

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.**

**O.A.210/00112/2015**

**Dated this Friday the 30<sup>th</sup> day of November, 2018.**

**Coram: Dr.Bhagwan Sahai, Member (A)  
Shri R.N. Singh, Member (J).**

Smt.Chhaya Prakash Torane,  
Widow of Late Prakash Ramchandra Torane,  
Ex. Khalashi working under  
Permanent Way Inspector (S/W) Kalyan,  
R/at: C/o. Teli Galli, At Post  
Taluka Nandgaon, Dist. Nashik,  
Maharashtra Pin - 423 106. .. Applicant.

**( By Advocate Shri J.M. Tanpure ).**

**Versus**

1. Union of India, through  
the General Manager,  
Central Railway, CST,  
Mumbai - 400 001.
2. The Divisional Railway Manager  
(Personnel),  
Central Railway, CST,  
Mumbai - 400 001. .. Respondents.

**( By Advocate Shri V.S. Masurkar ).**

**Order reserved on : 04.10.2018  
Order delivered on : 30.11.2018.**

**O R D E R  
Per : Dr.Bhagwan Sahai, Member (A).**

The applicant in this O.A. Smt.Chhaya  
Prakash Torane seeks -

**(a) .** declaration that she is entitled for  
terminal/retiral benefits such as arrears of family  
pension after death of her husband on 28.12.2011,  
balance in the Provident Fund Account, due leave

salary, gratuity, bonus, accumulated amount under group insurance, etc with 18% interest;

**(b)** . declaration that she herself / her sons are entitled for compassionate appointment as her husband died while serving with the respondents;

**(c)** . direction to the respondents to reconstruct service record of her husband and process the terminal benefits; and

**(d)** . award her cost of this O.A.

**2.** Summarised facts:

**2(a)** . Husband of the applicant i.e. late Shri Prakash Ramchandra Torane was appointed as casual Khalasi on 02.01.1982 and then made regular Khalashi on 03.06.1986. The applicant married him on 03.11.1987 and they had 2 sons and 1 daughter. During his service late Shri Torane was posted at Karjat, Lonavala and Dadar, etc. He died on 28.12.2011. After his death the applicant claimed terminal / retiral / pensionary benefits by submitting various documents to different Railway authorities including before a Pension Adalat. However, she has not been sanctioned those benefits.

**2(b)** . The applicant claims to have original documents pertaining to P.F. Account No.04018107 of late Shri Torane as well as his Identity Card

No.025122.

**2 (c) .** On 28.06.1994, late Shri Torane was awarded a punishment of reversion by two stages below in the same pay scale with cumulative effect for his unauthorized absence from 07.12.1992 to 02.02.1994.

**2 (d) .** By letter of 11.10.2012, the respondent No.2 i.e. D.R.M. (Personnel), Central Railway, CSMT, Mumbai informed that all office record of applicant's husband got washed away during floods of 2005. She appeared before the Appellate Authority on 05.02.2013 and produced the available documentary evidence but for want of relevant documents she has been denied the terminal / retiral benefits. Hence this O.A.

**M.A.207/2015**

This M.A. has been filed on 20.01.2015 by the applicant for condonation of delay claiming that her late husband was working to satisfaction of his seniors till his death on 28.12.2011, she had submitted her family pension claim before the Pension Adalat on 25.04.2012 by enclosing various documents including Railway Pass of 2008, she was under mental shock due to death of her husband, she had to take care of her children under condition of poverty and she made various efforts to collect the

relevant documents pertaining to service of her husband and even appeared personally before the Appellate Authority on 05.02.2013. But her claim for terminal/pensionary benefits was denied on 18.04.2013. She should have filed this O.A. before 17.04.2014, however, due to poverty, worry of children, etc, she could not file it at any time earlier, her case is covered by law laid down in the case of **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. AIR 1987 SC 1353** and the delay of 9 months and 5 days should be condoned.

With reference to the M.A.207/2015 filed by the applicant, the respondents' counsel has listed 12 caselaws to support their contention that the delay in this case should not be condoned. It has been contended that the O.A. is hopelessly time-barred by delay and latches and should be dismissed with cost as no cogent and sufficient reason has been given by the applicant to justify this long delay.

Limitation provided under Section 21 of the Administrative Tribunals Act, 1985 is strict and, therefore, the claim of the applicant is against the provisions of law and the caselaw cited by the applicant pertains to land acquisition and not a service matter. There is no record to show

that late husband of the applicant was in service even for a single day after closure of the office of PWI (Special Works) in the year 2000 and, therefore, the O.A. filed in January, 2015 is barred by limitation. The applicant has failed to explain the reasons for delay in filing the O.A. and, therefore, the M.A. filed for condonation of delay should be dismissed.

It has been further contended that a stale claim cannot be gone into by the Tribunal. This settled position has already been accepted by the Tribunal in its order dated 12.12.2006 in **O.A. 92/2006 i.e. Kaushal Kishore Vs. Union of India & others.**

As per the latest judgment in the case of **Union of India Vs. M.K. Sarkar reported in (2010) 1 SCC (L&S) 1126**, on reckoning of the date of accrual of cause of action, the Tribunal has to first consider and decide on this stale claim by considering the issue of limitation or delay and latches since the PWI (Special Work) was closed in the year 2000, where the applicant's husband had worked only as a Monthly Rated Khalasi and his name does not figure in the index register of that depot. The fact of the closure of the office of PWI (Special Works) in 2000 was also widely

circulated in the Railways and published in local newspapers. Also due to floods of 2005, all the office record of that office got washed away and as per the available record, no such employee was working under that department. In view of this, the M.A.207/2015 for condonation of delay should be dismissed.

**3. Contention of the parties:**

The applicant and her counsel have contended that -

**3(a).** after death of her husband, the applicant is entitled for terminal/pensionary benefits and compassionate appointment to her or her sons as in the normal course he would have retired in 2019 but died on 28.12.2011 while in service with the respondents;

**3(b).** the respondents are under legal obligation to maintain and preserve service record of the ex-employee and they should have reconstructed the service record based on the documents submitted by the applicant and then should have paid the terminal / retiral benefits due to her husband;

**3(c).** the applicant's husband was a regular employee of the Central Railway on pensionable establishment. As per the reply of the respondents, the applicant's husband was working

under PWI (Special Works) Depot, Kalyan which was closed before the year 2000 and all the staff working there were deployed to different other depots. Therefore, the applicant's husband must have been deployed to some other division such as Pune or Solapur under the Railway Administration and he must have been in the service of the Railways till 2005, but the respondents have not taken up rigorous search to trace his service record;

**3(d).** the ex-employee was issued a second class free pass for himself, his wife, and two sons on 16.08.2000. He also contributed to National Railway Mazdoor Union for the year 2002. This means he was in service till 2002. Therefore, the claim of the respondents that after 1996 there was no trace of the applicant's husband and he had been absent for more than 16 years is not correct;

**3(e).** the applicant's husband was not a Monthly Rated Casual Labour but was a Monthly Rated Khalashi, although initially he had worked as Casual Labour for some time. Since he was imposed a penalty on 28.04.1994, he must be holding a regular post at that time and re-deployed somewhere else. Details of second class free pass issued to late Shri Torane clearly show that he was in

service upto 2002 after closure of PWI (S/W) Depot, Kalyan in 2000. The respondents cannot claim bar of limitation as they themselves are in default for not making prompt payment of pensionary benefits to the applicant and her case is fully covered by Supreme Court guidelines in the case of **Collector Land Acquisition, Anantnag - AIR 1987 SC 1353** for condoning the delay;

**3(f).** the applicant has correctly explained the delay in filing of the O.A. and her claim for pensionary benefits is not a stale claim and the benefits claimed by her are a continuing cause of action. The applicant's husband must have been in Railway service till his death. If he was not in service he must have been removed or dismissed after conducting disciplinary proceedings after 2002/2005. If the applicant's husband had neither been redeployed nor dismissed nor removed from service, then he must have been in service of the Railways till his death on 28.12.2011 and thus he must have died in harness i.e. while in service of the respondents. Hence the applicant is entitled for pensionary benefits and to find out the truth the respondents can take help of CBI or CID; and

**3(g).** the claim of the respondents that as per Sr.DFM's letter dated 29.06.2015, record of the

applicant's husband pertaining to his Provident Fund is not available in the Accounts Office is absolutely incorrect in view of the statement of State Railway Provident Fund Account Non-Contributory No.0401807 of the year ending 1991 and 1993 (Annex A-3). State Railway Provident Fund/non-contributory Provident Fund record of applicant's husband must be available with the respondents as it should have been preserved till his superannuation in 2019.

**3(h).** In the rejoinder the applicant has reiterated details of the application memo that her husband was not a Monthly Rated Casual Labour but he was a Monthly Rated Khalasi. The respondents have not traced the service record of her husband at proper place and the details given in Annex A-1 i.e. reply of the Appellate Authority and the OSD services dated 18.04.2013 prove that her husband was in service upto 2002.

The respondents have contended that -

**3(i).** late Shri Prakash Ramchandra Torane was working as Monthly Rated Khalashi as shown in his Identity Card (Annex A-2) and punishment order dated 28.06.1994 (Annex A-3). As per the punishment order of 28.06.1994, the applicant's husband had remained unauthorizedly absent from

07.12.1992 to 02.02.1994 and he seems to have died in 2011 i.e. after 16 years of date of the punishment;

**3(j)** after receipt of the applicant's letter dated 28.09.2012, one Staff member and Welfare Inspector were directed to investigate the matter and submit report, and based on their report, the applicant was informed that official record pertaining to service of her late husband was not available in the concerned department. The office of Permanent Way Inspector (S/W), Kalyan where the late husband of the applicant worked got closed in the year 2000 and all the regular employees of that office were deployed in other departments but the applicant's husband was not deployed as he was not holding a regular post, being only a Monthly Rated Khalasi i.e. a Casual Labour. Since the Casual Labour is not entitled for pension, the applicant is not entitled for family pension;

**3(k)** . Sr. DFM has also informed by letter dated 29.05.2015 that no employee having name as Prakash Ramchandra Torane was available in the record of the Accounts Office. In the punishment order of 28.06.1994 (Annex-A-3), identity card (Annex-A-2) and Free Pass (Annex-A-1 of Rejoinder), it is mentioned that he was working as Monthly Rated

Khalasi and that is why he might not have been redeployed in other depots or departments after closure of the office in the year 2000.

As per CIC's order dated 26.11.2012, the applicant was also given a personal hearing on 05.02.2013 to redress her grievance, but she failed to produce any relevant documents on the basis of which settlement dues can be considered. She could not produce any evidence in the additional time given to her and, therefore, it was decided that settlement dues in respect of late Shri Torane cannot be sanctioned in favour of the applicant;

**3(1).** the claim of the applicant that she is in possession of Railway Pass of 2008 in favour of her husband is false as no such evidence has been submitted. If she had produced the pass issued in 2008, the respondents could have been able to trace the record of the late employee;

**3(m).** in the reply to the O.A., the respondents have reiterated the same details which were submitted by them in reply to M.A.207/2015 contending that the late husband of the applicant was not holding a regular post but he was a Monthly Rated Casual Labour;

**3(n).** as per Railway Pass Rule, validity of Pass is only for 4 months from the date of issue, but in

the copy of pass attached by the applicant at page 28 of the rejoinder, the validity of pass has been of less than 4 months i.e. date of issue as 23.04.2000 and date of expiry as 16.08.2000 and also there is overwriting on the dates mentioned on the copy of the pass. Thus this copy of the Railway Pass or its copy has been manipulated by the applicant. Even on the Railway pass, designation of the late employee has been mentioned only as Monthly Rated Khalasi which clearly establishes that her husband was not a permanent employee of the Railways;

**3(o).** the copy of the Provident Fund slip enclosed by the applicant at page 29-30 of the rejoinder pertains to the year 1990-91 and 1992-93, that is much prior to the closure of the office of PWI (Special Work), Kalyan Depot in year 2000;

**3(p).** as per the Apex Court decision in the case of **State of Haryana & Ors. Vs. Shakuntala Devi, 2008(15) SCC 380**, widow of a deceased employee is entitled for the family pension only when the employee was holding a regular post at the time of death. In the present case since the husband of the applicant was not holding a regular post, she is not entitled for family pension; and

**3(q).** in case death of a casual labour takes

place in an accident while on duty, then such a person is eligible for compensation under Workmen's Compensation Act, but in the present case the late husband of the applicant was not on roll of the respondents at the time of his death and, therefore, her claim cannot be covered even for appointment on compassionate grounds. In view of these submissions, the O.A. is totally devoid of merits and, therefore, should be dismissed.

**4.** Analysis and conclusions:

We have perused the O.A. memo and its annexes, rejoinder of the applicant, reply filed by the respondents, various caselaws cited by the parties and considered the arguments advanced by both of them on 04.10.2018. After consideration of all these, our conclusions are as follows:

M.A.207/2015

**4(a).** This M.A. was filed by the applicant on 20.01.2015 for condonation of delay claiming that her husband died on 28.12.2011, had submitted her pension claim before the Pension Adalat on 25.04.2012, was personally heard by the Appellate Authority on 05.02.2013 but her application was rejected on 18.04.2013, due to shock of death of her husband and responsibility of the children, she could not file the O.A.112/2015 on time i.e. before

17.04.2014. For condonation of delay of more than 9 months in filing the O.A., the applicant wants to benefit from the caselaw - **Collector, Land Acquisition, Anantnag and another AIR 1987 SC 1353** in which it was held that condonation of delay should not be denied on pedantic and technical considerations. The respondents have vehemently opposed the condonation of delay in this case by relying on a number of caselaws claiming that no cogent explanation has been submitted to justify the delay and, therefore, this O.A. is hopelessly barred by delay and latches and this M.A. should be dismissed.

**4(b)** . It is also claimed by the respondents that the above caselaw cited by the applicant pertains to land acquisition and not service matter, and, therefore, it is not applicable in this case. They have also contended that office of PWI (S/W), Kalyan was closed in the year 2000 and closure of that office was also widely publicized in the Railways and in the local press and thereafter there is no evidence of service of late husband of the applicant and thus the delay being of 15 years (not of 9 months only) cannot be condoned in view of provisions of Section 21 of the Administrative Tribunals Act, 1985.

**4(c).** It is also claimed by the respondents that reckoning of the date of accrual of cause of action in this case was in the year 2000 and, therefore, the plea for condonation of delay cannot be accepted. Therefore, the applicant cannot claim that she was not aware of the closure of the office of PWI Kalyan in the year 2000.

**4(d).** We have considered the rival submissions of the parties on the issue of delay in filing the present O.A. In our opinion reliance of the applicant on the caselaw - Collector Land Acquisition, Anantnag and another Vs. Mst.Katiji and others cannot help her as the delay involved in that case was only of 4 days and, therefore, the Apex Court view in that case was not to condone the delay merely on technicality by adopting a pedantic approach. Surprisingly there was no representation made by late Shri Torane about any of his grievances after closure of that office in 2000. Even if the delay is counted from the reply of 18.04.2013, the delay in filing the present O.A. on 20.01.2015 is certainly barred by limitation vis-a-vis the provision of Section 21 of the Administrative Tribunals Act, 1985.

In the present case the delay is of almost 15 years from the time of closure of the office of

PWI (S/W), Kalyan in 2000 i.e. when the original cause of action actually arose. The mere plea of the applicant of shock of death of her husband and responsibility of her children cannot justify such a long delay, hence it cannot be condoned.

**4(e).** Here it is also pertinent to take cognizance of the Apex Court view in the case of **Union of India and others Vs. M.K. Sarkar (2010) 2 SCC 59**, when a stale or dead issue is considered and decided, the issue of limitation or delay and latches should be considered with reference to original cause of action and not with reference to the date on which an order is passed in compliance with Court's directions. Thus Court or Tribunal should not direct consideration or reconsideration of a dead or stale issue. Based on our consideration of these claims of the parties, we find substance in the contention of the respondents and conclude that the delay in this case has not been justified satisfactorily by the applicant. Hence it cannot be condoned and M.A.207/2015 is dismissed.

**4(f).** The applicant has claimed that her husband was working with the Railways and died on 28.12.2011. In support of the death, no evidence has been brought on record by the applicant. It

has not even been clearly stated that the ex-employee late Shri Prakash Torane was actually staying with the family till the claimed date of his death.

**4(g).** For unauthorized absence of Shri Torane from 07.12.1992 to 02.02.1994, he was imposed penalty of reversion by two stages below in the pay scale with cumulative effect. From this it appears that he was not a casual labour or monthly rated casual Khalasi as claimed by the respondents. The claim of the respondents that the ex-employee Shri Torane worked at PWI (S/W), Kalyan and this office was closed in the year 2000 is not disputed by the applicant. The respondents have also stated that the fact of closure of that office was also widely circulated within the Railway Administration and was also published in the local press. Therefore, the applicant was aware of this closure of that office. It is further claimed by the respondents that record of the earlier office got washed away during floods of 2005 and it is not traceable now. These facts have also not been contested by the applicant and are thus acceptable.

**4(h).** The claim of the respondents as mentioned in reply of DRM, CST dated 11.10.2012 to the applicant reveals that there was no record of

service of the applicant since 1996 and even after the closure of that office PWI Kalyan in the year 2000, there is no record of deployment of late Shri Torane elsewhere under the Railway Administration. In view of absence of production of any contradictory evidence by the applicant, this claim of the respondents is also acceptable.

**4(i).** We have also considered the fact that the applicant herself even though she was wife of the ex-employee is unable to make any categorical averment as to upto when her husband was actually in service with the respondents - she has mentioned four different dates upto which her late husband is claimed to have been in service of the Railways i.e upto the year 2000 (page 28), upto 2002 (page 26), upto 2005 (page 43) and upto his death in 2011 (page 26). Such a claim is totally unbelievable. The applicant claims to be the wife of late Shri Torane and such claims by her reveal total lack of her knowledge of the time upto when late Shri Torane actually in service with the Railways. These different dates are actually her imaginary hypothesis. She has not even made any averment about receipt of salary, etc upto a particular period in time at any stage after the year 1996. Even in her letter of 30.04.2012 submitted to the

General Manager, C.S.T., Central Railway she did not mention any date upto which the late Shri Torane was in service with the respondents. From this we conclude that these claims of the applicant are totally false and she has tried to paint an imaginary story. It seems only an imaginary and false guessing attempt made by her to create an impression about continuation of her husband in service of the respondents.

**4(j).** We also notice the further imaginary attempt of the applicant to claim that after the closure of the office of PWI (S/W), Kalyan in the year 2000, late Shri Torane might have been deployed elsewhere by the respondents. There has been total silence on her part from the year 2000 upto 2012 when she approached the Pension Adalat held on 05.04.2012. Even then the respondents have given her adequate opportunity to provide evidence and of personal hearing on 05.02.2013.

**4(k).** The copy of railway free pass issued to late Shri Torane and his family Page 29, (Annex-A-1 to the rejoinder) also clearly reveals tampering of dates on it. So no weightage can be given to it.

**4(l).** In view of these facts of the case, we conclude that the O.A. is totally devoid of merit and deserves to be dismissed.

**5. Decision:**

In absence of satisfactory justification for the delay, M.A.207/2015 filed for condonation of delay is rejected. The O.A.112/2015 stands dismissed for unjustified delay which is not condoned and on merits.

**(R.N. Singh)**  
**Member (J)**

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

H.