

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated: this the 22nd day of May 2012

Original Application No. 1144 of 2006

Hon'ble Ms. Jayati Chandra, Member – A

Smt. Kamla Pandey, W/o Ram Raj Pandey, Khalasi FA and SAO Corps
Central Railway Electrification, Allahabad.

... Applicant

By Adv : Shri Pramod Kumar

VERSUS

1. Union of India through Ministry of Railways, Rail Bhawan, New Delhi.
2. The Financial Advisor and Chief Accounts Officer, Railway Electrification, Corps, Allahabad.
3. The General Manager, Electrification Organization, Allahabad.

... Respondents

By Adv: Ms. Nandita Adaval

(Reserved on 15.05.2012)

ORDER

Instant OA has been filed under section 19 of the Administrative Tribunal's Act, 1985 praying for direction to pay family pension to the applicant and to her minor son Anand alongwith all other benefits admissible under rules from the date of death of her late husband.

2. The applicant is the widow of late R.R. Pandey who had been employed as casual labour from 08.08.1977 but had obtained status of temporary employee on 25.11.1985. He died on 12.07.1988. The applicant was given compassionate appointment, but she or her minor son was not granted any family pension. Although Rule 18 of the Railway

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Pension Rules provided for such benefits to the family of the deceased employee. She prayed for family pension through her application dated 03.05.2006 (Annexure A-IV) which was turned down by the impugned order dated 15.06.2006 stating that as per Railway Boards order No. F (E) / III / 88 / PN2 / 4 dated 02.03.1988 she is not entitled to such family pension.

3. In their counter affidavit the respondents stated that the applicant's husband had not completed the mandatory period of 10 years service as temporary employee and, therefore, she could not be granted family pension in terms of the relevant rules. The applicant's husband was engaged as casual labour from 29.08.1979 to 01.09.1980 and later on with breaks till 1988. Although his total length of eligible service is 08 years, 09 months and 09 days (Annexure CA-2). The applicant was paid Rs. 5587/- as gratuity and she was given compassionate appointment. They have referred to order dated 25.11.1985 (Annexure CA-1) by which the temporary status was granted to the deceased employee. They have further produced copy of the Railway Board's Rule governing cases of grant of family pension to the families of the temporary railway servants retired / superannuated on completion 10 years of temporary service (Annexure CA-3). They have further quoted Rule 18 of Railway Service (Pension) Rules, 1993 which is reproduced below:

"18. Pensionary, terminal or death benefits to temporary railway servant. - (1) A temporary railway servant who retires on superannuation or on being declared permanently incapacitated for further railway service by the appropriate medical authority after having rendered temporary service not less than ten years shall be eligible for grant of superannuation, invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent railway servant under these rules."

4. In the rejoinder affidavit the applicant has stated that the deceased had put in service from 29.08.1979 till the date of his death i.e.

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12.07.1988. Therefore, it is clear that he has put in more than 10 years of service. Moreover, he has cited the judgment of Hon'ble Supreme Court in the case of *Prabhavati Devi Vs. Union of India* – 1995 LAWS(SC)-11-45 which reads as under:

- "4. The deceased kept working as a 'substitute' till 5.1.87 when he died. But, before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway Establishments. The said rule provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of 6 months' continuous service. Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311; whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's 2 months' pay on which the death gratuity is determined. The Railways have paid to the appellant gratuity under this sub-rule, but have denied to her the family pension. Her claim before the CAT, Patna Bench, Patna, was dismissed which has culminated into this appeal.
5. 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 Vs. Ex. Engineer, Southern Railway and Anr.* (1982 1 SCC 645 and *U.O.I. and Ors Vs. Basant Lal and Ors.* (JT 1992 (2) SC 459). 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 demise his widow and children acquiring the right to claim family pension.
6. We, thus, allow this appeal; set aside the impugned orders of the Tribunal and allow the claim to family pension as projected by the appellant. We also direct the railway to work out the pension due within 2 months from today and deliver the pension as also the arrears to the appellant within 15 days thereafter, if not earlier and also pay interest at the rate of 12% per annum from the date it was due till payment."

5. Learned counsel for the applicant has also placed reliance on the following judgments:

- "i. 1998 SCC (L&S) 1517 – *Sher Singh and others Vs. Surinder Kumar and others*
- ii. 1998 SCC (L&S) 1217 – *Raj Bahadur Sharma (Dead) through LRS. Vs. Union of India and others.*
- iii. Special Appeal No. 942 of 2000 (Gujarat High Court) – *Union of India and other Vs. Matatiben Sureshbhai Chile*

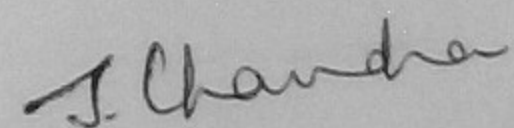
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6. I have heard Shri Promod Kumar learned counsel for the applicant and Ms. Nandita Adaval, learned counsel for the respondents and perused the entire facts of the case. It would be appropriate to say that mere grant of gratuity or compassionate appointment does not in any way curtail the right of the applicant of family pension if she is otherwise eligible. Question of length of service put in by the deceased employee being 10 years on which the respondents have placed their own decision is clearly erroneous in terms of the extract provided by them as Annexure CA-4. Rule 18 is captioned as pensionary, terminal / death benefit to temporary railway servant. Para 18 (1) only indicates those who retire on superannuation or on being declared permanently incapacitated. In their case the requirement of 10 years service is mandatory. Para 18 (2) deals with temporary railway servant who seeks voluntary retirement after completion of 20 years of service. Rule 18 (3) is, quoted below:-

"18 (3) In the event of death in harness of a temporary railway servant his family shall be eligible to family pension and death gratuity on the same scale as admissible to families to permanent railway servants under these rules."

7. It does not state 10 years as covering provision. Further nothing in Rule 18 (4), 18(5), 18 (6) or 18 (7) talks about minimum years of eligible service for person dying in harness.

8. Accordingly, the OA is allowed. The impugned order dated 15.06.2006 is quashed. The respondents are directed to grant family pension to the applicant from the date of eligibility and also pay arrears within a period of three months from the date of receipt of a certified copy of this order. No cost.



Member (A)

/pc/