

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 6490 of 2019

Union of India through its Divisional Personnel Officer,
South Eastern Railway, Hatia, Ranchi

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Versus

1.Pilla Venkata Satyawati

2.Union of India through General Manager, SER, Kolkata

3.Divisional Railway Manager, SER, Hatia, Ranchi

4.Sr. Divisional Electric Engineer(G), SER, Hatia, Ranchi

5.Assistant Divisional Electric Engineer (G), SER, Hatia, Ranchi

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CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : M/s Prashant Pallav, ASGI, Parth Jalan, AC to ASGI

For the Respondent : Mr. Anish Khan, Advocate

09/22.03.2022 Heard learned A.S.G.I Mr. Prashant Pallav and learned counsel for the respondent Mr. Anish Khan.

2. Being aggrieved by order dated 22.08.2019 passed in O.A. No. 051/000138/2019 of the learned Central Administrative Tribunal (CAT), Circuit Bench, Ranchi (Annexure-9), Union of India is before us under Article 226 of the Constitution of India.

3. The short issue canvassed and as arisen out of the pleadings on record is whether the learned Tribunal was right in directing the respondents to pay subsistence allowance to the applicant/ respondent herein for the period for which she remained under suspension till her termination from service. It is not in dispute that the applicant was placed under suspension on 25.04.2012 and continued to get subsistence allowance till April 2016 where after, she was terminated on 12.09.2019 (Annexure-10). The applicant was granted appointment as Trainees Skilled Artisan (TSA)-III after death of her husband in harness on 03.08.2009 while working as Khalasi. She underwent job training for 3 years. She was taken in custody on 24.04.2012 and placed under suspension under Rule 5(2) of (Disciplinary and Appeal), Rules 1968. The order of suspension indicated that since the case was subjudice before the learned Special Judge, (CBI), Bhubaneswar, revocation of suspension would be considered only after framing of charge against her by the learned Trial Court. By a letter dated 09.11.2017, the C.B.I. communicated to the Senior Divisional Electrical Engineer (G)/ RNC, South Eastern Railway, Ranchi (Jharkhand) that since the criminal

case is pending for framing of charge, competent authority of South Eastern Railways may take appropriate decision in the matter in accordance with the instant rules and regulations. Such communication was further made on 22.03.2019 (Annexure-6). Applicant was served with a show-cause notice asking her to explain as to why action for termination of her service be not initiated as her acts was unbecoming of a Railway or a government servant and for her involvement in CBI case. However, it is also true that no disciplinary proceedings were held thereafter though she was terminated on 12.09.2019 after passing of the impugned order by the learned CAT, treating her service for the post of T.S.A.-III as terminated with immediate effect.

4. Learned counsel for the applicant/ respondent herein submits that the order of termination has not been challenged by the applicant before any forum.

5. Learned counsel for the petitioner submits that in terms of Rule 5 of the Disciplinary and Appeal Rules, 1968 applicant holding the status of a trainee was not a regular servant. In terms of para 1342 of India Railway Establishment Code Volume-II, therefore, applicant was a trainee on stipend and not on leave salary. Therefore, subsistence allowance should not have been extended. However, subsistence allowance was paid inadvertently while putting her under suspension, which was later on rectified and stopped.

6. It appears from the perusal of the impugned order that the learned Tribunal has taken a view that since the appointment was made on 17.06.2011 on compassionate ground in a regular pay scale of Rs. 5200-20,200 with Grade Pay of Rs.1900/- and she was sent for job training for 3 years as part of this appointment, the department having chosen to suspend the applicant, was bound to give her subsistence allowance which could not have been unilaterally withdrawn. The department has not chosen to say as to what action was taken against the erring official who granted the subsistence allowance to her on placing her under suspension. The department has after passing of the impugned order, terminated her by treating her as a trainee without full-fledged departmental proceeding. However, the fact remains that the applicant

had been under suspension since 25.04.2012 till the date of her termination as the suspension was never revoked. Therefore, the department should not be allowed to take advantage of its own wrong. On equitable grounds therefore, we do not find any reason to interfere in the impugned order.

7. Accordingly, the writ petition is dismissed. Pending I.A. is closed.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)