

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 279 of 1996

Allahabad this the 3rd day of June 1998

Hon'ble Mr. S. K. Agarwal, Member (J)

Rukmini w/o Late Misri Lal, R/o 65/193, Moti Mahal,
Kanpur.

Applicant

By Advocate Sri K. S. Saxena

Versus

1. The Union of India through D.R.M., Northern Railway,
Allahabad.
2. The Medical Superintendent, Northern Railway, Kanpur.
3. The Chief Health Inspector, (Colony), Northern Railway
Kanpur.

Respondents

By Advocate Sri S. K. Jaiswal

O R D E R

By Hon'ble Mr. S. K. Agarwal, Member (J)

In this O.A. filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has prayed
to give directions to the respondents to pay the retiral
benefits of Late Misri Lal, Bishti - husband of the applicant
with interest and grant the applicant family pension as per
rules.

Sudarshan
3/6/88

2. In brief the facts of the case as stated by the applicant are that the husband of the applicant was appointed as ~~Bhisti~~ in the Sanitation Branch of Northern Railway at Kanpur on 14.5.50 and in due course of time, he was regularised against Class IVth post of Bhisti under the Chief Health Inspector(Colony), Kanpur and was allotted P.F.No.425665/20958. ^{husband of the} It is submitted that the applicant died while in service after prolong sickness on 07.7.86 and immediately after the death of the applicant's husband, settlement papers were filed to the respondents for early payment of settlement dues as well as family pension but office of Chief Health Inspector, Kanpur - respondent no.3 detained the settlement papers and did not forward them to the D.R.M. office. The applicant approached the Secretary, N.R.M.U. Kanpur, Headquarters Branch and thereafter the applicant is regularly contacting the authorities concerned in person as well as sending the representations to them for early payment of settlement dues. The applicant also addressed the Ministry of Railways, Government of India, New Delhi but no intimation has been received by the applicant from the side of the respondents so far. It is, therefore, requested that necessary directions may be given to the respondents to settle the dues of the Late Mishri Lal- husband of the applicant and to grant family pension to the applicant as permissible under the rules.

Surajal
3/6/98

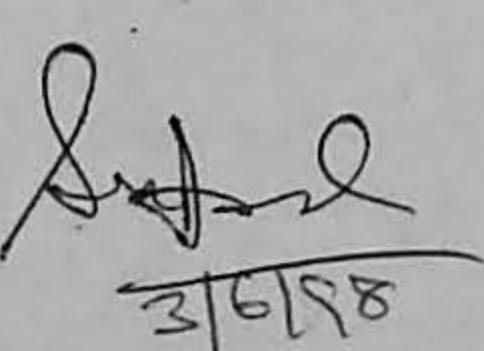
3. A counter-reply has been filed by the respondents. It is submitted that Late Mishri Lal was on unauthorised absence from his duty w.e.f. 29.9.75 till his death and his absence from duty exceeded 05 years. As such, he deemed to have resigned from Railway Service with effect from 28.9.80 under Rule 732 of Railway Rules. It is also submitted that the death of Mishri Lal cannot be treated as "death while

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in service". Moreover, the applicant - Smt. Rukmani Devi has not submitted her identity as the widow of Late Mishri Lal. The amendment in the provision of Rule 732 of Railway Rules was made by the Railway Board vide letter no. E(P&A)1-84/CPC/LE-3, dated 23.3.85 is not applicable in this case. It is submitted that on verification of record, it is revealed that services of Late Mishri Lal had already been terminated on account of deemed resignation due to his absence from service exceeded 05 years. In view of this, the applicant is not entitled for any family pension or other death settlement benefit except P.F. amount. Since the applicant has not been produced her identity, no action could be taken for arranging payment of P.F. amount to the lawful claimant. It is, therefore, requested that this O.A. may be dismissed with cost.

4. I have heard the learned lawyer for the applicant and learned lawyer for the respondents and have perused the whole record.

5. It is submitted by the learned lawyer of the applicant that Late Mishri Lal died on 07.7.86 while in service after prolong sickness and his services cannot be terminated without making the proper inquiry. It is submitted by the learned lawyer of the respondents that the applicant - wife of Late Mishri Lal Soni is not entitled to family pension as per rules. It is further submitted that the applicant is not entitled to any relief sought for.


3/6/88

6. As regards the first contention is concerned, it is an admitted fact that Late Mishri Lal Soni - husband of the applicant died on 07.7.86 after a prolong sickness. It is also an admitted fact that Late Mishri Lal Soni

was appointed as Bhisti and later on regularised as Class IVth in Group 'D'. In Rule 732 of Indian Railway Establishment Code Volume II following have been substituted vide authority no.

"Note(2) - Where a temporary railway servant fails to resume duty on the expiry of the maximum period of extra-ordinary leave granted to him or, where he is granted a lesser amount of extra-ordinary leave than the maximum amount admissible, and remains absent from duty for period which, together with the period of extra-ordinary leave granted, exceeds the limit upto which he could have been granted such leave under sub-rule(1) above, he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be removed from service after following the procedure laid down in the Discipline and Appeal Rules for Railway Servants."

7. It is held in 'M.D. Sirajuddin Vs. Union of India and Ors. A.T.J. 1996(1) Page 560' (O.A. 935/91, decided on 19.3.1995, by Calcutta Bench) that in case of unauthorised absence from duty for a period of more than 5 years, Government has the right to terminate the service of the employee but for that purpose a disciplinary proceedings in accordance with the rules must be held. Rule 2014 of Railway Establishment Manual also provides as follows;

"No Railway Servant shall be granted leave of any kind for a continuous period exceeding five years.

(2) Where a railway servant does not resume duty after remaining on leave for a continuous period of five years or where a railway servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which, together with the period of leave granted to him, exceeds five years, he shall, unless the President in view of the exceptional circumstances of the case, otherwise determines, be removed from service after following the procedure laid down in the Discipline and Appeal Rules for railway servants."

Sudesh
3/6/28

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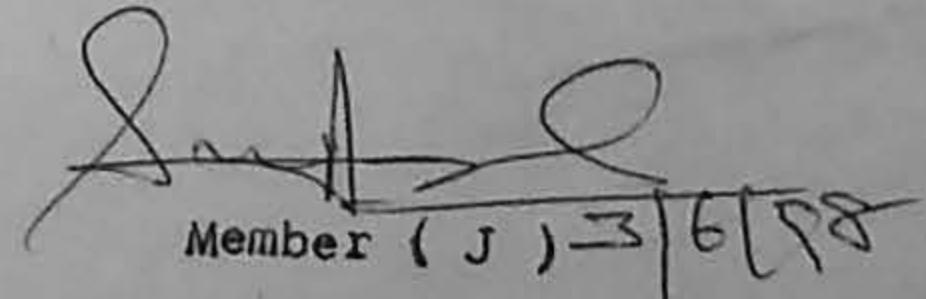
8. On the perusal of these rules and legal position as mentioned above, I am of the view that the services of the applicant have not been terminated in accordance with the rules, therefore, his death can only be said to be while in service.

9. As regards family pension is concerned, it is an admitted fact that Late Mishri Lal Soni was regular Class IV employee whose services were regularised much earlier than his death, therefore, on the basis of the law laid down in the case of 'Ham Kumar Vs. Union of India (1988) 2 SCR 138' and law laid down by the Hon'ble Supreme Court in the case of 'Union of India and Ors. Vs. Rabia Bikaner etc. Civil Appeal No. 4373 of 1997' , it has been held that the widow of the deceased employee is entitled to pension if he dies after one year of his regularisation. In this case, definitely the death of Late Mishri Lal Soni took place after one year of his regularisation, therefore, widow is entitled of pensionary benefits.

10. On the basis of foregoing discussions, this O.A. is allowed and the respondents are directed to pay ;

1. All the dues payable to the employee after his superannuation to the applicant
2. Family pension to the applicant as per Railway Rules strictly in accordance with the law.

11. In the circumstances of the case, parties shall bear their own costs.


Member (J) - 3/6/98

/M.M./