

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA No.293/2017 with M.A. No. 276/2017

Ahmedabad, this the 01st day of May, 2019

Smt. Rosy J. Macwan
W/o. James P Macwan
Aged 47 years
R/o. 301, Anjani Apartment, TP-13, Chhani Jakat Naka,
Vadodara 390 002. Applicant.

(By Advocate : Ms.S.S.Chaturvedi)

VERSUS

1. Union of India,
Notice to be served through
Chairman,
Railway Board, Rail Bhavan,
New Delhi 110 001.
2. The General Manager
Western Railway, Churchgate,
Mumbai 400 020.
3. Divisional Mechanical Engineer
Western Railway, Pratapnagar,
Vadodara 390 004.
4. Sr. Divisional Mechanical Engineer
Western Railway, Pratapnagar,
Vadodara 390 004. Respondents

(By Advocate : Shri M.J.Patel)

O R D E R – ORAL

Per : Hon'ble Shri M.C.Verma, Member (J)

1. Being aggrieved by wrong fixation of pay of her husband, instant OA has been filed by the wife of a deceased employee of the respondents pleading that she has filed several representation for correct fixation of the pay of her deceased husband, the matter has been referred by the Respondent Authority to the Railway Board on 30.6.2014 but no final decision has yet been taken.
2. Crux of facts, as has been set out in the OA is that applicant is the wife of Late James P. Macwan, a deceased employee of the respondents, that while serving as Diesel Shunter her husband, in year 2003, was served with major penalty charge sheet, her husband denied the charges but departmental inquiry was conducted. That Inquiry Officer did not find charges as proved but Disciplinary Authority did not accept that report and raising few queries sent back the matter to Inquiry Officer for revision. That in revised report Inquiry Officer held her husband guilty and thereafter Disciplinary Authority, on 27.7.2004 issued penalty order and imposed penalty of ***“Reduction to lowest stage in the same time scale for a period of three and half years without future effect”***. That her husband did file appeal but during pendency of the appeal he died.

That with the reduction as punishment and fixing pay of her husband at Rs.4,000/- memorandum of financial settlement i.e. retirement dues of her husband was issued in year 2005.

2.1. That being aggrieved by wrong fixation of pay of her husband she filed representation for correct fixation of the pay of her deceased husband and after her several representations the matter, on 30.6.2014 was referred by the Respondent Authority to the Railway Board but no final decision has yet been taken and hence is the OA. In support of her claim applicant has also filed copy of several document, as Annexure, which includes copy of pay fixation order dated 19/4/2005, copy of final settlement letter dated 25/2/2005, copy of PPO dated 13/6/2005, copy of her representation dated 1/8/2007, dated 2/1/2008, dated 25/2/2011, dated 01/3/2011, dated 22/9/2011 and dated 17/6/2013 as well copy of letter of respondents dated 17/1/2012, dated 5/6/2013, dated 8/1/2015 and dated 29/3/2016. In addition thereto applicant has also filed copy of copy of charge-sheet, copy of penalty order, copy of penalty order passed in appeal and of PNM item etc.

3. On receipt of notice of the OA respondents put their appearance and did file their detailed reply rebutting the arguments made by the applicant in the OA. Respondents pleaded that as per Railway Board's instruction

contained in RBE No.115 of 2000 (Annexure R-1) clearly provides that disciplinary proceedings should be closed immediately on death of the charged Railway servant and since husband of the applicant has expired on 03.1.2005 so in accordance of the NIP, issued vide letter dated 27.7.2004, no relief could be granted to the applicant. Respondents pleaded further that fixation order dated 19.4.2005 is correct and pay of husband of applicant was fixed at Rs.4000/- is also correct. Further contention of the applicant is that deceased employee was served with NIP dated 12.8.2004 and he died on 03.1.2005, but he has never preferred appeal and after his death, legal representative have preferred appeal, which is not permissible under law.

4. Have heard the counsel of parties to lis. learned counsel Ms. S.S.Chaturvedi, who appeared for the applicant urged that husband of applicant was served with major penalty charge sheet, departmental inquiry was conducted and Inquiry Officer did not find any charge as proved but Disciplinary Authority did not accept that report and raising few queries sent back the matter to Inquiry Officer, for revision and surprisingly Inquiry Officer, in revised report held her husband guilty and thereafter Disciplinary Authority imposed penalty of reduction to lowest stage in the same time scale for a period of three and half years

without future effect. Learned Advocate clarified that in this OA applicant has not assailed the penalty order but only grievances of the applicant is that wrong fixation of pay of her husband has been done, she has filed several representation for correct fixation of the pay but no final decision has yet been taken by the respondents and it transpired that her matter has been referred by the Respondent Authority to the Railway Board on 30.6.2014. She referred various document, annexure of OA and requested to that respondents may be directed to consider and take decision on the representation of the applicant, for correct fixation of the pay of her deceased husband and to issue fresh PPO in time period as deemed fit and proper to this Tribunal.

5. Counsel for the respondent did not dispute the factual aspects that husband of the applicant was charge-sheeted and punishment of reduction to lowest stage in the same time scale for a period of three and half years without future effect was imposed she contending that appeal was not preferred by deceased employee but by her L.R and even if a employee died during pendency of the departmental appeal, order of Disciplinary Authority cannot be treated as no rest. She concluded that presently respondents have referred the matter, of pay fixation of the husband of applicant, to Railway Board so it would be appropriate to

wait for instruction of the Railway Board so that final decision on the representation of the applicant may be taken.

6. Considered the submissions and perused the record. There is consensus that it need that final decision on the representation of the applicant be taken by the respondents. Having taken note of facts and circumstances of the case and submission made at Bar respondents are directed to consider representation of the applicant and to take final decision qua case of pay fixation of husband of the applicant and this entire exercise be completed within three months from the date of receipt of this Order. The decision taken be communicated to the applicant within two weeks of its taking.

7. With this direction, the OA stands disposed off. The M.A.is also disposed of accordingly. No order as to costs.

(M.C.Verma)
Member (J)

Nk-jrm