

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.2313 of 1993

This 10th day of June, 1994

HON'BLE MR. B.K. SINGH, MEMBER (A)

Smt. Kunjan Bai,
wife of late Shri Siya Ram Dubey,
C/o Shri Shiv Ram Dwivedi,
13, Safdar Hashmi Marg,
New Delhi

Applicant

By Advocate: Shri H.P. Chakravorti

VERSUS

Union of India, through:

1. The Secretary,
Ministry of Railways
Railway Board,
Rail Bhavan,
New Delhi.
2. the General Manager,
Central Railway,
Bombay V.T.
3. The Divisional Railway Manager,
Central Railway,
Jhansi.

Respondents

By Advocate: Shri H.K. Gangwani

ORDER

(By Hon'ble Mr. B.K. Singh, Member (A)):

This O.A. No.2313/93 is directed against non-release of Pension, Gratuity, Life Insurance Scheme, Provident Fund, Leave Salary, and other dues to the applicant as also appointment on compassionate ground due to the sudden death of her husband in harness.

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2. The material averments in the O.A are these. The husband of the applicant rendered more than 10 years service as casual Gang Man under Permanent Way Inspector (South) Central Railway, Jhansi Division. He was murdered in a Railway quarter when he was on duty on 18.3.1984. In the record he has been shown as Monthly Rated Casual Labour (MRCL). In the application the length of service of the deceased is mentioned as more than 10 years, and the averment is that the records are with the respondents and that after verifying the factual position the payments due to him may be released.

3. At page 13 of the annexure A-5 it has been stated that the husband of the applicant had been granted temporary status. On the death of the husband of the present applicant, she was appointed as seasonal worker against the post of waterman. The learned counsel for the applicant referred to para 2005 of the IREM which enumerates the benefits which will accrue to a person after grant of temporary status. It is further stated that the husband of the applicant was declared medically fit vide certificate No. 07605. His PF Account No. was 03640235. Again it was emphatically said that all the

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relevant papers are with the respondents and that he had rendered 10 years as MRCL before being murdered on 18.3.1984. It was further argued that many persons junior to him were absorbed on regular basis as Gang Man by the time of his death. It is further stated that he had been screened for being regularised before his death. The learned counsel quoted the circular issued by the Railway No.F(E)/78.PL.1/12/79 dated 19.12.86 (annexure A-9 of the rejoinder). He argues ^{that} this circular is entirely relevant in the applicant's case. The circular lays down that family pension scheme will apply ^{in case of} ~~to~~ a railway servant, even a casual worker, who has put in even less than one year's continuous service at the time of his death in harness. In this case he also cited a judgment of Principal Bench in the case of Mukesh Saini v. Union of India decided on 13.12.93

4. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for. ~~Heard~~ the learned counsel, Shri H.P. Chakravorti for the applicant and Shri H.K. Gangwani for the respondents.

5. On the basis of circulars quoted above by the learned counsel for the applicant, it was said that the husband of the applicant was in the employment of the Railways for a pretty long time and he had been granted temporary status. He had been medically examined and

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given a certificate of fitness. The deceased was allotted a GPF No. and deductions made from his salary were credited to it. These are the criteria for grant of family pension and on this basis the learned counsel for the applicant argued that the deceased's widow, the present applicant, is entitled to family pension and the respondents should also pay gratuity and provident fund etc. credited to his (G.P.F.) accounts, as indicated in the OA and also pointed ^{out} during the course of the hearing.

6. It was further stated that in view of the murder of the applicant's husband, she is entitled to employment on compassionate grounds. She has also put in 450 days service with the Railways in different spells. In this connection the applicant's counsel quoted some of the spells. She worked for 41 days from 9.4.88 to 19.5.88; for 67 days from 23.5.88 to 28.7.88; for 119 days from 1.4.89 to 28.7.89 and her ^{last} engagement for 40 days was till 22.7.91 and since then she has not been engaged and not a single penny has been paid to her. She has made a prayer for her re-engagement on the basis of the various spells of work put in by her in the Railways. The total days put in (450 days) will also entitle her for grant of temporary status as laid down in chapter 20, para 2005 of the IREM Vo.2.

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7. The learned counsel for the respondents rebutted the contentions of the learned counsel for the applicant. While arguing, he asserted that the application is badly hit by limitation as defined under Section 5 of Limitation Act and therefore it is not maintainable because the grievance of the applicant arose in 1984 and the CAT came into being w.e.f. 1.11.1985 and the matter should have been agitated for grant of reliefs at the appropriate time. It was further argued that no MA has been filed by the applicant for condonation of delay and unless sufficient and reasonable cause is shown, and unless the delay is condoned by a specific order of the Tribunal, Law of Limitation will apply. It was further argued that order of the Chairman under Section 25 of CAT Act has not been taken in this matter for being adjudicated upon in the Principal Bench, since the husband of the applicant was working in Jhansi at the time of his death and Jhansi (Lalitpur) is within the territorial jurisdiction of CAT, Allahabad Bench, therefore, this application does not lie in the territorial jurisdiction of the Principal Bench. Thus, both on account of limitation and territorial jurisdiction this application cannot be heard by the Principal Bench, Delhi.

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8. In view of the aforesaid defects and in view of the ruling of Hon'ble Supreme Court in the case of State of Punjab v. Gurdev Singh, (1991) 4 SCC, the application does not lie. In this case ratio has been established that a party aggrieved by an order has to approach the Court for relief of the declaration that the order against him/her is not operative and not binding upon him/her within the prescribed period of limitation since after the expiry of statutory time limitation the Court cannot give declaration sought for. The respondents have also denied having received any representation from the applicant and therefore the remedy to the applicant has also not been availed of and the cause of action which arose in 1984, even after filing representation and waiting for six months, should have been filed within one-and-a-half years. This has not been done and as such this application is barred by limitation. Since no application has been filed for condonation of delay under Section 21, we do not find any explanation for the delay involved in filing this case. The same principle was propounded in AIR (1990) Sc 10, SS Rathore v. State of M.P. where it has been held that the cause of action shall be taken to arise on the date of the order of higher authority. Since no representation was filed in

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the instant case, the question of order of higher authority did not arise. Similar view was propounded in JT (1992) 37 SC 322, Bhoop Singh v. Union of India.

9. Thus, there is no doubt that the application is highly belated and barred by delay and laches and no petition has been filed for ^{Section 5 of the} condonation of delay under Limitation Act ^{and also} under Section 20 of CAT Act. The hurdle of territorial jurisdiction has also not been crossed nor permission of Chairman has been obtained for adjudication of this case in the Principal Bench. The application is, therefore, dismissed on the ground of delay and laches, for which no explanation has been offered.

10. While parting with this case, the respondents are directed to consider the case of the applicant for release of family pension, gratuity, GPF etc. on her ~~f~~ furnishing a death certificate in respect of her husband as the same is not on the record. Only post mortem report has been placed on record. The law also lays down that if a man does not appear within 7 years, he will be deemed to be dead. Notwithstanding this provision of law, the applicant is directed to furnish a copy of the death certificate to the respondents who will, in turn, process the case for grant of benefits due to the applicant.

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11. As regards re-engagement of the applicant, if any junior to her has been appointed, her case also should be considered in preference to the juniors, if she has put in 450 days by the time she was disengaged.

12. With these directions this O.A. is finally disposed of with no orders as to costs.


(B.K. Singh)
Member (A)

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