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W.P.No.26382 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.26382 of 2018

M.Chellammal

.... Petitioner

-Vs-

Union of India represented by

1.The General Manager
Southern Railway, Park Town
Chennai 600 003.

2.The Chief Security Commissioner
Railway Protection Force
Southern Railway, Park Town
Chennai 600 003.

3.The Senior Divisional Security Commandant
Railway Protection Force, Chennai Division
Southern Railway, Park Town, Chennai-600 003.

4.The Senior Divisional Personnel Officer
Chennai Division, Southern Railway
NGO Annexe, Park Town,
Chennai 600 003.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus direction in the form of a writ relating to the non-consideration of the representations of the petitioner dated 11.04.2015 and 27.05.2017 made to the 2nd Respondent and representations dated 18.09.2015 and 28.12.2015 made to the 4th Respondent requesting sanction of Family Pension on



W.P.No.26382 of 2016

the death of her husband as provided under proviso to sub rule (1) of Rule 65 of Railway Service (Pension) Rules 1993 read with Railway Board Letter No.F(E)III/2003/PNI/5 dated 04.11.2008 and consequently to direct the respondents to sanction Family Pension in favour of the Petitioner with effect from the date of her eligibility as per Rule in vogue.

For Petitioner : Mr.R.Pandian
For Respondents : Mr.M.T.Arunan
Special Counsel for Railways

ORDER

The prayer sought for herein is for a Writ of Mandamus / direction in the form of a writ relating to the non-consideration of the representations of the petitioner dated 11.04.2015 and 27.05.2017 made to the 2nd Respondent and representations dated 18.09.2015 and 28.12.2015 made to the 4th Respondent requesting sanction of Family Pension on the death of her husband as provided under proviso to sub rule (1) of Rule 65 of Railway Service (Pension) Rules 1993 read with Railway Board Letter No.F(E)III/2003/PNI/5 dated 04.11.2008 and consequently to direct the respondents to sanction Family Pension in favour of the Petitioner with effect from the date of her eligibility as per Rule in vogue.

2. The petitioner's husband one Muthupandian who was working as Constable in the Railway Protection Force at Arakkonam Junction Station was removed from service on 13.08.1987 by the authority concerned by way of disciplinary proceedings and subsequently he expired on 02.11.1990.



3. During his service period, he had put in 25 years of service in the Railway Protection Force. However, since he was removed from service no retiral or pensionary benefits including Provident Fund has been paid either to the deceased employee or to the petitioner, who is the wife of the deceased employee. Hence, in order to get the said benefits by way of compassionate allowance as per Rule 65 of the Railway Services Pension Rules, 1993 the petitioner has given a representation to the respondents on 11.04.2015. However, the same has not so far been considered. Even thereafter when many representations / reminders have been given and the same also since has not been considered by the respondents, she has approached this Court by filing the present writ petition.

4. Heard Mr.R.Pandian learned counsel for the petitioner who would submit that the person who was removed or dismissed from service normally would not be entitled to get any retirement benefits. However, Rule 65 of the Railway Services Pension Rules, 1993 (In short 'the Rules') paves the way for referring the servant who was dismissed or removed from service to the Railway Board and, if the case is deserving of special consideration, sanction the compassionate allowance not exceeding 2/3rd of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.



5. Relying upon this Rule 65 of the Rules, the learned counsel for the petitioner would contend that, insofar as the compassionate allowance is concerned, Rule 65 can very well be invoked by the authorities, which they have not exercised during the period of the lifetime of the deceased employee. Even thereafter, when such a request now has been made by the present petitioner, who is the widow of the deceased employee, the same also has not been considered and in this regard the learned counsel for the petitioner relied upon a circular issued in this regard by the Railway Board dated 04.11.2008, wherein inter alia the following has been stated.

“ 3. The matter has, therefore been considered by the Board in consultation with the Department of Pension and Pensioners' Welfare and it has been decided to reiterate that in cases where a decision has already been taken by the disciplinary authority not to grant compassionate allowance, such a decision is final, which should not be reviewed at any later stage. However, in partial modification of Board's letter dated 09.05.2005, it has also been decided by the Board that out of the past cases in which the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance, if any case appears to be deserving for consideration being given, may be reviewed by the disciplinary authority concerned on receipt of representations of dismissed/removed employees or the family members of the deceased employees keeping in view of the following conditions.”



6. Relying upon this Board's circular, the learned counsel for the petitioner would contend that, even at the time of removal or dismissal from service, Rule 65 was not invoked and the compassionate allowance was not granted or considered by the railway authorities. Hence, the Railway authorities can be directed by this Court to revisit their decision if any already taken or if no decision is taken, that can very well be taken by invoking Rule 65 of the Rules as per the clarification issued by the Board by its circular dated 04.11.2008 and accordingly the petitioner's representation dated 11.04.2015 and the subsequent reminders can very be considered by the authorities, he contended. Since that exercise has not been undertaken by the respondents the petitioner seeks the indulgence of this Court to issue suitable directions to the respondents by way of mandamus.

7. Heard Mr.M.T.Arunan, Special Counsel appearing for the respondent Railways, by relying upon the averments made in the counter affidavit, would submit that there is a long delay in making the representation even by the petitioner, who is the widow of the deceased, as the employee was removed from service in 1987 and he died on 02.11.1990, and only after 28 years after his removal from service, now the widow of the deceased employee has given a representation. Therefore, at this length of time whether such a consideration would be possible even under Rule 65 of the Rules in consonance with Para 3 of the Board's Circular dated 04.11.2008 is a question. Therefore, the case of the petitioner is an undeserving one even for consideration under Rule 65 and the learned Special Counsel for the respondents seeks dismissal of



the writ petition.

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8. I have considered the submissions made by the learned counsel on either side and have perused the materials placed on record.

9. No doubt, the petitioner's husband was removed from service on 13.08.1987 and by virtue of such removal, the deceased employee was not entitled to get any benefits like the retirement benefits and pensionary benefits except the Provident Fund and other amounts. Even that Provident Fund has not been paid according to the learned counsel for the petitioner. In the year 1990 the employee expired and thereafter the widow of the deceased employee, after having struggled a lot for survival, has made this application in 2015 ie., on 11.04.2015 followed by some reminders.

10. If such a representation or request is made by the dependent of the deceased employee ie., the family member of the deceased employee, then that kind of application / representation can very well be considered as per the clarification issued by the Board in their circular dated 04.11.2008 in consonance with Rule 65 as referred to above.

11. Therefore, the contention raised by the learned Special Counsel for the Railways that at this length of time the plea raised by the petitioner cannot be



considered may not be a justifiable one because, in deserving cases the authorities can very well revisit the decision if already taken and they can review the decision as per the clarification given by the Board's Circular dated 04.11.2008. Therefore, since no orders are passed in this case, due to the penurious circumstances, the petitioner being the widow of the deceased, struggling to make both ends meet since has given a representation dated 11.04.2015, this Court feels that a direction can be given to the respondents to consider the said representation and decide the same in accordance with law especially under Rule 65 of the Rules on the basis of the modus operandi that has been explained in the Board's Circular dated 04.11.2008.

12. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

“That there shall be direction to the respondents to consider the representation of the petitioner dated 11.04.2015 and decide the same on merits and in accordance with law especially under Rule 65 of the Railway Services Pension Rules, 1993 as per the procedure contemplated or clarified by the Railway Board's Circular dated 04.11.2008 and pass orders thereon within a period of eight weeks from the date of receipt of a copy of this order and communicate the same to the petitioner.”



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13. With the above direction, this writ petition is disposed of. No costs.

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Index : Yes/No

Internet : Yes/No

KST

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R. SURESH KUMAR, J.

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