

(12)

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.**

ORIGINAL APPLICATION NO. 927 OF 2005.

ALLAHABAD THIS THE 30<sup>th</sup> DAY OF April 2008.

**Hon'ble Mr. Justice Khem Karan, Vice Chairman.**

Smt. Mandodari Devi aged about 62 years, widow of late Ram Prakash R/o Village: Rudai Ka Pura, Post: Bihasara, District Mirzapur.

.....Applicant

(By Advocate: Shri Sudama Ram)

Versus.

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Sr. Divisional Personnel Officer, North Central Railway, Allahabad.
4. Sr. Divl. Finance Manager, N.C. Railway, Allahabad.

.....Respondents

(By Advocate: Shri D.S. Shukla)

**ORDER**

The applicant has prayed for following relief(s):-

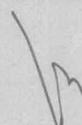
- "(i) *The Hon'ble Tribunal may graciously be pleased to direct the respondents to pay the applicant the balance DCRG, Leave encashment, Group Insurance payable to the applicant on calculating Full 18 years of service of her husband for the purpose of pensionary benefits as per Law.*
- (ii) *The Hon'ble Tribunal may graciously be pleased to direct the respondents to pay the applicant 18% compound interest with compensation on the delayed payment on the principal amount of family pension and on other payable dues admissible to the applicant from the date it became due for the date of her husband i.e. from 3.3.1996 and further interest on the interest which accrued on the delayed payment of the principal amount.*
- (iii) *Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.*
- (iv) *Cost of the Application may also be awarded".*

2. Brief facts giving rise to this O.A. are as under:-

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Admittedly applicant's husband late Ram Prakash worked as Gangman with temporary status and before his services could be regularized, he expired. Applicant staked claim for grant of family pension and also filed one O.A. NO. 1537/99, which this Tribunal allowed vide order dated 2.4.2003, directing the respondents to grant family pension to her with effect from the date of death of her husband. Writ Petition NO. 34849 of 2003 filed by the respondents against the said decision, was also dismissed vide order dated 25.1.2005 (Annexure A-2). While contempt proceedings were pending here, for disobedience of orders dated 2.4.2003, the respondents granted family pension to her vide PPO NO.0196030948 dated /10.2005 with effect from the due date. She also got arrears of family pension on 5.5.2005. She is getting family pension. This O.A. has been filed for interest on delayed payment of arrears of family pension.

3. The respondents have filed reply, resisting the claim of the applicant for interest on delayed payment of arrears of family pension. They say as per the relevant rules, the applicant was not entitled to family pension, as her husband was not in regular employment of the respondents and as the family pension has been given in compliance of the direction of the Tribunal, so the question of payment of interest does not arise.
4. I have heard Shri S. Ram, learned counsel for the applicant and Shri D.S. Shukla, learned counsel for the respondents.
5. Relying on Bajnath Gupta Vs. State of Bihar (1996) 10 SCC page 297, decision dated 21.3.2005 of this Bench in Smt. Nanhki Devi Vs. Union of India and others (in O.A. NO.847/04), decision of Hon'ble High Court in writ petition NO. 21313 of 2000 in Radhika Devi Vs. Union of India and others and also of Apex Court for O.P. Gupta Vs. Union of India and Ors 1987 SCC (L&S) 400 and Gorakhpur University Vs. Dr. Shitla Prasad Nagendru 2001 SCC (L&S) 1032, Shri S. Ram has argued that applicant is entitled to

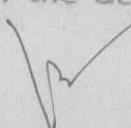


interest on the delayed payment of arrears of family pension, as according to him it was owing to lapses on the part of administration that she could not paid family pension in time.

6. On the other hand, learned counsel for the respondents has tried to say that since under the Rules, the applicant was not entitled to family pension as her husband was a casual employee with temporary status and as the family pension has been paid in compliance of the directions of this Tribunal, so the question of payment of interest does not arise.

7. I have considered the respective submissions. It is true that this Tribunal allowed interest to the applicant in O.A NO. 847/04 on delayed payment of arrears of family pension and it is also correct that Hon'ble High Court, Allahabad has also upheld the claim of interest on delayed payment of amount of family pension in Radhika Devi's case (supra). It has been ruled by the Apex Court in Baij Nath Gupta's case (supra) that the question of payment of interest on delayed payment of pension will depend upon the answer to the question whether it was due to any latches or slackness on the part of administration that the payment could not be made in time and <sup>if the</sup> answer comes in affirmative, interest will be payable. Let us see as to whether the delay in payment of amount of family pension to the applicant was due to lapses on the part of respondents and if it was so, the applicant will be entitled to interest on delayed payment of arrears of family pension.

8. The question as to whether wife or other dependant of the deceased casual workers with temporary status, will be entitled to family pension remained subject matter of debate, <sup>till</sup> it was finally settled by a Larger Bench of this Tribunal (comprising of five Hon'ble Members) on 5.9.2007 in O.A. NO. 1722/06. The Larger Bench ruled "legal representatives of the casual labourer may not be entitled to the benefit of family pension although the deceased



employee might have attained temporary status in accordance with relevant Rules. It is essential that before his death, he should have been subject to screening and should have been regularized in Service, which only enable to legal representatives to claim the benefit of family pension. This will again subject to the condition that was laid down under the provision of Railway Services (Pension) Rules 1993 or Circular issued from time to time".

9. In view of the above it is difficult to say, the Administration was at fault in not granting the family pension to the applicant, soon after the death of employee concerned. They have granted family pension in compliance of certain directions of the Tribunal. So if the ratio in Baijnath's case is applied to the facts in hand, the question of grant of interest on delayed payment of family pension should not arise. The applicant will not get the benefit of certain decision where interest was allowed on delayed payment of family pension as each case has to be decided in the light of its own facts and circumstances.

10. There is another angle also. When the applicant filed first O.A for grant of family pension, she could have asked for interest on the arrears of family pension. If she did not ask for interest or if she asked for interest but the same was not allowed, she will not be entitled to bring another O.A. only for the purpose of interest. That perhaps will be hit for the principles contained in Order 2 Rule 2 of Code of Civil Procedure.

11. So I am of the view that the applicant is not entitled to the interest on delayed payment of arrear of family pension. The O.A being devoid of merits, is dismissed. No costs.

2 JUN 2008  
30.4.08

Justice Khem Karan,  
Vice Chairman.

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