

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00258/2016

Jabalpur, this Friday, the 15th day of November, 2019

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

1. M. Srinivas, aged about 36 years S/o Late M.V. L. Ganpati R/o Mouhari Marouda Near Kutti Hotel B.S.P. Gate Road, P.O. Newai District Durg, Bhilai (C.G.) 490006

2. A. Usha aged about 42 years D/o Late M.V.L. Ganpati Wd/o Late Suryanarayana R/o Bhagirathipuram (P.O.) Hirmondlem (via) Shrikalkulam (dt.) (A.P.) 532459

3. Jyoti Sethiyar Aged about 40 years, W/o Sunderam Sethiyar R/o Near Venkateshwar Talkies Supela District Durg, Bhilai (C.G.) 490023
-Applicants

(By Advocate –**Shri R.K. Verma with Ms. Preeti Khanna**)

V e r s u s

1. Deleted.

2. General Manager
South Eastern Central
Railways
Bilaspur (C.G.) 495004

3. Deleted.

3. Senior Divisional Personnel Officer
South Eastern Central Railways
Raipur (C.G.) 492008

-Respondents

(By Advocate –**Shri Vijay Tripathi**)

(Date of reserving the order: 22.08.2019)

ORDER

This Original Application has been filed against the inaction of the respondent-department in not paying the pension to the mother of applicants after death of her husband.

2. The applicants have prayed for the following reliefs:-

“8.i) a direction be issued to respondents to pay applicants the pension which was admissible to the mother of applicants Smt. M. Ramalaxmi after death of her husband due since January 2013 uptill 10.09.2015 the day when she expired along with interest @ 9% p.a.;

8.ii) respondents further may kindly be directed to pay applicants compassionate allowance at 2/3rd of pension and gratuity sanctioned vide order dt. 18.07.2006 (Annexure A/4) with interest @ 9% p.a. since 18.07.2006 uptill date;

8.iii) Grant any other relief/s, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

8.iv) Award the cost of the instant lis to applicant.”

3. Precisely the case of the applicant was that father of applicants Shri M.V.L. Ganpati was an employee of Railways who died on 09.10.1991 leaving behind his

widow and the applicants. Copy of death certificate has been annexed at Annexure A/1. The mother of applicants Smt. M. Ramalaxmi was given compassionate appointment in place of her husband M.V.L. Ganpati. The mother of applicants joined services and completed 10 years of her service. The mother of applicants was appointed in Group D post under Senior DEE/TRS/BIA on compassionate grounds. Due to sickness she remained absent from 31.10.2003 and expired on 10.09.2015. A copy of death certificate of Smt. M. Ramalaxmi has been annexed as Annexure A/2. On account of absence of Smt. M. Ramalaxmi, a departmental enquiry was initiated against her but she could not participate in the enquiry due to her mental problem. In such circumstances, enquiry officer proceeded ex-parte against her and thereafter ex-parte decision was taken against her whereby a final penalty was imposed for removal from service with immediate effect. A copy of order dated 18.07.2006 imposing penalty has been annexed at Annexure A/4.

From the perusal of this document, it is crystal clear that she was removed from service however the compassionate allowance at 2/3rd of pension and gratuity was made admissible. Since 18.07.2006, she survived with her mental sickness and thereafter died on 10.09.2015. Compassionate allowance as sanctioned by the authority vide order dated 18.07.2006 was not paid to her nor to the applicants nor any pension was fixed. No assessment of gratuity has been done. Applicants made representation on 07.12.2011 to Senior Divisional Personnel Officer, Raipur whereby a copy of service book was sought of their deceased mother but not supplied to them. Applicant No.1 represented the matter to the General Manager, South Eastern Central Railways, Bilaspur requesting for employment assistance. It was specifically stated in the representation that mother of the applicants remained in mental hospital at Vishakhapatnam in 2009 and thereafter was discharged. A copy of representation is annexed at Annexure A/6. The mother of the applicants submitted a

representation to the Divisional Personnel Officer, Raipur SECR for settlement of her pension and also requested to release 2/3rd pension and its arrear as ordered by authorities vide office order dated 18.07.2006 and the same was received by the office on 05.08.2013. The copy of same is annexed at Annexure A/7. In spite of the representation made, no amount was released by the authorities nor any communication was made from their side. On 06.11.2015 applicant No.1 further represented to the Senior Divisional Personal Officer, Raipur for payment of arrears. A copy of same is annexed at Annexure A/8. No payment has been made to the applicants till date.

4. Another grievance of the applicants is that after the death of father of applicants, the pension sanctioned to the mother of applicants was paid regularly uptill December 2012. Thereafter on account of mental sickness mother of applicants could not receive any pension nor the same was deposited in her accounts. She was entitled for the payment of pension of her husband which was sanctioned

in her favour since January 2013 upto her death 10.09.2015.

5. Respondents have filed their reply to the Original Application. It has been submitted by the replying respondents in their preliminary submissions that the mother of the applicants was appointed to the post of Khalasi at Senior Divisional Electrical Engineer (TRS)/Bhilai on compassionate ground after death of her husband. Vide order dated 18.07.2006 of disciplinary authority she was removed from service against the allegation of charges of unauthorized absent since 31.05.2003. The disciplinary authority has categorically made clear his reasoning about the payment of compensation allowance 2/3rd Pension and Gratuity both if she had retired on compensation pension and had rendered qualifying service of more than 10 years as per Estt. Rule 138/05. Copy of punishment order is annexed at Annexure A/4 of the O.A. It has been submitted by the respondents that the mother of the applicant was a chronic absentee

employee and after removal during her lifetime she never cooperated to the administration for completing necessary documentary formalities for initiating the payment admissible to her as per the Estt. Rule 138/05. After removal, she neither submitted her claim nor she approached to the office of answering respondent for completing necessary documentation works in regard to processing for payment of pending dues as admissible to her on removal as per Estt. Rule 138/05. Copy of estt. Rule 138/05 is annexed as Annexure R/1. On 06.08.2013 representation was received from Smt. M. Ramalaxmi in which she has claimed 2/3rd pension from 2006. Copy of which is annexed at Annexure R/2. The matter was examined and she was not found eligible for 2/3rd pension as after computing her total qualifying service it comes only to 6 years 9 months 27 days. Copy of computation chart of qualifying service is annexed at Annexure R/3.

6. After death of Smt. M. Ramalakshmi the applicants are claiming to be the legal heirs of the deceased/removed

employee. On verification of the service records of M. Rama Lakshmi it is seen that during 17 years (i.e. from appointment to till removal from service) that none of the person were nominated as per family members son, daughters in official records or as dependants in pass declaration. Now after death, they are claiming which leads to a considerable doubt about genuineness of the claimant as her legal heir. As the deceased was removed as has already been certified from the Associated Finance Branch in regard to the entries and qualifying service rendered by the Late M. Rama Lakshmi Ex Khalasi Helper and a tentative amount which is admissible to the heirs on the death of M. Rama Lakshmi is according to the available balance (own contribution) Provident Fund of Rs.12016/-, CGEIS saving and insurance amounting to Rs.2136/-, Leave Encashment Rs.3165/-, Death Cum Retirement Gratuity for 6 years 9 months and 27 days amounting to Rs.14607/-. The above total amounts reached to Rs.31924/- which may be vary at the time of finalization

of the payment. The amount of Rs.31924/- has to be paid to right and genuine legal heirs and when the heirship of the deceased employees is not available in records under these circumstances it will be safe for the administration to advise for production of succession certificate who are claiming to be the legal heir of the deceased employee Late M. Rama Lakshmi. The applicants may obtain succession certificate from the court of law or they may submit as a substantial proof by corroborating with documentary evidence so that the answering respondents may without complication arrange the payment to the heirship. The applicant neither approached the answering respondents with the said requirement and it is the delay on the part of the applicants. The applicants are claiming to be the son and daughters of the deceased removed employee which has not been recorded in Railway records by the deceased employee as such there is considerable doubt about the genuineness of the heirship.

7. The respondents have also raised the question of limitation. The deceased employee Smt. M. Ramalakshmi removed from Railway Service vide order 18.07.2006 with 2/3rd pensionary benefit if admissible as per Estt. Rule 138/2005 but she has not pressed the same for more than 7 years and only in the year 2013 she simply preferred representation and subsequently died on 10.09.2015. Smt. M. Ramalakshmi could have approached this Tribunal in the year 2007 for payment of settlement dues. Moreover, it is specifically submitted by the respondents that the deceased could have agitated for her claim prior to 2013 as she was chronic absentee employee as evident from the records available with the office. So the relief claimed by the applicants has no substance as the nomination and declaration of the family members have not been furnished in the Railway servant on records.

8. I have heard the learned counsel for both the parties and have gone through the documents attached with the pleadings.

9. It is clear from the pleadings itself that Smt. M. Ramalakshmi was appointed on 04.08.1993 to the post Khalasi. Thereafter she was promoted to the post of Khalasi Helper on 06/07.05.1997. It is undisputed by the parties that Smt. M. Ramalakshmi was removed from service on 18.07.2006 for unauthorized absent since 31.05.2003. It is also not disputed by the parties that order of removal by the disciplinary authority has categorically made clear in his reasoning about the payment of compensation allowance 2/3rd pension and gratuity both if she had retired on compensation pension and had rendered qualifying service of more than 10 years as per Estt. Rule 138/05. The contention of the applicants is that Smt. M. Ramalakshmi could not participate in the inquiry on account of mental sickness and in such circumstances the inquiry officer proceeded ex parte inquiry against her and ex parte decision was taken against her and final penalty was imposed vide order dated 18.07.2006 (Annexure A/4) Further contention of the applicant is that on removal from

service Smt. M. Ramalakshmi was neither paid the compensation allowance 2/3rd pension nor gratuity has been paid.

10. On the other hand, the contention of the respondents are that Smt. M. Ramalakshmi was chronic absentee and after removal during her life time she never cooperated to the administration for completing necessary documentary formalities for initiating the payment admissible to her as per the Estt. Rule 138/05 (Annexure R/1). It has come specifically in the reply of the replying respondents that on receiving the representation for the 1st time from Smt. M. Ramalakshmi, they have examined the case and it was seen that she was not found eligible for 2/3rd pension as after computing her total qualifying service it comes only to 6 years 9 months 27 days. Copy of which is annexed at Annexure R/2. Copy of computation chart of qualifying service is annexed at Annexure R/3. As per the Estt. Rule 138/05, the eligibility to grant pension requires 10 years of qualifying service. It has also come in the reply that Smt.

M. Ramalakshmi had died on 10.09.2015 (Annexure A/2). In the reply it has come that in the record of respondent-department none of the persons were nominated as her family members son, daughter as dependants in pass declaration. The replying respondents have clearly spelt out the admissible dues to Late M. Ramalakshmi qua the head of Provident Fund Rs.12016/-, CGEIS saving & insurance amounting to Rs.2136/-, Leave Encashment Rs.3165/-, Death-cum-Retirement Gratuity for 6 years 9 months and 27 days amounting to Rs.14,607/-. So, the total amount reached to Rs.31924/- is to be paid at the time of finalization of the payment. It is clear from the pleadings of both the parties that the respondent-department is ready to pay the dues as indicated, if the applicants obtained the succession certificate from the competent court of law or they may submit substance departmental evidence. The answering department paying to heirship, so from the pleadings itself the delay is caused on behalf of the applicants. For another grievance as

averred in Para 4.6 of O.A., there is no reply/denial on behalf of the respondents. So, applicants are also entitled for family pension to her mother of her husband from January 2013 till her death i.e. 10.09.2015.

11. In view of the above, this Original Application is allowed with following directions:-

(a) Applicants shall procure succession certificate from the competent court of law.

(b) Thereafter, respondents are directed to pay applicants the pension which was admissible to the mother of applicants Smt. M. Ramalakshmi after death of her husband due since January 2013 uptill 10.09.2015.

(b) Respondents are further directed to pay the applicants compassionate allowance at $2/3^{\text{rd}}$ of pension and gratuity sanctioned vide order dated 18.07.2006 (Annexure A/4). No order as to cost.

(Ramesh Singh Thakur)
Judicial Member