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IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

WPCT 4 of 2019
With
CAN 1 of 2021

*[Smt. Pratima Sarkar -Vs- Union of India, through the Chairman, The
Railway Board, Government of India & Ors.]*

Mr. Debajit Kundu
Mr. Shubhankar Dutta
... .. for the petitioners

Mr. Sudipto Kuma Mazumdar. Ld. DSGI
Mr. Ajoy Kumar Singhanian
Mr. Sudip Kumar Paul
Mr. Saptak Sarkar
Mr. Sourab Kar
..... For N. F. Railway

1. By order dated 03.09.2019 the Central Administrative Tribunal had directed the Chairman, Railway Board to consider whether the deceased employee (husband of the petitioner) had superannuated as ESM Grade I or ESM Grade II.

2. Petitioner had superannuated in 1987 as ESM Grade II and had earned his pension in such grade till 1990. But by a revised pension PPO dated 21.01.2014 his status was fixed as ESM Grade I. Revised pension order remained unimplemented. As a result writ petitioner approached the Tribunal. During hearing of the application before the Tribunal the parties took contradictory stance with regard to the status of the deceased employee. Under such circumstances, the matter was remanded to the respondent

no. 1, Chairman, Railway Board, Government of India, to take appropriate decision with regard to his status. Subsequently by order dated 21.11.2019, 7th respondent i.e. senior Divisional Financial Manager, North East Frontier Railway, Katihar, Bihar, came to a finding that the revised pension order dated 21.01.2014 had been inadvertently issued and had been corrected vide pension payment order dated 11.03.2019. Thereafter the petitioner approached this Court, inter alia, praying for setting aside the impugned decision dated 21.11.2019 of the 7th respondent and to treat her deceased husband as ESM Grade I as per pension payment order dated 21.01.2014.

3. During hearing of the petition before this Court, order passed in MAT 820 of 2019 modifying the earlier order and directing the 3rd respondent, i.e. the General Manager, North East Frontier Railway, Maligaon, Guwahati, Assam or any other competent authority to consider the case of the petitioner was placed on record. It was contended on behalf of the petitioner that the order was never communicated to her by the Registry of the Tribunal and she was unaware of the change with regard to the authority who was to decide the matter.

4. In view of such submission, a co-ordinate Bench of this Court directed the Registry of the Tribunal to submit a report indicating the date and manner the order of the Tribunal in MAT 820 of 2019 had been communicated to the petitioner. Report has been submitted by the Tribunal. Perusal of the report does not show that the order

in MA 305/802/2019 had been communicated to the petitioner.

5. Under such circumstances, we are constrained to hold the petitioner was unaware that the authority concerned who was assigned to decide his case had been subsequently altered. Accordingly, he was unable to assist the said authority concerned by placing documents, if any, available to him in support of her case.

6. These circumstances make it imperative that the issue be re-considered by the respondents afresh. We are in agreement with the submission of learned Deputy Solicitor General (I) that it may not be appropriate to remand the matter for consideration by the first respondent i.e. Chairman, Railway Board. We are also of the view, as the 7th respondent has already expressed his views in the matter, the 6th respondent i.e. the Divisional Railway Manager (P), North East Frontier Railway, Katihar, Bihar who is the senior most officer of the division may be directed to take an appropriate decision in the matter.

7. Under such circumstances, we direct as follows:-

- (i) The impugned decision taken by the 7th respondent, i.e., The senior Divisional Financial North East Frontier Railway, Katihar, Bihar shall be kept in abeyance;
- (ii) The issue whether the husband of the petitioner viz. late Birendra Kumar Sarkar had superannuated in the status of ESM Grade I

or Grade II shall be decided afresh by the Divisional Railway Manager (P), North East Frontier Railway, Katihar, Bihar;

- (iii) A reasoned order shall be passed by the 6th respondent i.e. the Divisional Railway Manager, North East Frontier Railway, Katihar, Bihar in the matter within six weeks from the date of communication of this order after giving an opportunity to the petitioner to place all relevant documents, if any, in support of her case;
- (iv) Needless to mention the decision so taken shall be communicated to the petitioner forthwith and all consequential steps thereto shall be taken in accordance with law.

8. With these directions writ petition is disposed of. In view of disposal of the main matter connected application being CAN 1 of 2021 is also disposed of.

9. There shall be no order as to costs.

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)