

**Central Administrative Tribunal,
Mumbai Bench, Mumbai.**

O.A.210/00659/2017

Dated this Tuesday the 13th day of November, 2018.

Coram: Dr.Bhagwan Sahai, Member (A) .

Mrs.Arockiamary Mariacolandhai,
Age about 57 years
Widow of late Shri Maria
Malayappan Colandhai, MCF/ELF,
working under Carshed-BCT,
presently residing at
Room No.C-353, Sector 2,
Airoli, Near Gurudwara,
Navi Mumbai - 400 708. .. Applicant.

(By Advocate Shri Ulhas Shinde).

Versus

1. The Union of India, through
the Secretary,
Ministry of Railway,
New Delhi.
2. The General Manager,
Headquarters,
Western Railway, Churchgate,
Mumbai - 20.
3. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008. .. Respondents.

(By Advocate Shri V.S. Masurkar).

Order reserved on : 28.09.2018

Order delivered on : 13.11.2018.

O R D E R

1. In this O.A., Mrs.Arockiamary Mariacolandhai, widow of late Shri Maria Malayappan Colandhai seeks direction to the

respondents to grant her National Holiday Allowance as well as ex-gratia lumpsum compensation by considering her representations dated 18.12.2016 and 24.07.2017, along with cost of the application to be saddled on the respondents.

2. Facts of the case stated in brief:

2(a). The applicant is wife of deceased late Shri Maria M. Colandhai, Master Craftsman who worked under Western Railway (Railway ID Card No.468978). He was appointed on 26.02.1977 as ELF and on 26.01.2012 while working as Master Craftsman he died in an accident at Dadar Railway Station.

2(b). It is claimed by the applicant that on 26.01.2012 Shri Maria Colandhai had received a telephone call from Shri Vishal Kumar Sharma, Supervisor PA/PIS Section, EMU Carshed, Mumbai Central and was asked to be on duty to attend failure reports on the line. It is further claimed that during his duty to attend the failure on line, he met with an accident at Platform No.2 Dadar Railway Station. Dr. Sharda More, Central Railway declared his death at 10.35 hrs. and the body was treated as of any general passenger, was then sent to Nair Hospital for further action

although his Identity Card was found on his body showing that he was Mumbai Central Carshed employee.

2(c). On the date of the accident i.e. 26.01.2012, Shri Vishal Kumar Sharma was also on duty and he marked late Shri Colandhai as present in the Attendance Muster and also noted in the Daily Report Book about failure to be attended by him. But in the death memorandum dated 20.02.2012 issued by the A.P.O. (Elect.), Mumbai Central late Shri Colandhai was not shown as an IOD case.

2(d). The applicant claims to have obtained the copy of the Attendance Muster and Daily Report Book of January, 2012 under R.T.I. Act but they were not provided by the respondents. A copy of the time sheet obtained through R.T.I. Act shows late Shri Colandhai as present on that date and he also received payment of salary for that date. But for benefits of death on duty and National Holiday Allowance, he was not given IOD Certificate and these have not been given by the respondents inspite of repeated requests.

2(e). The applicant represented to various respondent offices for payment of workman compensation and National Holiday Allowance on 18.10.2006 and 24.07.2017 but did not receive any

reply from the respondents. On 17.01.2017 Sr. D.P.O., Bombay Central granted personal hearing to the applicant but expressed his inability for issuing IOD certificate as proper procedure had not been followed at the time of accident.

2(f). Later the applicant was informed that daily failure report of PA/PIS Section and Attendance Muster for January, 2012 were not traceable. The applicant claims that in January, 2014, Shri Vishal Kumar Sharma made changes / alterations in the Attendance Muster and Daily Report Book of January, 2012 and Attendance Muster of January and February, 2014 but forgot to make changes in time sheet before the applicant obtained them under RTI Act. For this, Sr. DEE (RS) sought explanation from Shri Sharma on 23.08.2016, but Shri Sharma did not reply to it. For ex-gratia compensation to families of Railway servants who happen to die during performance of their bonafide duties, the Railway Board has issued Circulars on 08.02.2006, 01.05.2007 and 30.09.2008. These Circulars contain instructions that representations should be considered not later than outer limit of 3 months from the date of their receipt but the respondents have not complied with these instructions. For grant of

National Holiday Allowance and ex-gratia lumpsum compensation, therefore, the present O.A. has been filed.

3. Contentions of the parties:

The applicant and her counsel have submitted that -

3(a). on 26.01.2012 inspite of his Identity Card found on the body of late Shri Colandhai his body was treated as of any general passenger, while Shri V.K. Sharma made changes in the Attendance Muster of January, 2012, he did not do so in the time sheet. The applicant is entitled for payment of ex-gratia as per the above Railway Board Circulars and, therefore, this O.A. should be allowed;

3(b). during hearing of the case on 06.08.2018, as the respondents had not filed an affidavit about availability of relevant documents, it was felt necessary to call a senior officer of the Railways incharge of the concerned Division to appear and explain the circumstances of the incident and also to file an affidavit in this regard. Accordingly on 13.08.2018, Shri K.S. Kapur (CEE (RS)/CCG), Shri Rituraj Misra, Sr.DPO, Mumbai Central and Shri Lavesh Gupta, DEE/RS (BCT) were present in the Court and offered to permit

joint inspection of the available record in Mumbai Central Office. Based on that inspection, the respondents have filed an affidavit on 27.09.2018 explaining that the inspection of record and personal hearing were granted to the applicant and after perusing the record, a self-explanatory and reasoned order was passed by the Sr.DEE/RS/Bombay Central on 14.09.2018. A copy of that order has also been enclosed by the respondents with the affidavit in which it has been explained that as per the decision of the Competent Authority on 14.09.2018, pay for the National Holiday on 26.01.2012 has been paid to the applicant on 21.09.2018 but the applicant has not been found to be eligible or entitled for payment of ex-gratia lumpsum compensation.

In the reply filed by the respondents on 27.02.2018, it has been submitted that -

3(c). the applicant has not approached this Tribunal with clean hands and has suppressed material facts, on this ground itself the application should be dismissed with cost. The death of the ex-employee did not occur while on duty assigned by the Department and, therefore, no compensation is payable to his dependents and all admissible benefits under Service Rules have

already been paid. As per the Employees Compensation Act, 1923, the claim has to be made within two years from the date of death whereas in the present case the applicant has filed this O.A. after lapse of 6 years. Therefore, the claim is time barred;

3(d). Shri V.K. Sharma, then Supervisor PA/PIS Section had not made any telephone call to late Shri Colandhai on 26.01.2012 and had not assigned any task the late employee for attending to board line failure and no evidence has been found either from Section Incharge or the EMU Controller, and thus the death did not take place during performance of duty and, therefore, entitlement for workman compensation is not there;

3(e). in the sur-rejoinder filed on 23.04.2018, the respondents have repeated their submissions mentioned in the reply and contend that the Railway Board Circular of 08.02.2006 is not applicable in this case and, therefore, this Tribunal has no jurisdiction on the subject matter. As per the undertaking received from Shri V.K. Sharma, he had not made any telephone call to the deceased employee;

3(f). as informed by the train punctuality report at 11.30 hrs. on 26.01.2012, late Shri

Colandhai was knocked down at Dadar Station Platform No.2 but from the record of the EMU Controller no evidence was found regarding attending of PA/PIS failure on line at Dadar by the deceased employee;

3(g). the claim of the applicant that Shri V.K. Sharma made changes in the entry dated 16.04.2014 does not tally with the date of the accident i.e. 26.01.2012;

3(h). the details of the muster are maintained as duplicate copy in the form of time sheet, and Daily Report Book is not an authentic copy. Therefore, FIR might not have been filed by the Supervisor. However, for this act of carelessness by Shri V.K. Sharma, he has also been communicated about initiation of DAR against him and he has been transferred to Railway Board. In view of these facts, the applicant has not been able to make out any case for grant of any relief by the respondents;

3(i). based on the directions issued by the Tribunal on 13.08.2018, the Sr.DEE/RS/Bct has passed a speaking order on 14.09.2018 after allowing inspection of the available records by the applicant along with her Advocate Shri Ulhas Shinde, her son and 2 other friends. This order

has stated that the National Holiday Allowance was due to the deceased employee and it would be paid at the earliest - it was paid to her on 21.09.2018. The Competent Authority has further mentioned in the order that in addition to record available with that office, if any additional evidence was available with the applicant it was requested to be made available but no such evidence has been made available by the applicant;

3(j). based on the Telephone Department's record of all telephone calls of Shri V.K. Sharma on 26.01.2012, the first ongoing call had been made at 11.31 hrs. whereas death of the deceased employee had occurred at 10.35 hrs and it was communicated by the Dadar Station Master and reported at 11.30 hrs to EMU Controller. These facts prove that accident on 26.01.2012 had taken place at 10.35 hrs. at Dadar Station whereas the deceased employee was supposed to be on duty at car shed at Mumbai Central; and

3(k). the deceased employee had not expired while carrying out any official duty assigned to him by his senior officer i.e. Sr. D.E.E., hence ex-gratia payment cannot be paid to the dependents of the deceased employee.

4. Analysis and conclusions:

4 (a) . From perusal of the contentions of the applicant in the O.A. Memo, his rejoinder, and oral arguments heard on 28.09.2018 as well as reply and sur-rejoinder of the respondents along with arguments on 28.09.2018, it is clear that the death of late Shri Colandhai took place at Platform No.2, Dadar Station on 26.01.2012 at 10.35 hrs. and his Identity Card was found on his body. Thus presence of the deceased employee at Dadar Station at the time of his accidental death on 26.01.2012 is not disputed.

4 (b) . Based on the joint inspection of the record done by the applicant and the respondents on 14.09.2018, the Competent Authority i.e. Sr.DEE/RS/Bct. has passed a speaking order concluding therein that the payment of National Holiday Allowance was due to the deceased employee and it has been subsequently paid to the applicant on 21.09.2018. There was negligence on the part of Shri V.K. Sharma in maintaining and preserving the relevant duty record of the ex-employee because of which disciplinary action has already been initiated against him by the respondents. It is also clear that the conclusive evidence to support deployment of the deceased employee at

Dadar Station for official duty on 26.01.2012 at the time of his accidental death has not been established.

4 (c) . Based on the Railway Board Circulars of 08.02.2006, 01.05.2007 and 30.09.2008, stipulations have been made about ex-gratia payment when the employees of the Railway happen to meet with accidental death while performing official duties. However, in the present case because of presence on duty of the deceased employee at Mumbai Central carshed on 26.01.2012, one relief claimed by the applicant has been found justified and already been paid to her by the respondents, but her entitlement for ex-gratia payment has not been conclusively established. Therefore, denial of this benefit to the applicant by the respondents seems justified. In view of this, the O.A. deserves to be dismissed.

5. Decision:

The O.A. is dismissed.

**(Dr.Bhagwan Sahai)
Member (A) .**

H.