

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 17 DAY OF 7 2009)

PRESENT

HON'BLE MR. A.K. GAUR, MEMBER (J)

ORIGINAL APPLICATION No. 1261 OF 2003.
(Under Section 19, Administrative Tribunal Act, 1985)

Srimati Suraji wife of Late Hari Chand Driver Grade 'A', Eastern Railway resident of House No. 666, Rajib Coloney, Subhash nagar, Bareilly.

.....Applicant.

By Advocate: Sri Neeraj Agrawal

Versus

1. Union of India, through the General Manager, Eastern Railway, Howrah Culcutta (West Bengal).
2. The Divisional Railway Manager, Eastern Railway Howrah West Bengal.
3. Accounts Officer, Office of the F.A. and C.A.O. 17, Netaji Subhas Road, Calcutta. -1

..... Respondents.

By Advocate: Shri K.P. Singh

O R D E R

(Delivered By: Mr. A.K. Gaur, Member-Judicial)

By means of this Original Application the Applicant has prayed for grant of family pension after the death of her husband Harichandra who died on 02.01.2001, at Bareilly.

The husband of the Applicant was posted as Driver grade 'A' at Burdwan Station. The husband of the Applicant sought voluntary retirement on 05.01.1982 and was getting pension under P.P.O. No. 3728 through State Bank of India, Subhashnagar Branch, District Bareilly.

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2. According to the Applicant she approached the Bank Authorities for payment of pension, who directed the Applicant to approach Railway Authorities in this regard. The Applicant made Representation/s for grant of family pension on 26.03.2001, 27.04.2001, 05.06.2001, 06.07.2001, 24.08.2001 and 11.10.2001, but no response was given by the Competent Authority. It is also alleged by the Applicant that she is Wife of Harichandra and complimentary free Railway passes were issued in her favour vide first class Railway pass No. 898437, dated 03.09.99, 138338 dated 08.06.2000 and 145923 dated 06.09.2000. In the voter list the name of the Applicant is also mentioned at serial No. 2118 as wife of Harichand. The Applicant is aggrieved by the order dated 18.07.2003 of the Respondent No. 2 by which the claim of the Applicant for the grant by pensionary benefit has been rejected.

3. In the Counter reply filed by the Respondents, it is submitted that at the time of the retirement of the Applicant he declared that he was a widower and having two sons namely Shri Makhan Lal (date of birth 16.04.64) and Kanchan Lal (date of birth 16.6.66). The photo copy of Form No. 6 submitted to the Respondents by the deceased employee has been annexed as Annexure No. 1 to the Counter Affidavit. In terms of the Railway Board circular and recommendations of 5th pay commission the deceased

employee had applied for payment of difference of DCRG and revised pension with arrears, since voluntary retirement w.e.f. 25.01.1982. The Applicant was intimated vide order dated 02.06.2001 that from the facts contained in the record and Form No. 6, it is evident that the Ex-employee was a widower and made declaration during his life time i.e. before retirement that he was a widower. In view of the declaration given by the Ex-employee, the Applicant was not eligible/entitled for any pensionary benefit as per rule.

4. The Applicant was also intimated vide letter dated 26.12.2001 of the Respondents that from the settlement record it is revealed that the Ex-employee was a widower having two surviving sons namely Makhan Lal & Kanchan Lal at the time of retirement and therefor, the Applicant was not entitled for Pensionary benefits. The photo copy of the order dated 26.12.2001 has been filed as Annexure A-II to the counter reply. According to the Respondents the Original Application filed by Applicant is inordinately time barred and the same deserves to be dismissed on the ground of delay and laches. As per the official record Late Harichand was widower and residing with his two sons on the following address:-
Harichand c/o Babulal, Railway Quarter No. 357, Ambagan, Rai Bahadur Road, District 24 Pargana, West Bengal. It is also alleged that the deceased employee had manipulated and obtained Railway passes by suppressing the material facts

before Railway administration. The deceased employee had procured complimentary Railway passes for self and for so called Wife which was subsequently detected as false and fabricated by the Railway administration resulting into stoppage and discontinuance of complimentary passes.

5. The deceased employee submitted only his single photograph at the time of retirement and the same has been annexed as Annexure No. IV. On 01.07.2000 Late Harichand represented to the Railway administration that he has migrated from West Bengal to U.P. and residing with his two sons at Bareilly. Even in this letter the deceased employee did not mention anything about the Applicant photo copy of the letter dated 01.07.2000 has been filed as Annexure-V to the CA.

6. Applicant has filed Rejoinder reply denying the facts enumerated in the counter reply and submitted that the Applicant is real Wife of the deceased employee and she deserves to get family pension.

7. I have heard, learned counsel for the parties and perused the written argument filed by Shri Neeraj Agrawal learned counsel for the Applicant. Learned counsel for the Applicant, vehemently argued that the applicant being Wife of the deceased employee is entitled to get the family pension. A

perusal of voter list also indicates that the name of the applicant finds place as wife of Harichand. Learned counsel for the Applicant also submitted that during the life time of the Ex-employee Railway passes were issued in favour of the Applicant alongwith her husband late Harichand. Learned counsel for the Applicant argued that the nomination Form No. '6' annexed by the Respondents along with the Counter Affidavit as Annexure I is a forged and fabricated document.

8. It is also argued that there is no delay in filling the Original Application. In support of this contention reliance has been placed on the decision referred in 2003 (1) ESC (Supreme Court) 17 S. K. Mastan Bee Vs. Union of India. From perusal of the judgment rendered by Hon'ble Supreme Court in S. K. Mastan B's case (Supra) it is crystal clear that the grant of family pension is a recurring cause of action and the question of limitation shall not be strictly adhered to. In my considered view, there is no delay in filing OA and delay if any is condoned.

9. It is argued by Sri K. P. Singh that on 01.07.2000 the deceased employee moved an application in support of his case for recomputation of pension by calculating 75% of pay as running allowance, and from this letter of the deceased employee, it is evident as follows:-

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Bareilly. Now I am also drawing my pension from the State Bank of India, Subhash Nagar Branch, Bareilly, U.P. In this letter the deceased employee did not mention any where regarding his Wife i.e. the Applicant".

10. I have carefully considered the argument advanced by the parties counsel and found that the deceased employee died on 02.08.2001. In the declaration Form the Applicant has not been named by the deceased employee. He has only mentioned his two sons in Form No. 6. A perusal of Form No. 6 duly signed by the Applicant clearly indicates that the deceased employee was a widower. It is also seen that the Form No. 6 has duly been signed by the Ex-employee in presence of two witnesses of the department. In view of the aforesaid observation, there is hardly any justification for denying the documentary evidence filed by the Respondents.

11. I do not find, any illegality in the order dated 18 July 2003. The Applicant has utterly failed to make out any case warranting interference. OA is accordingly dismissed. No costs.

A. J. Jain
MEMBER (J)

/S.Verma//-