

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A.No.2394/89

New Delhi, this the 24th day of May, 1994.

HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN

HON'BLE MR. P.T.THIRUVENGADAM, MEMBER(A).

1. Smt.Jai Bai widow of
Shiv Lal Meena Ex-Lab Khalasi,
R/O Village Itri Khara
Post Riwali District Sawai
Madhopur (Raj).
2. Murari Lal s/o Shri Shiv Lal Meena,
r/o Village Itri Post Riwali
District Swai Madhopur (Raj).
(By Shri V.P.Sharma, Advocate)

...Applicants.

Vs.

1. Union of India: through
The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Delhi Dn. New Delhi.
3. The C.M.T. Diesel Shed,
Northern Railway, Tuglakabad,
New Delhi.
(By Shri D.P.Kshtriya, Advocate)

...Respondents.

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM, MEMBER(A)

The applicant No.1 in this O.A. is widow of Shiv Lal Meena, Lab-Khalasi, Northern Railway, who died during duty hours on 6-12-83 as a result of train accident. This O.A. has been filed praying for the following directions:-

- (i) To grant family pension;
To sanction
- (ii) / appointment on compassionate basis to
the applicant No.2 who is /son of the
deceased employee; and
- (iii) to pass order to pay all terminal
benefits including the P.F., Compensation
of death on duty etc., to the applicant.

2. The applicants have produced a copy of order

issued on 3-6-82 (An.A.20) posting the applicant as Substitute Lab-Khalasi. At the time of death of the employee, he had put in service of one year and six months as Substitute Khalasi.

3. With regard to the eligibility for family pension/compassionate appointment of the applicants, the learned counsel for the applicants referred to para 1515 of Indian Railway Establishment Manual Volume I which reads as under:-

"1515.- Rights and privileges admissible to the Substitutes.- Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service...."

On the subject of rights and privileges for ^{temporary} railway servants, attention was drawn to paras 1501 to 1511 of the same Manual. These paragraphs relate to termination of service, pay and allowances, compensatory and local allowances, education allowance, medical attendance, leave rules, allotment of residences and recovery of rent, passes, advances and provident fund and gratuity. There is no mention with regard to the applicability of family pension or the eligibility for compassionate appointment in the above paragraphs which are included in the chapter on terms and conditions applicable to railway servants and substitutes in temporary service.

4. On the issue of applicability of family pension, it is the case of the ld. counsel for the applicant that it has been held that substitutes hold civil posts and hence the family pension scheme should be extended to cover them. Since both parties could not produce the relevant rules/instructions on the subject, we perused a copy of the Railway Services (Pension) Rules, 1993 issued by the

Ministry of Railways. In the preface to these rules, it has been mentioned that the present volume is a self contained compilation codifying all the pension rules applicable to railway servants in the form of statutory rules on the pattern of Civil Services (Pension) Rules, 1972 applicable on the civil side. It is also stated that the provisions contained in the Railway Services (Pension) Rules, 1993 are issued by the President of India in exercise of the powers conferred by him by the proviso to article 309 of the Constitution of India. These rules have been divided into three parts with part one covering the Railway Services (Pension) Rules and parts two and three covering Railway Services (Commutation of Pension) Rules and Railway Services (Extra-ordinary Pension) Rules, respectively. In the first part, there are 108 rules and Rule 75 relates to Family Pension Scheme for Railway Servants, 1964. Rule 3 relates to the definitions with regard to various terms used in the Railway Services Pension Rules. The relevant definitions are extracted as under:-

"(23) 'railway servant' means a person who is a member of a railway service or holds a post under the administrative control of the Railway Board and includes a person who is holding the post of Chairman, Financial Commissioner or a Member of the Railway Board but does not include casual labour or Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control."

x x x

"(26) 'substitutes' means a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service."

Sub section (1) of Rule 75 relating to family pension scheme for railway servants 1964 reads as under:-

"75.- Family Pension Scheme for railway servants, 1964:- (1) The provisions of this rule shall apply:-

- (a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and
- (b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees, 1964, contained in the Railway Board's letter No.F(P)63 PN-1/40, dated the 2nd January, 1964 as in force immediately before the commencement of these rules.

Note:- The provisions of this rule have also been extended from 22nd September, 1977, to railway servants on pensionable establishments who retired or died before the 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme."

5. Thus the scheme for family pension is applicable only to railway servants and by definition under item 26 under rule 3 of definitions, substitutes do not get covered by the family pension scheme.

6. It is not disputed that the husband of applicant No.1 was employed as a substitute at the time he died in December, 1983. In view of the pension rules enumerated above, the benefits of family pension cannot thus be extended to the family of the deceased person.

7. As regards compassionate appointment, the learned counsel for the applicant relied on the instructions issued by the Railway Board in their letter No.E(NG)II/84/CL/28 dated 4-5-84. These instructions read as follows:-

"Sub: Appointment on compassionate grounds cases of wards of casual labour.

As Railway Administrations are aware, the extant orders and instructions relating to appointment on compassionate grounds apply only to railway servants in regular employment on Railways. In this connection attention is invited to instructions contained in this Ministry's letter No.E(NG)III/78/RCI/1 dated 7-4-83.

2. In the PNM meeting held with the All Indian Railwaymen's Federation on the 6th/7th February, 1984 the Federation pointed out that in the case of casual labourers dying in harness, the General Managers had no powers to appoint their wards on compassionate grounds. They wanted that powers to make such appointment in appropriate case should be given to the General Managers. As a result of discussion of this demand in the aforesaid meeting, it has been decided that General Managers should be given powers to consider and decide requests for appointment on compassionate grounds of the ward of a casual labourer who dies due to accident while on duty provided the casual labourer concerned is eligible for compensation under the Workmen's Compensation Act, 1923. This power should be exercised by the General Manager personally and such appointments should be as casual labour (fresh hand) or substitute. The power to make such appointment should not be delegated to a lower authority."

It is to be noted that the above instructions are applicable in the case of casual labour and not substitutes and hence would not help the case of the applicants in this O.A. It was then argued that as per para 1515 of Indian Railways Establishment Manual already quoted supra, the benefit of compassionate appointment should be extended. Once again the provisions as applicable to temporary railway servants as enumerated in paras 1501 to 1511 of the same Manual were referred to but these paras could not advance the case of the applicant.

8. The respondents have taken a stand that the instructions issued by the Railway Board dated 4-5-84 are having prospective effect and would

not cover cases prior to this date.

9. We do not see any logic behind this stand since the contents of letter dated 4-5-84 are not applicable to substitutes. This has already been observed earlier by us.

10. On probing by us, we have come across Railway Board instructions issued on 31-12-86 and 7-10-93 on the subject of compassionate appointment. The letter of 31-12-86 issued vide Railway Board Establishment Circular No.256/86 has enlarged the scope of compassionate appointment as casual labour/substitute mentioned in the earlier letter of 4-5-84 to cover all cases of death of casual labour with temporary status and not only death due to accident while on duty. Further letter of 7-10-93 which has been issued by the Railway Board Establishment Circular No.147/93/Supplementary Circular No.9 to master circular No.16 reads as under:-

"Sub: Appointment on compassionate grounds-
case of widow/wards of substitutes
who die in service.

Attention is invited to Railway Board's letter No.E(NG)II/84/CL/28 dated 31-12-86 regarding appointment on compassionate grounds of wards of temporary status casual labour who die in harness, as casual labour (fresh face) or as a substitute.

2. Board desire to clarify that instructions contained in the above letter are also applicable to the cases of temporary status substitutes who die in harness."

From the above it is clear that the scheme of compassionate appointment was not available to the dependants of substitutes at the time when the husband of the applicant No.1 in this O.A. died in accident.

11. In the circumstances, relief No.2, namely, compassionate appointment for the son of the

deceased person cannot be granted since the instructions framed by the Department did not cover the case of applicant No.2.

12. As regards the relief relating to terminal benefits, it is the case of the applicants that no amount other than the funeral expense of Rs.1000/- was paid to them. As regards the claims for provident fund as well as workmen compensation, the position is not clear as to whether the payments, as due, have been made. It is hoped that any recovery of provident from the employee for the period he worked as substitute would have been paid to the family alongwith interest. Similarly, the compensation arising out of death on duty as admissible as per rules should have been paid to the family. If such payment has not taken place, we direct the respondents to arrange the payment due as per rules within three months from the date of receipt of this order.

13. On the facts and circumstances of this case, the O.A. is disposed of with the following directions:-

- (1) Reliefs claimed regarding family pension and compassionate appointment are disallowed.
- (2) Provident Fund and compensation due to death on duty- if admissible as per rules, should be arranged, if not already done, within three months from the date of receipt of this order.

14. There will be no order as to costs.

P.T. Thiruvengadam

(P.T. THIRUVENGADAM)
Member(A)

V.S. Malimath

(V.S. MALIMATH)
Chairman