filed OA 508/2012 which was disposed of by this Tribunal by an order dated 01.03.2013 permitting her to make a comprehensive representation along with all relevant papers in support of her claim. The respondents were directed to consider the same and pass a reasoned and speaking order within a period of two months thereafter. The impugned Annexure A-1 order dated 23.09.2016 came to be passed in compliance thereof rejecting the claim of the applicant for family pension, aggrieved by which the applicant is before this Tribunal.

4. Learned counsel for the applicant would argue that the very fact that the applicant was granted compassionate appointment following the death of her husband would clearly establish that the applicant's husband died in harness and not after he ceased to be in service. The applicant's husband had joined service in the year 1976 and had accordingly put in about 12 years of service by the time of his death. Accordingly, the respondents are not correct in rejecting the applicant's claim on the ground that his qualifying service was less than 10 years and hence he was not entitled to pension and consequently his legal heirs were also not entitled to family pension.

5. Learned counsel for the respondents would, however, refute the allegations stating that though the applicant's husband had joined in the year 1976, there were several periods of unauthorized absence from duty as revealed by his (Annexure R-3) service book entries . As there was no order regularising the period of absence, such periods could not be counted for determining the qualifying service, it is contended.

6. Learned counsel for the applicant would, however, insist that a mere entry in the service book of alleged unauthorized absence was not sufficient to exclude the period from qualifying service, unless the period was declared as dies non and the salary for the period forfeited after due disciplinary proceedings. As such the applicant's service must be counted from the year 1976 onwards for the purpose of determining the qualifying service for pension, it is contended.

7. It is pointed out that the respondents had also not indicated the extent of shortfall from the qualifying service in terms of service book entries. Even if there was a shortfall, there were provisions for the competent authority to relax the qualifying service for the purpose of pension since the applicant's husband was medically invalidated and died soon thereafter. In such circumstances, his case ought to have been considered sympathetically. The applicant may, therefore, be permitted to file a representation to the competent authority seeking relaxation of the minimum qualifying service for family pension, it is urged.

8. I have considered the matter. It is not in dispute that the applicant had been granted compassionate appointment following the death of her husband in 1988. It is not clear why the applicant had not made a claim for family pension till the year 2012. The respondents contend that no records pertaining to the applicant's husband were available with them except Annexure R-3 service book entries. While it may not be possible at this distant date to trace the records of the disciplinary proceedings conducted against the applicant's husband for unauthorized absence except to rely on his service book entries, in view of the submission that provisions exist for relaxation of qualifying service in exceptional cases, the applicant is permitted to make another representation seeking relaxation of the qualifying service for the purpose of family pension. On receipt of such representation, the competent authority may consider it in accordance with law and precedents, if any that may be relied upon in

the representation and take an appropriate decision within a period of six months from the date of receipt of a copy of this order.

9. The OA is disposed of as above.

(R.RAMANUJAM)
MEMBER (A)
29.01.2019

M.T.