

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application 812 of 2003

Allahabad this the ¹⁸18 day of February 2005

Hon'ble Mr. A.K. Bhatnagar, Member (J)

Smt. Baijnathi Devi Wife of Late Sita Ram Pal, Resident of Village Tenshah
Alamabad, Post-Manjhanpur, District Kaushambi (Allahabad)

Applicant

By Advocate Shri Sudama Ram

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad.

Respondents

By Advocate Shri S.N. Gaur

ORDER

By Hon'ble Mr. A.K. Bhatnagar, Member (J)

By this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to respondents to grant family pension to the widow applicant w.e.f. 12.11.1991 with all consequential benefits including arrears of pension with compound interest.

2. The brief facts giving rise to this O.A. as per the applicant are that the husband of the applicant was appointed as Casual Gangman on 01/08/1978. He was medically examined in 'B-1' category and was found fit on 25.02.1981. He died on 12.11.1991 in the Hospital leaving behind widow-applicant, five sons and one daughter with no source of livelihood. Although the eldest son of the applicant was given compassionate appointment but no family pension has been granted to the applicant even though the applicant's husband served with the Department for 15 years. The applicant represented for family pension on 26.02.2001 followed by

reminder dated 24.03.2003 but no action has so far been taken by the respondents, therefore, the applicant filed this O.A.

3. Learned counsel for the applicant submitted that husband of the applicant was medically examined for the post of Gangman on 25.02.1981 and was found fit and thereafter he was allowed authorized scale of pay but his services were not regularized even after the expiry of more than fifteen years service in the Railways. Ultimately he died after a long sickness in the Railway Hospital. It is further contended that under the Railway Servant (Pension) Rules, 1993, Family Pension Scheme was introduced for Railway Servants in the year 1964 in which it has been clearly mentioned that one year of continuous service is sufficient or before completion of one year of service, the Railway Servant examined by the Medical Authority and was found/declared fit, than the widow of the Railway Servant is entitled for Family Pension. Learned counsel for the applicant placed reliance on the Judgments of (1) Smt. Mandodari Devi Vs. Union of India and others in O.A.No.1537 of 1999, decided on 23.04.2003, (2) Smt. Somwati Devi Vs. Union of India and Ors. In O.A. No.375 of 1996, decided on 16.02.1999 and (3) Smt. Vallam Badia Vs. Union of India and others in O.A. No.316 of 1996, decided on 21.06.2002 [2003 (2) A.I.S.L.J. 271] and submitted that this case is squarely covered by the Judgments mentioned above. Moreover, the applicant has filed representation to the General Manager, Northern Railway, Baroda House, New Delhi and Divisional Railway Manager, Northern Railway, Allahabad dated 24.03.2003 (AnnexureA-5) which is still lying undecided till date as mentioned in para 5(E) of the O.A.

4. Resisting the claim of the applicant, respondents filed counter and raised a preliminary objection that husband of the applicant died in 1991 and this O.A. has been filed in 2003 so the O.A. is barred by limitation, which is strongly opposed by the applicant's counsel in view of the decisions of Major Rajinder Singh Vs. Union of India and Ors. 2003 (1) S.L.J. Page 1 and in the case of S.K. Mastan Bee Vs. General Manager South Central Railway and another. In the case of Major Rajinder Singh(supra) it is clearly held that non payment of pension is a continuous cause of action so limitation does not apply. It is also held by the Apex Court in S.K. Mastan Bee case (supra) that the family pension cannot be rejected due to laches. Learned counsel for the respondents further submitted that the deceased applicant was not a Railway Servant so the applicant is not entitled for the family pension, as the applicant died on 12.11.1991 in the capacity of temporary status casual Gangman.

5. After hearing counsel for the parties, I am of the view that the ground for limitation argued by the respondents' counsel does not hold water as in the case of

Major Rajinder Singh(supra), it has clearly been held that non payment of pension is a continuous cause of action and in the case of S.K. Mastan Bee (supra), Hon'ble Supreme Court clearly held that family pension cannot be rejected due to laches so the question of delay does not come into picture in deciding the present case. It is also an admitted fact that the applicant filed a representation to this effect on 26.02.2001(AnnexureA-4) to the General Manager, Northern Railway, New Delhi and to Divisional Railway Manager, Northern Railway, Allahabad followed by a reminder dated 24.03.2003 which is still lying undecided.

6. On merits it is suffice to state that admittedly husband of the applicant had been working as casual labour in the respondents' establishment. He was found medically fit for the post of Gangman on 25.02.1981, as shown by annexure-1 of the O.A. He was granted temporary status in the pay scale of Rs.200-250 w.e.f. 01.03.1986 and he died on 12.11.1991 in the capacity of temporary status casual Gangman(as admitted in paragraph no.4 of the counter affidavit).

7. In the case of **Smt.Vallam Badia Vs. Union of India and others**{supra}, it is clearly held that temporary status holder casual labour is entitled to pension as well as for family pension. Paragraph no.14 of this order is reproduced below:-

“ We have given an anxious thought to the rule judgments positions which has been submitted before us on behalf of both the parties and have hardly anything to say in the matter since the rule position regarding the precedent is settled as submitted by the learned counsel for the applicant. In this view of the matter we are left with option except to follow the verdict of the Hon'ble Supreme Court by a three Judges Bench in Ram Kumar V. Union of India and Ors. 1996(1) SLJ 116 and wherein has been provided that temporary status casual labour in the Railways is entitled to the pension the matter does not needs any further adjudication since once the normal pension is allowed to a temporary status casual labour, his widow definitely would be entitled for family pension.

Playing regard to the provisions and position of the law, the foregoing discussions made, the law laid down by the Apex Court and for the reasons recorded herein above we find merit in the O.A. and the same deserves to be accepted. The O.A. is allowed. The respondents are directed the settled family pension of the applicant within three months from the date of receipt of a copy of this order. In case the family pension is not paid within three months the respondents shall be liable to pay interest at the rate of 9% per annum after expiry of the said period of three months. No order as to costs.”

8. After careful consideration of the arguments advanced by the counsel for the parties and in respectful agreement with aforementioned case law, I am of the view

that the case of the applicant is fully covered by these Judgments, therefore, applicant is also entitled for the relief claimed by her.

9. Accordingly, the O.A. is allowed. The respondents are directed to grant family pension to the applicant with effect from the date of death of her husband and start payment of family pension to her within a period of 3 months from the date of a copy of this order filed. The arrears shall also be paid to the applicant within a period of 6 months from the date of a copy of this order. No order as to cost.



Member {J}

/M.M./