

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 2nd day of December 1996.

Original application No. 1605 of 1994.

Hon'ble Mr. D.S. Baweja, AM

Srimati Rajpati, widow of late
Sri Rameshwar, Railway Quarter
No. 1B-D, Railway Station, Faphund
Dist. Etawah.

..... Applicant.

C/A Sri S.L. Kushwaha

Versus

1. Union of India through Secretary
Railway Board, New Delhi.
2. Divisional Railway Manager, Northern
Railway, Nawabyusuf Road, Allahabad.
3. Divisional personal Officer, Northern
Railway, Nawab Yusuf Road, Allahabad.
4. Assistant personal Officer, Northern
Railway, Nawab Yusuf Road, Allahabad.

..... Respondents.

C/R Sri D.C. Saxena

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed under Section 19 of Administrative Tribunal Act 1985, praying for direction to the respondents to grant family pension to the applicant with effect from 1976 or any later date as deemed fit by the Tribunal.

2. The applicant's husband late Sri Rameshwaram was appointed as a substitute Porter on 14.4.73 under Goods

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Inspector, Northern Railway, Kanpur under Allahabad Division.

After working continuously for one year, the applicant was allotted Provident Fund Account No. and also his service sheet was prepared. ^{While in service he died on 3.8.75} The widow, the applicant was appointed on compassionate ground as a substitute Waterwoman as per letter dated 22.12.1974 and since then she is continuing till date. She approached in 1990 the concerned authorities for grant of ex-gratia payment. She was advised in reply to submit affidavit with full service particulars of her late husband. She submitted the details vide letter dated 17.10.92. In response to this she got a reply dated 15.5.94, advising that she is not entitled for ex-gratia payment as her husband was appointed after the introduction of pension scheme since 16.11.57. In reference to this letter, the applicant applied for family pension vide letter dated 10.6.94. She got a reply to this representation by a letter dated 21.9.94 (A-2) rejecting the claim on the ground that her husband was only a substitute Porter. Being aggrieved she has filed the present application on 17.10.94.

3. The applicant has based her claim for family pension linking the following documents:-

- (a) Railway Board's letter dated 18.5.72 (Annexure-A-7),
- (b) Para 75 of Railway Services (Pension) Rules 1993 (Annexure-A-8).
- (c) Railway Board's letter dated 27.2.79 (RA-1).
- (d) Railway Board's master circular No. 55/94. ^Q ~~(RA-4)~~
- (e) Railway Board's order No. 17/94 dated 30.3.94 ^Q ~~(RA-4)~~.

The applicant has cited in her support the judgement

dated 16.11.95 of Hon'ble Supreme Court "Prabha Devi Vs. U.O.I." (1996) 32 ATC 515.

4. The respondents have opposed the application, submitting that she is not entitled for family pension as late Sh. Rameshwaram had been not regularised before his death and he was still working as a substitute and therefore not entitled for family pension as per the extant rules. The respondent have relied upon the judgement of Principal Bench in "Smt. Jai Bai and another Vs. U.O.I." decided on 24.5.94 (1194) 28 ATC 202.

5. The applicant has filed the rejoinder reply countering the averments of the respondents and reiterated the grounds advanced earlier in the application.

6. I have heard the learned counsel of the parties. ~~He~~ have carefully considered the pleadings made during the hearing and the material placed on record.

7. From the facts brought on the record ~~we~~ note that the late husband of the applicant was appointed as a substitute vide letter dated 12.4.73 (Annexure-A-3) against the existing vacancy. The letter states that the appointment is purely temporary and the services may be terminated anytime without notice as and when surplus staff are available for absorption or the post is abolished. He continued as a substitute ^{without break} continuously for a period over two years till death. As per the respondents, Sh. Rameshwaram was not regularised at the time of his death. The applicant has also not brought any document on record to prove that her husband had been regularised in service.

(X)

The applicant has brought on record the allotment of Provident Fund Account No. from 1.5.74 after completion of one year and therefore contending that he was a temporary employee at the time of death.

8. Keeping the above admitted status of the applicant, the short question to be determined is whether the applicant (Widow) is entitled for the family pension. The respondents have contended that the applicant's late husband had not been regularised at the time of death and therefore widow is not eligible for the family pension as per the rules. The respondents have not quoted the relevant rules. In respect of the rules cited by the applicant and detailed in para 2 above, while replying to paras 4 (X VI, X VII) and (XVIII) of the application wherein these rules have been referred to, the respondents have simply stated that these paras do not call for any comments as being matter of records. This implies that the respondents admit the existence of these circulars. The respondents have relied upon the judgement "Jai Bai Vs. U.O.I." 1994 (28) ATC 202 of Principal Bench, New Delhi. We have gone through this judgement carefully. In this case the applicant was working as a substitute Khalasi and at the time of death had a service of one year and six months. This judgement has reviewed the extant instructions on the subject in the Railway Servants (pension) Rules as well as Indian Railway Establishment Manual and came to the conclusion that the substitutes are not covered by the Family Pension Scheme. I have also gone through the references quoted by the applicant as detailed above in para 2 and brought on record. I am unable to find

from these rules specifically covering the case of substitute who is not regularised is entitled for family pension on death of the government servant.

9. The applicant during the hearing has however relied upon the recent judgement of Hon'ble Supreme Court "Prabhavati Devi Vs. U.O.I. & Oths." (1996) 32 ATC 515. I have carefully gone through the judgement. In this case the employee i.e. husband of the widow (Appellant) was working as a substitute at the time of death. Their Lordships while setting aside the order of the Tribunal has allowed the claim of family pension. The relevant para 5 is reproduced below:-

"On the acquisition of temporary status derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for support L. Robert D' Souza V. Executive Engineer, S. Rly. and Union of India V. Basant Lal. We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal; overlooking as it does the chain in consequence, making the deceased acquire a temporary status and on his widow and children acquiring the right to claim family pension."

The facts in the present case are similar and the late husband of the widow had worked for more than one year as substitute continuously before the death. What is held by the Apex Court in the judgement referred to above is applicable to the applicant's case by all the fours. In view of this the applicant is entitled for the family pension.

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10. Considering the above facts, ²⁰we allow the application with the direction to work out the pension and pay the arrears due from the date of death/within a period of three months from the date of communication of the judgement.

No order as to costs.

Sharma
Member -

Arvind.