

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1287/2000

New Delhi, this 27th day of August, 2001

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Smt. Latifan
w/o late Shri Shammusdin
Vill. Pathanpura, PO Pepla Idrispura
Teh. & Distt. Meerut (UP) .. Applicant

(By Shri B.S.Maine, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi
3. Assistant Engineer
Northern Railway, Meerut Cantt. .. Respondents

(By Shri R.L. Dhawan, Advocate)

ORDER(oral)

Shri M.P. Singh

By filing this OA under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for the grant of family pension to her including arrears of pension with interest @ 18% thereon.

2. Applicant has also filed MA No.1607/2000 for condonation of delay in filing the OA. After hearing the learned counsel for the applicant and considering the grounds taken by the applicant for the delay, MA is allowed.

3. Brief facts of the case, as stated by the applicant, are that applicant's husband late Shri Shammusdin was initially appointed as casual Khalasi on 12.2.1969. He



was screened and regularised in terms of letter dated 19.3.2000. While working as Khalasi under Respondent No.3, he expired on 6.2.1990. On his death, respondents appointed the son of the deceased on compassionate grounds by order dated 29.6.1993. Though the son of the applicant was appointed on compassionate ground, respondents did not sanction family pension to the applicant. Applicant submitted her representation to Respondents No.2 and 3 for sanction of family pension to her as per Rules. No action was taken by the respondents on her representation. Thereafter, applicant served a notice on 15.10.98 on R-1 as well as Inspector of Works, Meerut under whom applicant's husband was working. R-3 has sent a reply to the applicant on 5.12.98 in which facts relating to the date of appointment, date of screening and date of death of the deceased were accepted but the respondent expressed his inability to grant family pension on the ground that all the papers and service book have been sent to R-2, who is the competent authority to take a decision in the matter. Aggrieved by this, she has filed this OA seeking the aforesaid reliefs.

4. Respondents in their reply have contested the case and have stated that the applicant's husband was working as casual labour with temporary status at the time of his death on 6.2.90 and the applicant is not entitled for payment of family pension under the Rules. The Hon'ble Supreme Court in the case of UOI Vs. Rabia Bikaner JT 1997(6) SC 95 has held that "no retiral benefits were available to the widow of a casual labour with temporary status who had not been regularised till his death". According to the respondents the widow of

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the casual labour with temporary status is not eligible for family pension in terms of para 101(1) read with Para 308 of the Manual of Railway Pension Rules, 1950. Moreover, the applicant did not approach the respondents for grant of family pension soon after the death of her husband on 6.2.90 and she is, therefore, not eligible for family pension under the Rules. In view of the aforesaid submissions, the applicant is not eligible for grant of family pension and the OA be dismissed.

5. Heard the contentions of the rival contesting parties and perused the records.

5. During the course of the arguments, the learned counsel for the applicant has drawn my attention to the decision of the Single Bench of this Tribunal dated 5.3.2001 in OA No.122/2000. This was a case of a substitute Safaiwala under the respondent-Railways, who died in harness after putting in service of 17 years from March, 1973 to July, 1990 and his widow was denied grant of family pension etc. Following the ratio of the judgement of the apex court in the case of Prabhavati Devi Vs. UOI (1996) 7 SCC 27, wherein it was held that on completing 6 months continuous service, the husband of the appellant became a temporary railway servant and when he died after one year's continuous service his widow and children became entitled to family pension, the aforesaid OA No.122/2000 was allowed by this Tribunal and the respondents were directed to grant family pension etc. to the applicant therein as per rules. This order was carried by the respondent-Railways before the Delhi High Court in CW No.3358/2001 but the same was dismissed in limine by an

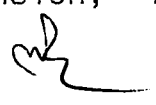
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order dated 24.5.2001, upholding the decision of this Tribunal. The Delhi High Court in the said CW has observed as under:

"Petitioner's case is that respondent's husband was neither empanelled nor screened by the Railways and, therefore, was not entitled to pension in terms of Supreme Court judgement in Rabia Bikaner's case. We fail to appreciate how deceased could not be screened or empanelled during his 17 years service and how it was open to petitioner-Railways now to turn round and deny the pensionary benefit on this plea. Matter is distinguishable and since impugned order proceeded on the Supreme Court judgement, it could not be faulted and is affirmed to dismiss this petition in limine".

6. On the other hand, the learned counsel for the respondents drew our attention to the decision dated 2.12.87 of the apex court in the case of Ram Kumar & Ors. Vs. UOI 1989(1) AI SLJ 101 wherein it was held that casual labour with temporary status cannot be allowed pensionary benefits which are not admissible as per rules. He has also referred to the judgement of the Calcutta Bench of this Tribunal dated 8.12.2000 in OA No.372/93 (Smt. Lakshmi Moni Sardar Vs. UOI) ATJ 2001(1) 603 wherein it was held that casual labours who have merely been granted temporary status are not eligible for family pension unless they are regularised against temporary/permanent post.

7. However, learned counsel for the applicant drew our attention to para 14 of Other Conditions of Service-Casual Labour of the Railway Establishment Rules wherein it has been stated that "Qualifying Service for Pension: Half of the service rendered by casual labour after attainment of temporary status on completion of 120 days continuous service will be allowed to count towards pension, if such service is followed by their



absorption as regular employees. This weightage for the past service would be limited from 1.1.61" (Issued by the Railway Board on 14.10.80).

8. Learned counsel has further relied upon the judgement of the apex court in the case of Ram Kumar & Ors. UOI 1996(1) AI SLJ 116 (decided on 6.9.90) wherein it was directed that "Railway Casual labourers attaining temporary status entitled for pensionary benefits as for orders issued by Railway Board be given that benefit". He also referred to the judgement of the AP High Court in Eluri Marthamma Vs. DRM, SC Rly (ATJ 2000(3) 238) decided on 6.12.99, wherein it was held that casual labour who had acquired temporary status before his death is entitled to family pension.


9. Though the respondents have averred that the deceased was not screened till the date of his death, we find from the letter dated 5.12.98 passed by R-3 in reply to the notice issued by applicant's Advocate that late Shri Shammusdin joined duty on 12.2.69, was screened vide letter dated 19.3.80 and he expired on 6.2.90. Thus, late Shri Shammusdin was in employment under the respondent-Railways for nearly 21 years. Therefore, the respondents cannot take the plea at this stage that the deceased was not screened due to over age till his death, his case was not considered by the screening committee and therefore the widow of the deceased is not entitled for family pension.

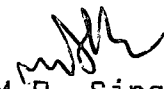
10. We are of the view that the present case is covered in all fours by the decision of this Tribunal in OA No.122/2000, which itself was a follow up of the



decision of the Hon'ble Supreme Court in the case of Prabhavati Devi (supra). Therefore reliance on the case of Rabia Bikaner (supra) by the respondents is not sustainable.

11. In the result, the OA is allowed. Respondents are directed to grant family pension etc. to the applicant in respect of her late husband Shri Shammusdin, as per rules. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.


(Shanker Raju)
Member(J)


(M.P. Singh)
Member(A)

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