

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1902/2004

New Delhi, this the 12th day of May, 2005

Hon'ble Shri S.K. Naik, Member(A)

Smt. Chander Wati
W/o late Shri Nihali
H.No.C-65, Jiwan Park, Pankha Road, New Delhi .. **Applicant**
(Shri S.K.Sawhney, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway, Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway, New Delhi
3. Divisional Personnel Officer(Settlement)
Northern Railway, New Delhi .. **Respondents**

(Shri Shailendra Tiwary. Advocate)

ORDER

Brief relevant facts of the case, according to the applicant, are that her husband late Shri Nihali, who was appointed as Khalasi under Senior Section Engineer(P.Way-II) of the respondent-Railway on 25.12.1986, expired on 1.11.1993. Applicant represented for release of final dues payable to her late husband but she received only an amount of Rs.6477 towards final settlement of dues on 10.2.1995. The grievance of the applicant is that she is entitled to receive DCRG and family pension in terms of Rules 70 and 75 of Railway Services (Pension) Rules, 1993. Though she made a representation to this effect, the same was rejected vide letter dated 25.11.2002 inter alia asking her to refund the Provident Fund already received by her. Though she claims to have submitted necessary papers on 21.4.2003 in reply to the aforesaid letter dated 25.11.2002, there is no response. Aggrieved, she has filed the present OA seeking a direction to the respondents to pay her DCRG and family pension from 2.11.93 and insurance amount due to her husband.

2. Learned counsel for the applicant has contended that the late husband of the applicant was appointed on 25.12.1986 and had been working in regular pay scale until his death on 1.11.1993 and therefore he was entitled to all benefits which are applicable to temporary railway employees. According to him, in terms of Rule 70(1)(b) of Railway Servants (Pension) Rules, 1993 he was entitled to DCRG at 12 times the emoluments. Further he contended that under Rule 75 of the Pension Rules the applicant is entitled to family pension @ 30% of the basic pay which was drawn by her husband alongwith dearness relief.

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3. Respondents have contested the OA. They have raised the preliminary objection that the OA is time barred inasmuch as the applicant has approached this Tribunal after a lapse of more than 11 years from the date of death of her husband.

4. In the reply it has been submitted that late Shri Nihali was engaged as an unscreened Khalasi during December, 1986 and unfortunately he expired while working as such on 1.11.1993. Contending that legal dues such as gratuity as per his entitlement and the balance in his GPF were paid to the legal heirs on 10.2.1995 soon after completion of the formalities after adjusting the loan amount, the counsel has submitted that the cause of action, if any, should have arisen from that date. The applicant therefore cannot raise the issue so belatedly.

5. On the merits of the case, the counsel has submitted that learned counsel for the applicant has tried to make out a case on the basis of the deceased employee having acquired the status of temporary railway servant. This, the counsel contends, is only an attempt to somehow make out a case as the deceased employee during his life time had neither represented for grant of temporary status nor claimed to be a temporary railway servant and therefore the widow of the deceased at this point of time cannot claim that her husband was a temporary railway employee. Referring to the citation relied upon by the learned counsel for the applicant in Ram Kumar Vs. UOI 1996(1) SLJ 116, the counsel has explained that what the apex court had stated therein was in the nature of a direction to the respondents to consider the case of temporary railway servant for grant of pension and did not lay down any law on the subject. He therefore contended that legal dues of the late railway servant having been calculated as per his entitlement under the Payment of Gratuity Act, 1972 and after taking into account the balance in his GPF account the respondents have adjusted the loan amount of the deceased employee. The remaining (balance) amount thereafter has been paid to the legal heirs as far as back on 10.2.1995. The applicant having availed the benefit has absolutely no case for claiming any further benefits such as pension etc. now, the counsel contends.

6. I have heard the learned counsel for the parties and have perused the records of the case.

7. It is an admitted fact that the husband of the applicant was engaged as an unscreened casual Khalasi and had expired while working in the same capacity. It has nowhere been claimed in the OA that the deceased had been conferred either temporary status or status of temporary railway servant while in service. Respondents on the other hand have taken the very plea that since he had put in less 10 years service to be eligible for grant of pension and that he died as an unscreened Khalasi, he was covered under the Payment of Gratuity Act, 1972. They have accordingly paid a sum of Rs.6477 to the legal heirs after adjustment of the loan amount, which was availed of by the deceased. The applicant having enjoyed legal dues of the deceased since 1995, in my view, cannot

at this stage raise the question of pension. The plea of having acquired the status of a temporary railway servant does not stand established. The citation of Ram Kumar (supra), which was only a direction for consideration, would not be applicable in this case.

8. Learned counsel for the applicant has not been able to establish that the deceased railway servant had acquired the status of a temporary railway servant to be eligible for consideration for payment of family pension. Rules 70 and 75 of the Pension Rules on which much reliance has been placed by the learned counsel for the applicant, I find, are applicable to only in case of regular railway servants. They are not applicable in case of the deceased husband of the applicant. Under the circumstances, I find no merit in this OA and the same is accordingly dismissed, with no order as to costs.

Naik
(S.K. Naik)
Member(A)

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