

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(11)

OA.2684/92

Dated the 13th December 1993.

Smt. Mukesh Saini
Widow of Late Shri Rajinder Singh Saini,
Khalasi, Office of the Accounts,
Northern Railway, Kishangang, Delhi.
By Advocate Shri B.S. Mainee.

Applicant

Versus

Union of India through

1. The General Manager,
Northern Railway,
Bareda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

By Advocate Shri I.C. Sudhir.

Respondents

Judgement (Oral)

(delivered by Hon. Member(J) Shri C.J. ROY)

Heard the learned counsel for both parties. The applicant is the widow of late Shri Rajinder Singh Saini, who worked as Khalasi under Assistant Engineer, Horticulture, Northern Railway, New Delhi. He was appointed as Casual Labour Mali Khalasi on 26-6-78 and according to the allegation in the OA at para 4.2, he acquired the temporary status and was given full pay scale of Rs.196/232 w.e.f. 15.4.82. Consequent upon recommendation of the IV Pay Commission, it was revised to the scale of Rs.750-940. The re-fixation of the pay scale is at Annexure A-1 (Page-8 of the paper book). Late Rajinder Singh Saini was also screened subsequently during his life time, ~~XXX~~ which was held on 24.4.81 to 2.5.89 and the result was declared on 10.7.89. A copy of the result is at Annexure A-2. The applicant's name is at Sl.No.727 (Annex-A3). This screening was done for filling up decasualised posts, sanctioned by the Railway Board against existing and anticipated vacancies as per letter dated 10.7.89. Based on this, Late Rajinder Singh Saini was screened and ^{was} declared successful. The applicant's averment is that as per Annexure A-3, her late husband had successfully completed the screening test. Vide Annexure A-4 it is stated, that in the letter addressed to the General Manager,

Northern Railway, New Delhi that the grant of family pension dated 10.1.92, in which it is stated that the said Shri R.S. Saini who was working as Mali Khalasi had expired on 1989, having passed the screening test. Therefore, the applicant claimed for compassionate appointment in a separate OA No.2411/90 which was decided in her favour and she was granted compassionate appointment in a Class-IV post in the same department. In the instant case, the applicant has prayed for grant of family pension and other benefits in accordance with law.

2. The respondents were given a last and final opportunity to file the counter, failing which, the right to file the counter would be forfeited. But the respondents did not file the counter and in the interest of natural justice, liberty was given to come with the counter and argue the matter. Shri I.C. Sudhir, counsel for the respondents filed the counter and as a measure of indulgence, it is taken on record and is permitted to argue the case. He raised two points to the effect that the applicant has not exhausted the departmental remedy and since the deceased R.S. Saini has not been absorbed permanently in the vacant post, he is not entitled for family pension.

3. Having heard both the parties and perused the documents on record, I think, the short point for decision is ^{whether} ~~/xxx~~ the applicant is entitled for family pension. There is no dispute that the applicant is the widow of Late Shri R.S. Saini since some of her retiral benefits have been paid to her and compassionate appointment has also been given to her. On her filing the OA 2411/90, she has been given a Class-IV post on compassionate grounds. This aspect is also not disputed. With reference to the objection that the departmental remedies have not been exhausted by the applicant, the applicant cites the Annexure A-4 representation addressed to the General Manager, Northern Railway, New Delhi dated 10.1.92, which has not been disposed of yet. This OA is filed on 19.10.92 after waiting for six months for reply from the respondents. Therefore, the ground

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raised that the applicant has not exhausted the departmental remedy cannot be sustained. The other objection raised by the respondents/^{is} that the deceased R.S. Saini had not been absorbed during the lift time on the permanent post and therefore he is not entitled for the family pension. It is pertinent to mention here that in the counter, it is not denied that the allegation made in the OA at para 4.2. that the applicant has acquired temporary status. Therefore, the second objection also cannot be sustained. The fact that he ^{was} screened during the life time and was declared successful for the vacant post is itself a proof that, had he been alive, he would have been absorbed. The counsel for the applicant has cited the case of Malati ^{and} others versus Union of India (ATJ (12) 1992 page 543 decided in the Calcutta Bench of the Central Administrative Tribunal wherein, it has been held at para-28, that the applicants were casual labourers who were working for more than 13 to 18 years acquired temporary status but were not regularised till their death. It is held that the widows of the casual labourers are entitled for the family pension. Subsequently another judgement was also cited, in which, in the case of B.S. Rehills versus U.O.I. (ATC 1992(22) page 321) decided in the Principal Bench of the Tribunal, it was held at para 10, 13 and 14 by a Division Bench, that the pension is no longer a compensation for a loyal service but it is granted as an economic security. After 25 years of service, the applicant cannot be denied just because he is not confirmed due to Government fault. It is further held that the applicant has been confirmed without any screening. But in the instant case, the applicant has been screened and declared successful. This ^{support} case completely ~~separates~~ the case of the applicant. In the case of Smt. Juhnu Bala Versus UOI (ATJ 1993 (1) page 537) in OA 9/92 decided on 30.12.92 by the Calcutta Bench of the Tribunal, it was observed that an employee who worked for 22 years, acquires temporary status after retirement.

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4. In the conspectus of the above facts and circumstances of the case, I feel the applicant has made out a case in such a fashion not to leave any doubt in my mind to give the benefit of family pension to her. I direct the respondents to grant the family pension to the applicant herein, calculated from the date of death of late Rajinder Singh Saini, ^{my (attendant widow)} as admissible in accordance with rules, within a period of three months from the date of communication of this judgement. The application is allowed. No costs.

History
(C.J. ROY)
MEMBER (J)
13.12.93.