

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

...

**O.A. No. 290/00039/2017  
With M.A. No. 290/00033/2017**

Reserved on : 14.01.2020  
Pronounced on : 24.01.2020

**CORAM:**

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)**

Rupa Devi W/o Deceased Shri Mohan S/o Shri Ramu Ram,  
aged 55 years, Ward No.10, Meghwali Ka Vas, Dulhasar,  
Tehsil Dungargarh, Bikaner, Rajasthan

...Applicant

(By Advocate: Shri Anish Mohd. Proxy for Shri Aditya  
Singhi)

Versus

1. Union of India, through General Manager, NWR, Jaipur
2. Divisional Railway Manager (Grievances), Northern  
Railway, DRM Office, Estate Entry Road, New Delhi- 110  
001.
3. The Divisional Personal Officer, Northern Railway,  
Bikaner Division, Bikaner.
4. The PWI, North Western Railway, Sudhsar, Tehsil  
Dungargarh, District Bikaner, Village Dulhasar.

...Respondents

By Advocate: Shri Vinay Chhipa for resp. Nos. 1, 3 & 4  
Shri Darshan Jain proxy for Shri Vinay Jain,  
for resp. No.2

**ORDER**

The applicant, who is widow of late Shri Mohan, has  
challenged the letter dated 28.03.2014 (Ann.A/1), which is

reply to RTI application of her late husband. In relief, she has prayed for complete retiral benefits, issue of medical card and family pension with arrears from the date of superannuation of her late husband.

2. It is the case of the applicant that her husband was appointed in the Railways on 6.1.1969 as Casual Labour on the post of Gangman in PWI, Sudsar and worked till his retirement on superannuation on 31.7.2010. After working from 1969 to 1996, he was appointed as Casual Labour Safaiwala w.e.f. 22.7.1996 under Sr. CHI/N.Rlys/Delhi Sarai Rohilla. After completion of 120 days, he was granted temporary status w.e.f. 12.12.1996. The requisite screening was held on 30.3.1996 and name of the deceased stood at Sl.No.12 in the panel list. The deceased has completed 10 years service after being appointed as Casual Labour till the date of superannuation excluding the period of Leave Without Pay of 416 days because of the medical problem. As per revised Railway Services (Pension) Rules, w.e.f.1.2.2006 an employee who rendered 10 years or more qualifying service becomes eligible for pension @ 50% of the basic pay plus grade pay. The sum equivalent to basic pay amounting to Rs. 9300 was deducted from the settlement dues for issuance of post retirement medical

identity card, but the same is never been provided to the deceased or his family till date. For not receiving pension, the deceased had made application dated 31.7.2010, 6.12.2010 and 13.03.2014, but no favourable response had been received. The deceased had worked from 6.1.1969 but his services have not been counted and the deceased employee expired on 22.1.2016. The family of the deceased is very much in requirement of family pension and retiral benefits, which should be paid from the date of superannuation as it was the duty of the respondents. Therefore, aggrieved by the inaction on the part of the respondents, the applicant has filed the present OA.

3. Respondent Nos. 1,3 and 4 have filed a separate reply dated 23.8.2018 and respondent No. 2 has filed reply on 20.8.2018. The respondents have raised preliminary objection with regard to limitation. It is the submission of the respondents that though the deceased employee retired on 31.7.2010, if he had any grievance regarding non-payment of pension/family pension, he could have raised his grievance at the relevant point of time. Therefore, filing the present OA in 2017 does not entitle the applicant for condonation of delay and the present OA deserves to be dismissed. Respondent Nos. 1,3 and 4 besides raising the

plea of limitation have also raised objection to the effect that necessary parties have not been impleaded. It has brought to the notice of the Tribunal that the deceased employee was working under Northern Railway and he retired from the said railway. However, the applicant failed to implead the concerned General Manager, Divisional Railway Manager and Senior Divisional Personnel Officer of Northern Railway as party respondents. The respondents, therefore, prayed that it is settled law that non-joinder of necessary parties and mis-joinder of unnecessary parties is fatal and without impleading necessary parties, an aggrieved person cannot seek any relief.

The respondents have further submitted that the deceased employee is not entitled to get pension as he has rendered service of 9 years, 7 months and half day, which is less than the prescribed requirement of 10 years. It is submitted that no record relating to deceased employee Shri Mohan is available in the office of PWI/SDF and ADEN/RTGH by which it can be ascertained that the deceased was appointed with the Railway Department on 6.1.1969 as Casual Labour on the post of Gangman under PWI, Sudhsar. Even a bare perusal of the service record produced by the applicant at Ann.A/2 make it ex-facie clear

that the deceased employee was appointed as Casual Labour (Safaiwala) vide letter dated 18.7.1996 on daily wage basis w.e.f. 22.7.1996 and he attained temporary status on 12.12.1996. As per the documentary evidence available on record, the deceased had superannuated after putting the service of 9 years, 7 months and half day, therefore, he was not entitled for pension and the question of family pension and other benefits does not arise. The employee who rendered 10 years or more qualifying service becomes eligible for pension @ 50% of the basic pay. It is pointed out by the respondents that the deceased has already been paid settlement dues such as GIS- Rs. 2,455, DCRG- Rs. 5,96,636 and PF- Rs. 6,60,076. An amount of Rs. 9300 on account of medical card was recovered from the deceased employee as he was not eligible for medical facilities under Railway Rules, hence the question of refund of the said amount does not exist.

4. Heard Shri Anish Mohd., proxy counsel for Shri Aditya Singh, counsel for the applicant and Shri Vinay Chhipa and Shri Darshan Jain, proxy counsel for Shri Vinay Jain, counsel for respondents.

5. The applicant has filed a Misc. Application for condonation of delay stating that the respondents have

passed order dated 28.3.2014 rejecting the claim of the applicant. There is recurring cause of action as the family of the deceased employee is not getting pension, medical benefits and other retiral benefit, therefore, the delay in filing the OA may be condoned.

6. Respondent Nos. 1,3 and 4 have filed reply to the Misc. Application for condonation of delay submitting that no justifiable and valid reasons have been assigned by the applicant for condonation of delay. The employee retired in the year 2010 and if he was having any grievance regarding non-payment of family pension and other benefits, he could raise his grievance at the relevant point of time, but he kept mum for such long years. Even after passing the order dated 28.3.2014, the OA is not filed within limitation period. The delay cannot be condoned as a matter of right until or unless the litigant satisfies the court that delay can be condoned. Therefore, the OA is liable to be dismissed at the threshold without entering into merit.

7. After considering the delay in filing the OA, it is noted that though there is delay and the delay is not sufficiently explained in the pleading made in the M.A., but in the interest of justice, I think is proper to condone the delay and consider the matter on merit.

8. The learned counsel for the applicant reiterated the submissions made in the OA and stated that the deceased employee worked from 1969 to 1996 at Northern Railway. He was lastly posted as Safaiwala at CHI/DEE, (Delhi Sarai Rohilla), New Delhi under Northern Railway and retired on 31.7.2010 after attaining the age of superannuation. He states that he has no documentary evidence to prove his claim and tried to prove his claim on the basis of copies of service record of the deceased employee, which are not legible. After perusal of these documents I fail to gather any evidence from these documents which suggest that the deceased employee was working from 1969 as Casual Labour. He further stated that the deceased employee worked as Casual Safaiwala from 22.6.1996 and after having completed 120 days of service on 11.12.1996, he was given temporary status w.e.f. 12.12.1996. Even in the screening held on 30.03.1998, he stood at Sl.No. 12 in the said panel list. As he has completed more than 10 years of continuous service, he was entitled for pension. The deceased was not getting pension, therefore, applications were made but no fruitful result was given by the respondents. The learned counsel further stated that though the respondents gave a letter dated 28.7.2014

stating that the deceased employee's service was of 9 years, 7 months and half day, therefore, he was not entitled for pension and accordingly there is no question of family pension. It is pointed out by the counsel for the applicant that the reason given by the respondents is highly arbitrary, unreasonable and not tenable in the eyes of law.

9. The respondents reiterated that the deceased employee was not fulfilling the required qualifying service for getting pension as his qualifying service was only 9 years, 7 months and half day. Whatever dues required to be paid has already been paid at the time of retirement of the deceased employee and he was satisfied and aware that he was not entitled for pension. The applicant has approached this Tribunal claiming that she is entitled for retiral benefits, family pension and medical card. The respondents pointed out that the record which was available was collected from the Northern Railway as per the information provided by the DPO, Northern Railway, New Delhi. It is the applicant who failed to make them party respondents and as per the information provided by them, it is clear that the qualifying service of the applicant is less than 10 years. From the Annexures annexed to the OA, it is clear that the deceased employee was appointed as Casual

Labour on 22.7.1996. It is evident from Ann.A/2 that the deceased was granted temporary status from 12.12.1996 and he retired on 31.7.2010. Therefore, it is clear that he has not completed qualifying service required for pension and therefore, there is no question of family pension and other reliefs to be given to the present applicant.

10. Considered the rival contention of parties.

11. So far as the submission of the respondents regarding non-joinder of necessary parties, it is seen that the applicant has made DRM, Northern Railway, New Delhi as respondent No.2 and reply on his behalf has been filed by the Divisional Personnel Officer, Northern Railway, New Delhi. Therefore, the above submission of the respondents cannot be accepted.

12. So far as the working of the deceased employee as Casual Labour from the year 1969 is concerned, there is no evidence available on record to suggest that he was working from 1969. The learned counsel for the applicant tried to establish his claim by producing copies of some documents relating to service record, but these are not legible. It was asked to the learned counsel to produce the originals or legible copies, but the learned counsel was unable to produce the same. In these circumstances, it

cannot be established that the deceased employee was working from the year 1969 as Casual Labour. But it is evident from the service record produced by the applicant at Ann.A/2 that the deceased employee was appointed as Casual Labour w.e.f. 22.7.1996 and he was granted temporary status on 12.12.1996. Screening was held on 30.3.1998 and result was declared vide letter No. APO/BKN No. P-4/220 E-01 Screening/Sav/dt. 12.5.1998 and name of the deceased stood at No.12 in the panel list. A revised panel was declared on 27.2.2003 and the name of the deceased was placed at Panel No.19 (Ann.A/2). The respondent No.2 in his reply has stated that the applicant has not placed on record any documentary evidence that his name appeared in the said panel. Respondent No.2 further submitted that vide letter dated 27/28.2.2003, the deceased was screened and not vide order dated 12.5.1998 and referred letter Ann.R/1. But on the face of Ann.A/2, which is copy of service record of the deceased employee maintained by the respondents themselves, it cannot be said that deceased employee was not in the panel at No.12 in the screening held and the result of which was declared vide APO/BKN letter dated 12.5.1998. The letter Ann.R/2 only suggest that the result of the persons named therein

was withheld due to administrative reasons and after approval of the competent authority, these names were required to be included in the panel dated 12.5.1998, in which name of the deceased employee appears at Sl.No.19. From the pleadings of the parties, it is not clear why the respondents have not operated the panel dated 12.5.1998 in which the deceased employee was at Sl.No.12 for a period of about 5 years i.e. upto 2003. If the panel dated 12.5.1998 could have been operated, the deceased employee could have completed 10 years of qualifying service upto his retirement on superannuation on 31.7.2010. It is not the case of the respondents that the earlier panel dated 12.5.1998 was cancelled. The deceased could not get the benefit of the earlier panel in which his name appeared at Sl.No.12 only because of the administrative reasons without any fault on his part. Therefore, I do not find any convincing ground on the part of the respondents in this behalf.

13. In these circumstances, I deem it appropriate to direct the respondents to reconsider the case of the applicant for family pension, retiral benefits etc. afresh on the basis of the record available with them and pass appropriate reasoned and speaking order taking into consideration the

observations made above within a period of three months from the date of receipt of copy of this order and communicate the same to the applicant.

14. The OA stands disposed of in above terms with no order as to costs.

**(HINA P.SHAH)**  
**Judicial Member**

R/