

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(Sr. No. 109)

CWP No. 22659 of 2023

Date of decision: 06.02.2024

Mamta Rani @ Mamta Sharma

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present : Mr. Abhinav Sood, Advocate for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

(1) The judgment of the Central Administrative Tribunal, Chandigarh Bench (for short - the Tribunal) which has been assailed through the present petition is dated 07.10.2016. There is a delay of nearly 07 years in challenging the same. The delay has not been explained. Therefore, in the exercise of our writ jurisdiction we were not inclined to entertain the instant petition. However, on the insistence of the learned counsel for the petitioner that the petitioner is a widow, who through these proceedings is claiming compassionate appointment, the matter was heard on merits.

(2) Briefly stated, the undisputed facts are that the petitioner's husband namely Avinash Chand was serving as a Helper Khalasi at Railway Station, Bhatinda. In the year 2003 the Special Railway Magistrate (Haryana), Ambala Cantt. (for short - the Magistrate), convicted and

sentenced Avinash Chand under Section 3 of the Railway Property (Unlawful Possession) Act, 1966 (for short - the 1966 Act). In an appeal preferred by him, the Additional Sessions Judge, Ambala, through his judgment dated 31.03.2006, upheld Avinash Chand's conviction but modified the order of sentence by ordering his release on probation.

(3) In the meanwhile, on the basis of his conviction, through order dated 19.07.2004, Avinash Chand was removed from service. An appeal filed by him against his removal was also dismissed on 14.02.2005.

(4) After being released on probation, Avinash Chand made a representation to the respondents seeking therein his reinstatement. However, before his request could be responded to, he unfortunately expired on 29.01.2007.

(5) After her husband's death the petitioner represented to the respondents for the release of the due retiral benefits and for her appointment on compassionate basis. When her requests were not responded to, she knocked the doors of the Tribunal through Original Application No.464/HR/2012 which was disposed of by the Tribunal on 16.01.2014 by directing Avinash Chand's disciplinary authority to reconsider the quantum of punishment imposed upon him. Through order dated 28.04.2014, Avinash Chand's disciplinary authority reconsidered the matter and on account of the unfortunate change in circumstances, modified the punishment of removal from service to compulsory retirement but with effect from the date when Avinash Chand had been ordered to be removed from service *i.e.* 19.07.2004.

(6) After the passing of the aforesaid order dated 28.04.2014 the petitioner again represented to the respondents for appointing her on

compassionate basis. Through order dated 08.12.2014 the respondents declined her request. The reason given by the respondents to deny compassionate appointment to the petitioner was that her husband had retired on 19.07.2004 and had died later.

(7) The petitioner preferred an appeal against the decision dated 08.12.2014 but when she received no response thereto she again approached the Tribunal. She challenged not only the order dated 08.12.2014, through which she had been denied compassionate appointment but also the order of the disciplinary authority of the petitioner's husband dated 28.04.2014 through which her husband had been ordered to be compulsory retired but with effect from 19.07.2004. Through its judgment dated 07.10.2016 the Tribunal upheld the action of the respondents on both counts. It is in these circumstances that the petitioner is before us through the instant petition.

(8) We shall separately deal with both the issues raised by the petitioner.

Challenge by the petitioner to the order dated 28.04.2014.

(9) Order dated 28.04.2014 was challenged by the petitioner through an Original Application filed before the Tribunal on 22.09.2016. The Original Application was beyond the prescribed period of limitation by almost 01 year and 05 months. There was not even an application filed by the petitioner seeking condonation of the delay. Thus, her claim was time barred.

(10) Irrespective of the above, in the year 2003, the Magistrate convicted the petitioner's husband under Section 3 of the 1966 Act. On the basis of his conviction, through order dated 19.07.2004, the petitioner's

husband was ordered to be removed from service. The petitioner's husband challenged his conviction through an appeal in which the Additional Sessions Judge, Ambala, through order dated 31.03.2006, upheld the conviction but ordered his release on probation. The petitioner's husband died on 29.01.2007.

(11) After over 05 years of her husband's death *i.e.* in the year 2012, the petitioner approached the Tribunal claiming therein family pension and appointment on compassionate basis. On 16.01.2014 the Tribunal remitted the matter to the disciplinary authority of the petitioner's late husband to reconsider the punishment imposed on him. Between the date of the original order of punishment and the time of reconsideration of his punishment, the petitioner's husband had died. Therefore, by taking a sympathetic and adopting a humane approach, the petitioner's husband's disciplinary authority modified the punishment imposed on the petitioner's husband from dismissal from service to compulsory retirement but from the date of the original punishment order *i.e.* 19.07.2004.

(12) The petitioner's husband's conviction had attained finality on the basis whereof he was punished with removal from service. Later, such punishment was modified only on sympathetic grounds as in the integrum the petitioner's husband had died rendering the petitioner a widow. The modification of the petitioner's husband's punishment would now entitle the petitioner to retiral benefits which were not payable to her prior to such mortification.

(13) In the afore facts, we find no infirmity in the order dated 28.04.2014. Rather, the disciplinary authority of the petitioner's husband is found to have dealt with the matter leniently.

Challenge to the order dated 08.12.2014.

(14) The petitioner's husband was compulsory retired with effect from 19.07.2004. He died on 29.01.2007. He did not die in harness. Thus, the petitioner had no right of consideration for being appointed on compassionate basis. Moreso, when the challenge by her to the order dated 08.12.2014, through which she was denied compassionate appointment, was after a delay of about two and a half years and that the present petition has also been filed after about 07 years of the passing of the judgment by the Tribunal through which her claim for appointment on compassionate basis had been rejected.

(15) In the light of the above discussion, the present petition is dismissed both on the grounds of delay and laches as also on its merits.

(16) No costs.

(DEEPAK SIBAL)
JUDGE

06.02.2024
sunil yadav

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No