

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA /050/00485/2016
[MA/050/00285/2016]

Reserved on : 24.09.2019

Date of order : **21st Oct., 2019**

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER (J)
HON'BLE MR. DINESH SHARMA, MEMBER (A)

Niroo Singh, wife of Rajendra Singh, Ex-Helper Grade-II, Electrical, East Central Railway, Block Road, Narkatiyaganj, District – west Champaran [Bihar].

..... Applicant.

By advocate: ShriM.P.Dixit.

Verses

1. The Union of India through the General Manager, East Central Railway, Hajipur, District –Vaishali [Bihar].
2. The General Manager [Personnel], East Central Railway, Hajipur, District – Vaishali [Bihar].
3. The Divisional Railway Manager, East Central Railway, Samastipur [Bihar].
4. The Senior Divisional Personnel Officer, East Central Railway, Samastipur [Bihar].
5. The Senior Divisional Electrical Engineer, East Central Railway, Samastipur [Bihar].
6. The Senior Divisional Financial Manager, East Central Railway, Samastipur [Bihar].
7. The Senior Section Engineer [Electrical], East Central Railway, Samastipur [Bihar].

..... Respondents.

By advocate: ShriR.B.Awasthi

ORDER

JAYESH V. BHAIRAVIA, MEMBER [J]- In the instant OA, the applicant has prayed for the following reliefs:-

“8[1] That your Lordship may graciously be pleased to declare and hold the order of Removal from service dated 01.04.2002 un-constitutional to the applicant till date as null, void, ab initio wrong and contrary to order of Railway Board dated 22.08.1991 as referred to above and as such the said un-communicated order is fit to be quashed and set aside.

8[2] That your Lordships may further be pleased to direct/command the Respondents to grant/pay all

consequential benefits including settlement dues, family pension and compassionate appointment henceforth together with arrears and statutory interest thereupon.

8[3] Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant."

2. Before delving into merit of the case, the Tribunal noticed that the OA is hit by plural remedies, since the applicant in the present OA has prayed for quashing and setting aside the removal order of her husband, family pension as also compassionate appointment. Rule 10 of Central Administrative Tribunal [Procedure] Rules, 1987 stipulates that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. In the present OA, compassionate appointment and family pension is admittedly not consequential to quashing of removal order of the husband of the applicant.

3. The applicant's case in short is that her husband was a permanent employee of East Central Railway, Samastipur Division who was posted under Respondent No.7 but his whereabouts is not known for more than 15 years. The applicant lodged FIR before the concerned Police Station, but all efforts went in vain. Thereafter, the applicant met with Assistant Superintendent of Police, Narkatiyaganj and submitted the copy of FIR who directed to the Officer In-charge of Shikarpur Police Station, West Champaran, who registered the FIR on 11.01.2007, vide Shikarpur Police Station SDE No.268 of 2007 [Annexure-A/2].

4. The Police Station made investigation but they did not locate the husband of the applicant. Thereafter, the applicant

submitted a representation for payment of family pension and her appointment on compassionate ground. Thereafter, the Respondent No.3 sent a letter to the applicant on 03.10.2008 [Annexure-A/3] for furnishing the report from the concerned Police Station regarding search of her husband. Thereafter, the Police Station sent the report to the Superintendent of Police, West Champaran, Bettiah on 11.12.2008 [Annexure-A/4] stating therein that in spite of best efforts, the husband of the applicant could not be located/traced.

5. The applicant submitted that she received an order dated 06.03.2009 [Annexure-A/5] whereby her request for family pension and appointment on compassionate ground has been turned down for the reason that her husband has already been removed from service w.e.f. 01.04.2002 due to unauthorized absence from duty from 11.08.1995 to 16.04.2000. The applicant submitted that the said order of removal from service was neither been served or sent to the applicant along with the letter dated 06.03.2009.

6. The applicant further submitted that as per the Railway Board's order dated 22.08.1991, where action was initiated against an employee for an unauthorized absence who could not be traced despite best effort of Police, he shall be presumed as dead under Section 108 of the Evidence Act. The disciplinary action initiated shall be considered as invalid ground and be annulled by the disciplinary authority. If penalty has already been ordered, the annulment may be done by appellate/revisionary authority. The revision or review procedure will not be applicable in this regard.

It is further submitted that the said letter of Railway Board further stipulates that, since the husband of the applicant was genuinely missing, therefore, the punishment awarded to the husband of the applicant for unauthorized absence was ought to have dropped and relevant benefits like leave encashment, salary dues, retirement benefits, compassionate ground appointments etc. may be extended as per the instructions contained in RBE No.151/91 dated 22.08.1991. Denial of it, under the guise of impugned removal order dated 01.04.2002 is bad in law and unsustainable in the eye of law.

7. It is further submitted that the applicant initially filed one OA bearing no. 249/2010 against the order dated 06.03.2009 for payment of pensionary benefits. But in the aforesaid OA, the said removal order dated 01.04.2002 was not challenged, therefore, this Tribunal dismissed the OA on 13.04.2010. The relevant portion of the order passed by this Tribunal is extracted below :-

“3. Now the only prayer that remains is relief no.8[a] wherein the applicant has prayed for quashing letter dated 06.03.2009 [Annexure-A/7] issued by the DRM removing her husband from service. But this letter appears to have been written to the applicant in reply to her letter giving information that her husband was removed from service by order dated 01.04.2002 for remaining unauthorisedly absent from 11.08.1995 to 16.04.2000. Therefore, this letter is not the order by which her husband was removed from service. The applicant should have challenged the order dated 01.04.2002 by which her husband has been removed from service but the said order has neither been brought on record nor has been challenged.

4. So there appears no merit in the OA. This OA, therefore, is dismissed at the stage of admission.”

8. The applicant further submitted that the applicant tried his best to obtain the said removal order dated 01.04.2002 but the

respondents have not supplied the copy of the same but again they issued another letter dated 27.11.2015 [Annexure-A/7] the husband of the applicant, Shri Rajendra Singh, Helper Electric, Darbhanga has already been removed from service w.e.f. 01.04.2002 whereas FIR with regard to his missing has been lodged on 11.01.2007. The letter further stipulates that since Shri Singh has been removed from service during the course of his service tenure. Under such circumstances, giving appointment on compassionate ground is not feasible and the same is accordingly, rejected, hence the present OA.

9. The applicant has filed MA/050/00285/2016 under Section 21[3] of the Administrative Tribunals Act, 1985 read with Rule 8[4] of Central Administrative Tribunals [Procedure] Rules, 1987 for condonation of delay in filing the original application on the ground that after the knowledge about missing of her husband, the applicant approached the concerned Railway Authorities who suggested her to file FIR. Accordingly, an FIR was lodged by the applicant vide Shikarpur Police Station SDE No.268 of 2007. Thereafter, when the applicant contacted to the concerned Police Station, only then she was told that the report has already been sent to the SP, West Champaran, Bettiah on 11.12.2008 in which it has been stated that in spite of best efforts, her husband could not be located/traced. Thereafter, the applicant approached this Tribunal in OA No.249/2010 which was dismissed on 13.04.2010 as aforesaid. The applicant further submitted that there is no willful delay on the part of the applicant because she is a pardanashin lady having no knowledge about the law in pursuing

the matter rather there appears to be willful and deliberate negligence and delay on the part of the respondents.

10. On the other hand, the respondents filed their written statement and denied the contentions of the applicant. At the very outset, they submitted that the cause of action in the present OA, if any, has been arisen about 15 years ago, when the order of removal from service was issued, vide order dated 01.04.2002. The Hon'ble Apex Court has decided in catena of cases that the person who is in deep slumber has no right to succeed. Hence, the present OA is barred by limitation and fit to be dismissed on this ground alone.

11. The respondents further submitted that the applicant in the present OA has claimed plural remedies, hence this OA is liable to be dismissed, as Smt. Niroo Singh, wife of the missing employee Rajendra Singh has prayed for quashing and setting aside the removal order dated 01.04.2002 and also for appointment on compassionate ground of her son in place of her missing husband.

12. The respondents further submitted that the husband of the applicant, namely Rajendra Singh was appointed in East Central Railway as Helper Khalasi Grade-II [Electric] under Senior Section Engineer [Electric], E.C. Railway at Darbhanga. He was absent from duty w.e.f. ;11.08.1985 to 16.04.2000 without any intimation to the Railway Authority. The respondents submitted that after his long unauthorized absence, said Sri Rajendra Singh met with Senior Section Engineer, E.C. Railway, Darbhanga on 07.04.2000 along with an application and medical certificate of his

wife and submitted that due to illness of his wife, he was absent from duty. His application was considered and was directed to take him on duty, vide office order dated 18.04.2000 [Page 12 of written statement]. The aforesaid letter also stipulates that a major penalty charge-sheet was being served upon Shri Rajendra Singh due to his unauthorized absence.

13. The respondents submitted that under the provision of Rule 9 of Railway Service [Discipline & Appeal] Rules, 1968, memorandum dated 20.06.2000 was issued. As per departmental procedure, the competent authority appointed Shri R.N. Singh as Inquiry Officer, vide letter dated 27.12.2000. The first date of enquiry was fixed on 26.02.2001 on which the charged official presented himself for the enquiry and the proceeding was started. It is evident from the question-answer of enquiry dated 26.02.2001 [page 20 to 23 of the written statement] that Sri Rajendra Singh was present on 26.02.2001 before the Inquiry Officer. The respondents submitted that in reply to question no.6, i.e. "are you informed to your Supervisor regarding not coming back on duty", Shri Rajendra Singh replied, I had sent the information through postcard, probably which was not received. In reply to question no.7, the employee said that he did not have any proof in writing. Thereafter, the employee did not attend the enquiry.

The Inquiry Officer submitted his report dated 02.08.2001 and as per DA rule a copy of the enquiry report was sent to the charged official vide letter dated 09.08.2001 with instruction to make his submission, if any, within fifteen days from the date of

receipt of the letter. A copy thereof was also sent to the Section Engineer [Electrical]/Darbhanga to deliver the same to the charged official and if the employee is absent, the same be put on the notice board of the office in presence of the witness and submit the compliance report through special messenger. Since the charged official was again absented from duty without any intimation w.e.f. 19.03.2001, the enquiry report was put on the Notice Board of the Office on 04.09.2001 in presence of five witnesses and information to this effect was published through paper publication in the leading news paper "The Hindustan" dated 28, 29 and 30th of October, 2001 directing Sri Rajendra Singh to submit his defence within 15 days from the date of publication failing which the disciplinary authority will passé order. However, no defence was received in the office of Disciplinary Authority till 27.03.2002 and subsequently after considering every aspect, the Disciplinary Authority passed the removal order of Rajendra Singh on 01.04.2002. The respondents submitted that this OA deserves to be dismissed on the ground of limitation, as well as plural remedies.

14. The applicant filed rejoinder to the written statement and contended that the statement made in written statement are not only misleading, ill-motivated, baseless, false, unjust, punitive, inhuman, unconstitutional, malafide and against the various judicial pronouncements and also against the Railway Board's order dated 22.08.1991. The applicant contended that the Railway Board's order dated 22.08.1991 clearly stipulates that –

“where action was initiated against an employee for an unauthorized absence who could not be traced despite best effort of the police, he shall be presumed as dead under Section 108 of the Evidence Act. The disciplinary action initiated shall be considered as on invalid ground and be annulled by the disciplinary authority. If penalty has already been ordered the annulment may be done by appellate/revisionary authority. The revision or review procedure will not be applicable in this. After dropping the action, other benefits as due like leave encashment, salary dues, retirement benefits, compassionate ground appointments etc. may be extended.”

Thus, it is clear that the removal order on account of unauthorized absence is bad in law and unsustainable in the eye of law and the applicant is entitled to claim benefit of Railway Board's circular no.150/91 dated 22.08.1991.

15. The applicant further reiterated that in the meantime the applicant filed an OA No.249 of 2010 against the order dated 06.03.2009 which pertains to payment of pension, DCRG and other retiral benefits but the so called removal order dated 01.04.2002 was not challenged, therefore, the OA was dismissed on 13.04.2010 holding that the order dated 06.03.2009 is not a removal order.

16. The applicant relied on the decision rendered by CAT, Patna Bench in the case of Smt. Lagni Devi & Ors. Vs. Union of India &Ors. on 22.02.2000 passed in OA No. 833/1998, whereby this Tribunal held that – “Non-lodging of FIR in such cases do not necessarily result in forfeiture of rightful claims –presumption of death under such circumstances is also mandated by Sections 108 and 114 of Evidence Act –Directions given for re-consideration.”

17. Heard the learned counsel for the parties and gone through the materials available on record.

19. Admittedly, the husband of the applicant was proceeded under the disciplinary proceeding as per the provision of Railway Servants [Discipline & Appeal] Rules, 1968 for unauthorized absence for the period 11.08.1995 to 16.04.2000. It is noticed that as per the materials on record the said Rajendra Singh [husband of the applicant] had participated in the said disciplinary proceeding. He was remained present before the enquiry officer and was subjected to examination during the enquiry. During the course of enquiry, he had stated that due to illness of his wife he could not attend duty and remained absent. Due opportunity was granted by the enquiry officer to submit his defence/explanation to the charges leveled against him. However, from 19.03.2001 again the said Rajendra Singh remained absent unauthorizedly. The Disciplinary Authority received the enquiry report dated 02.08.2001 and as per DA Rules a copy of the enquiry report was sent to the charged official vide letter dated 09.08.2001 with instructions to make his submission, if any, within 15 days from the receipt of the letter. A copy thereof was also sent to the Section Engineer [Elect.], Darbhanga to deliver the same to the charged official. The same also was put on the notice board of the office on 04.09.2001 in presence of five witnesses and to this effect, press note was published through paper publication in the leading newspaper “The Hindustan” dated 28th, 29th, and 30th October, 2001 whereby the said charged official Shri Rajendra Singh was intimated to submit his defence within 15 days from,

the date of publication, failing which the Disciplinary Authority will pass order in accordance with rules. However, no defence was received by the respondents till 27.03.2002 and subsequently, the disciplinary authority vide order dated 01.04.2002 accepted the enquiry report and awarded the punishment of dismissal from service of the said Rajendra Singh, vide order dated 01.04.2002.

It is further noticed that there is no material on record placed by the applicant about missing of her husband on or before 01.04.2002 before the respondent authorities. Undisputedly, the FIR was lodged by the applicant about missing of her husband only on 11.01.2007, whereas he was removed from service, vide order dated 01.04.2002. Considering the said factual matrix, the claim of the applicant for availing the benefit of RBE No. 150/91 dated 22.08.1991 on the ground that the husband of the applicant is genuinely missing as per the report of the Police is in our considered view is not tenable for the reason that the husband of the applicant was remained absent unauthorisedly for the period from 11.08.1995 to 16.04.2000 and for such misconduct, disciplinary proceeding was held, and the said charged official participated in the said proceeding and subsequently the disciplinary authority had awarded the punishment of removal, since the charges leveled against him was proved, vide order dated 01.04.2002. At the relevant time, there was no FIR or any complaint lodged for missing of the said charged official. It is also apt to note here that the said charged official again remained absent from 19.03.2001. The report for missing of said Rajendra Singh, the charged official was lodged in the year 2007 before the

Police. Therefore, it cannot be said that the husband of the applicant was missing at the time of initiation of disciplinary proceeding. Not only that even for unauthorized absence for the period 11.08.1995 to 16.04.2000 the said official submitted his explanation that due to illness of his wife he did not perform duty for the aforesaid period. Thus, it cannot be said that at the time of disciplinary action against the applicant for unauthorized absence, he was genuinely missing or there was any police report about his missing. The claim of the applicant does not meet with the object and terms stated in RBE No.150/91. The order passed by this Tribunal in OA 833 of 1998 dated 22.02.2000 in the case of Lagni Devi vs. UOI as relied upon by the counsel for the applicant in support of his submission is not helpful to him in the facts and circumstances of the present case. Hence, the prayer of the applicant for direction upon the respondents to grant/pay consequential benefit under RBE No.150/91 is rejected.

Further, it is noticed that earlier the applicant had filed an OA No.249/2010 before this Tribunal which was dismissed on 13.04.2010 with the observation that the applicant should have challenged the order dated 01.04.2002 by which her husband has been removed from service but the said order has neither been brought on record nor has been challenged. The present OA has been filed on 04.04.2016 for quashing and setting aside the order dated 01.04.2002 even after lapse of about six years from the date of dismissal of earlier OA. Even otherwise, otherwise, as noticed hereinabove that the impugned order dated 01.04.2002 has been passed by the disciplinary authority after following due procedure

of law as stipulated under the rules, as also by providing due opportunity to the husband of the applicant. Therefore, it cannot be said that there is any violation of principle of natural justice, had committed by the Disciplinary Authority in awarding the punishment against the husband of the applicant. It is also apt to note that the applicant was made known to the order of removal of her husband long back, the copy of said removal order dated 01.04.2002 is on record. The grievance of the applicant that the same was not mate available to her is also not tenable, hence, the said decision dated 01.04.2002 is not required to be interfered. Moreover, the Tribunal noticed that the OA is hit by plural remedies, since the applicant in the present OA has prayed for quashing and setting aside the removal order of her husband, family pension as also compassionate appointment. Rule 10 of Central Administrative Tribunal [Procedure] Rules, 1987 stipulates that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

In the present OA, compassionate appointment and family pension is admittedly not consequential to quashing of removal order of the husband of the applicant. However, we take note of the order dated 06.03.2009 [Annexure-A/5] issued by the respondents themselves that in case of removal from service, there is a provision to give General Provident Fund and Group Insurance, but there is no provision to provide appointment on compassionate ground. Therefore, the respondents are directed to pass appropriate speaking order with respect to grant of GPF and

CGEGIS as per rules within a period of three months from the date of receipt of a copy of this order.

20. In view of the above discussions and directions, the OA stands disposed of accordingly. No costs.

Sd/-

[Dinesh Sharma]/M[A] [Jayesh V. Bhairavia]/M[J]
Mps.