

Central Administrative Tribunal  
Allahabad Bench  
Allahabad

Original Application No. 375 of 1996

Allahabad this the 16<sup>th</sup> day of Feb. 1999

Hon'ble Mr. S.L. Jain, Member ( J )

Smt. Samwari Devi, Widow of Late Krishna Prasad,  
R/o Village Singaron, P.O. Aunta, District Allahabad.

Applicant

By Advocate Sri Anand Kumar

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.

Respondents

By Advocate Sri G.P. Agrawal

O R D E R

By Hon'ble Mr. S.L. Jain, Member ( J )

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 for a Writ of mandamus directing the respondents to grant family pension with all consequential benefits arising out of death of the deceased Krishna Prasad.

2. There is no dispute between the parties

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in respect of the fact that the applicant is the widow of Late Shri Krishna Prasad who was working as 'Substitute Khalasi' under P.W.I., Northern Railway, Allahabad who died due to Heart Attack on 18-11-1984, was appointed as 'Substitute Khalasi' in Railway on 29.9.1997, was screened for permanent regular service in 1983, but the panel/result of the screening was declared on 05.1.1985 by A.P.C., Northern Railway, Allahabad and the name of the applicant was placed at sl.no.26 in the aforesaid panel. No family pension is paid to the applicant.

3. The applicant's case in brief is that due to lapse on the part of the Railway Administration, the result of aforesaid screening was not declared in time. It was deliberately declared after a gap of about two years and due to this reason, the services of Late Shri Krishna Prasad were not regularised who died as C.P.C./temporary employee. Late Krishna Prasad worked about 8 years continuously. Applicant is entitle to the family pension, Hence, this O.A. for the above said relief.

4. The respondents defence is that deceased Krishna Prasad was not a regular Railway Servant, when his services were terminated on 18.11.1994, he was holding the status of substitute at the time of his death, who is not entitled for pensionary benefits. The benefit of regularisation cannot be provided retrospectively. The claim for family pension in respect of a substitute employee is not permissible under the law. Moreover the applicant in O.A.957/91

has not sought the relief of family pension. Hence her claim is barred under Order 2 Rule 2 C.P.C.. The claim is barred by time also. Hence prayed for dismissal of O.A. alongwith cost.

5. Judgment of O.A. No. 857/91 annexure A-VI is on record and on perusal of the same I found that the relief claimed was only for compassionate appointment of Chandra Shekhar Prasad, the son of Late Shri Krishna Prasad.

6. The learned counsel for the respondents argued that Under Order 2 Rule 2 C.P.C., applicant was bound to include the whole of the claim which she was entitled to make in respect of the cause of action and she failed to make the claim, hence she is precluded from perusing this claim, I do not agree with the learned counsel for the respondent in this respect for the reason that Central Administrative Tribunal (Procedure) Rules, 1987- Rule 10 provides that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequent to one another. The relief of compassionate appointment and the relief of family pension are not consequential to one another. They are different reliefs, hence, applicant was not legally entitled to claim two independent reliefs in the said O.A.

7. The learned counsel for the respondents argued on the basis of Section 11 of Civil Procedure

Code that the matter which might and ought to have been made the grounds of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. As stated above, in the earlier O.A. No. 957/91 the relief sought was only compassionate appointment and hence question of family pension was not the subject matter of the said O.A. Hence principle of constructive resjudicata as mentioned under Section 11 of Civil Procedure Code does not apply to the present case.

8. The learned counsel for the applicant relied on 1996 Supreme Court Cases (I&S) 369 Prabhavati Devi Vs. Union of India and Others and argued that if a 'substitute' completes six months continuous service, he is entitled to a status of temporary Railway servant and consequent to it his widow and children becomes entitled to family pension. I do agree with the learned counsel for the applicant in view of the said proposition of law decided by the Apex Court of land and hold that Late Shri Krishna Prasad who was appointed as substitute on 29.9.1977 worked till 18.11.1984 for a period of more than seven years, acquires the status of temporary railway employee. Hence, his widow and children are entitled to family pension.

9. The claim of family pension which is a continuing cause of action is not barred by any provision of law.

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10. The applicant is entitled to family pension on the death of Late Shri Krishna Prasad. The matter has already been delayed by more than 14 years. This is a fit case where the applicant is entitled to an interest @ 12% per annum since 18.2.1985 after 90 days of the death of Late Shri Krishna Prasad in which the claim of family ought to have been decided.

11. In the result, O.A. is allowed. The respondents are ordered to;

- (i) decide the amount of family pension,
- (ii) pay the same to the applicant within a period of three months alongwith interest @ 12% per annum on every amount payable at the end of each month alongwith,
- (iii) pay the cost of this petition amounting to Rs.650/- (legal practitioner fee Rs.500/- plus Rs.150/- other expenses) within a period of three months.

It is made clear that no extention of time shall be made in respect of compliance of the above order.

*J.V.M.* —

Member ( J )

/M.M./