Mrs. D. Widrose Vs. Central Administrative Tribunal, Represented by Its Registrar,

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Court : Chennai

Decided On : Feb-21-2006

Reported in : (2006)2MLJ252

Judge : P.K. Misra and ;R. Sudhakar, JJ.

Acts : Railway Services (Pension) Rules, 1993 - Rules 65, 65(1) and 107

Appeal No. : Writ Petition No. 18193 of 2001

Appellant : Mrs. D. Widrose

Respondent : Central Administrative Tribunal, Represented by Its Registrar, ;union of India (Uoi), Rep. by the Co

Advocate for Def. : M. Sekar, Adv. for Respondents 3 and 4

Advocate for Pet/Ap. : V. Prakash, Sr. Adv. for ;Dhiravya Raj, Adv.

Judgement :
ORDER

P.K. Misra, J.

1. Heard the learned counsels appearing for the parties.

2. Petitioner is the widow of one Mr. P.A. Widrose, who was working under the fourth respondent. A disciplinary proceeding was initiated against the husband of the petitioner in the year 1982 on the allegation that he had remained unauthorisedly absent for 84 days without any sanction of leave. Such disciplinary proceeding was conducted ex-parte and ultimately, by order dated 12.8.1983, the husband of the petitioner was removed from service. Appeal filed by such employee was dismissed on 31.7.1984. Thereafter, in the further appeal filed in August, 1984, by the employee, no orders were passed. In the meantime, unfortunately, the husband of the petitioner died on 20.11.1990. Thereafter, the petitioner made several representations to various authorities claiming payment of family pension or compassionate allowance by invoking Rule 65 of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as 'the Rules'). However, by communication dated 25.7.1996, the claim of the widow was rejected. Thereafter, the Welfare Officer issued a further order stating that the petitioner was not eligible for grant of family pension or compassionate allowance or any other assistance. After a few more representations, the petitioner filed Original Application in Diary No. 2172 of 2000 before the Central Administrative Tribunal, which has been dismissed by the Tribunal only on the ground of limitation as, according to the Tribunal, the issue related to 1983, the year in which the husband of the petitioner was removed from service and, therefore, such matter cannot be agitated after a long lapse of time. The present writ petition is filed for quashing such order of the Tribunal and for issuing a direction to respondents 2 to 4 to accord family pension and compassionate allowance with effect from 20.11.1990, the date on which the husband of the petitioner died.

3. A counter affidavit has been filed on behalf of Respondents 3 and 4, wherein, it has been indicated that family pension is payable only if pension was payable to the husband. In the present case, the husband having been removed from service and being not entitled for pension, the widow cannot claim pension. The respondents have also taken the stand that the provisions contained in Rule 107 giving power to relax the rules in case of undue hardship, are also not applicable to the facts of the present case.

4. Learned counsel appearing for respondents 3 & 4 has vehemently contended that the Rules do not permit payment of family pension or compassionate allowance.

5. So far as the question of limitation is concerned, we find that the Tribunal has taken a highly technical view of the matter. It is no doubt true that the husband of the petitioner was removed from service in 1983, however, his appeal was pending and subsequently he died in the year 1990. By that date, the appeal of the petitioner's husband had not been disposed of. Subsequently, the petitioner had filed several representations and ultimately, on 8.12.1999, the Welfare Officer communicated stating that pension is not payable as the husband of the petitioner had been removed from service as a disciplinary measure. Therefore, it can be said that cause of action had ultimately arisen on 8.12.1999. Since the Original Application was filed in the year 2000, it cannot be said that the Original Application was barred by limitation. Even assuming that the Original Application was barred by limitation, the Tribunal had ample power to condone the delay in the facts and circumstances of the case, particularly when the petitioner, the widow, was diligently pursuing the matter.

6. Once the aforesaid conclusion is reached, in normal course, the matter would have been remanded to the Tribunal for disposal on merit. However, we desist from doing so on account of several circumstances, more particularly, considering the age of the present petitioner, who is aged about 78 years. Moreover, from 1992 onwards, she is representing to various authorities claiming certain amount and in these circumstances if the matter is remitted for fresh consideration, the agony of the petitioner would be compounded further. Since all the materials have been placed before us, including the chart relating to payment of compassionate allowance, we feel interest of justice would be served in disposing finally the matter on merit so that the litigation would come to an end.

7. Rule 65 of the Railway Services (Pension) Rules, 1993 is as follows :-

65. Compassionate allowance.- (1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule(1) shall not less than three hundred seventy five rupees per mensem.

8. This rule, obviously, gives discretion to the authority competent to dismiss or remove an employee from service if the case is deserving special consideration, to sanction compassionate allowance not exceeding two-third of the pension or gratuity or both which would have been admissible to him if the person would have retired on compensation pension.

9. In the present case, such discretion was available to be exercised by the competent authority, namely, the disciplinary authority to sanction compassionate allowance as contemplated under the proviso to Rule 65. It is no doubt true that the further appeal filed by the petitioner's husband was pending. Unfortunately such matter was not disposed of till the death of the husband. If such a matter would have been taken up before the death of the husband, it would have been open to the competent authority to extend the benefit contemplated under the proviso to Rule 65.

10. Apart from Rule 65, the provisions contained in Rule 107 of the Railway Services (Pension) Rules, 1993, being relevant, are extracted hereunder :-

107. Power to relax.- Where the pension sanctioning authority is satisfied that the operation of any of these rules causes undue hardship in any particular case, that authority, may for reasons to be recorded in writing, approach the Ministry of Railways (Railways Board) for dispensing with or relaxing the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. The ministry of Railways (Railway Board) shall examine such case and arrange to communicate the sanction of the President to the proposed dispensation or relaxation as it may consider necessary keeping in view the merits of each case

and keeping in view of any other statutory provisions :

Provided that no such order shall be made without concurrence of the Department of Pensioners; Welfare, in the Ministry of Personnel, Public Grievances and Pensions, Government of India.

11. This Rule gives ample power to the competent authority to relax the Rules if satisfied that the operation of any of these rules causes undue hardship and to deal with the case in a just and equitable manner. In normal course, the matter should be remitted to the concerned authority for applying the provision of Rule 107 read with Rule 65. However, for the very reasons for which we have thought it fit to dispose of the writ petition finally, we intend to dispose of the matter finally to avoid any further litigation and to avoid further hardship to the widow.

12. For considering the above aspect, the ground for removal is obviously to be taken into account. The disciplinary authority, which conducted the enquiry, found that the person was unauthorisedly absent. The materials on record indicate that the employee was undergoing some psychiatric treatment for sometime during 1981 and obviously the absence must have been on account of such psychiatric disability. It is not disputed that there was no allegation of any serious misconduct like misappropriation or dereliction of duty or wilful disobedience. It is no doubt true that the petitioner's husband had remained unauthorisedly absent for 84 days. However, there is some reason for such absence. We have come across many cases where even in case of unauthorised absence the Courts have interfered and have advised for imposition of lesser punishment. Even though in the present case such question does not arise, the fact remains that removal was on account of unauthorised absence and not on serious misconduct involving moral turpitude.

13. On going through the orders passed by various officers, we found that most of the representations were rejected on the ground that Rule 65 does not permit such payment. However, the authorities never considered the question of applicability of Rule 107.

14. Keeping in view the exceptional facts of the present case and keeping in view the fact that the employee had worked under the Railways for about 26 years and

there was no complaint against him on earlier occasion and the helpless ripe old widow is unable to maintain herself as she has no source of independent income, we feel interest of justice would be served by directing the respondents to grant pension as per the calculation furnished by the learned counsel appearing for the respondents. Having regard to all these aspects, we feel that the amount would be payable from the date on which the application was made before the Tribunal. This direction may be complied with within a period of eight weeks from the date of receipt of a copy of this order. The amount payable till the end of February, 2006 amounting to Rs. 1,37,031/- shall be paid within the aforesaid period. The amount payable from the month of March, 2006 shall be payable as and when such amount falls due. Keeping in view the fact that the order has been passed on peculiar facts and circumstances of the case, this would not be a precedent in other cases.

15. With the above directions, the writ petition is allowed in part. No costs.